MINUTE ITEM
This Calendar Item No. 73
was approved as Minute Item
No. 73 by the State Lands
Commission by a vote of 3
to Ø at its 2-5-01
meeting

Minute Item
73

02/05/01
W 24974
D. Plummer
B. Stevenson
J. Barbieri

MONTEZUMA WETLANDS, LLC
(APPLIANT)

REGULAR ITEM C73: Presentation was made to Commissioners concerning a general lease for Montezuma Slough. Staff also listened to concerns from the public. Item was approved as presented.

CALENDAR ITEM
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02/05/01
W24974
D. Plummer
B. Stevenson
K.Olin
J. Barbieri

GENERAL LEASE – INDUSTRIAL USE

LESSEE:

Montezuma Wetlands, LLC
c/o Levine-Fricke Restoration Corporation
1900 Powell Street, 12th Floor
Emeryville, California 94608

AREA, LAND TYPE, AND LOCATION:

18.4 acres of sovereign lands in the Sacramento River and Montezuma Slough, Collinsville, Solano County.

AUTHORIZED USE:

Construction, use and maintenance of an off-loading barge dock, two moveable barges, suction pipeline, water line, electrical lines, deep water discharge pipe, two small boat ramps, and four levee breaches and portions of certain structures in connection with those breaches.

LEASE TERM:

Twenty years, with an expiration date of December 31, 2020.

CONSIDERATION:

$3,700 per year, adjusted each year for inflation according to the terms of the lease; with the State reserving the right to fix a different rent in the tenth year of the lease term, and for that different rent to be increased for inflation as provided in the lease.

BACKGROUND:

The purpose of this calendar item is to request approval of a lease of tide and submerged lands in connection with a dredge spoils project at Montezuma Slough and the Sacramento River in Collinsville, Solano County. The overall

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project site is 2,394 acres in size, and is shown on Exhibit A attached to this calendar item, which is incorporated by reference as a part of it. The lands to be

leased by the State Lands Commission are 18.4 acres adjacent to the upland part of the project, and are shown on Exhibit B, attached and incorporated by reference. The proposed lessee is Montezuma Wetlands, LLC, for a lease period of 20 years.

The project has several purposes. The first is to allow the placement of spoils taken from San Francisco Bay navigation channels, and especially from the Port of Oakland, on 1,822 acres of the project site. The second is to create a tidal wetlands on top of the dredge spoils by raising the low elevation of the project site to support tidal flows. The third is to construct and to operate a dredge spoils rehandling facility on the site for the sales of dredge spoils for off-site uses in the Sacramento-San Joaquin River Delta and, if necessary, for on-site levees. The vast majority of these activities will take place on private upland property within the site. A lease from this Commission is necessary for facilities to off-load barges, for four levee breaches, pipelines and electrical services, and for two small boat docks.

Over many years, there has been extensive work on the problem of dealing with dredge spoils in the important navigation channels of San Francisco Bay. An interagency group composed of the agencies with responsibility over dredging was formed to deal with this issue. These agencies formed the Long Term Management Strategy, also known as the "LTMS," to dispose of dredge spoils by sound and environmentally beneficial placement of those spoils on upland sites, as an alternative to dumping them in the Bay or, at greater expense, in the Pacific Ocean. The LTMS is made up of the U.S. Army Corps of Engineers, the U.S. Environmental Protection Agency, the San Francisco Bay Conservation and Development Commission ("BCDC"), the San Francisco and Central Valley Regional Water Quality Control Boards, and the State Water Resources Control Board. The Montezuma Slough project will be able to accept 17 million cubic yards of sediments. It is anticipated that the Port of Oakland will use this site in connection with its 50' channel deepening project, which will begin this spring.

This project would achieve the primary goal of the LTMS to place spoils on upland areas, especially in connection with a beneficial program to create wetlands at the site of spoils placement. To achieve this, dredged materials taken from navigation channels and from the ports would be loaded onto barges and offloaded at the project site in a slurry, using underground water taken from the site. At various points, the make-up of the materials will be screened into "cover" and "non-cover" materials using tests developed by the San Francisco

Regional Water Quality Control Board known as the Interim Sediment Screening Criteria, together with federal standards. The non-cover materials--those that do not meet certain tests required for disposal in an aquatic environment--would be placed first. These would be capped by three feet of cover sediments, which pass tests showing that they are suitable for deposition into a tidal wetland environment. Non-cover material will not be placed within 200 feet of the planned tidal sloughs or of the Montezuma Slough levee.

The overall project will be split into four phases. Each phase will be separated from adjoining phases by "phase levees." Also, each phase will itself be broken into interior cells ranging from 15 to 60 acres in size. The cells will function as settling basins for the dredged material, and the cell levees will serve to confine non-cover materials. Dredge materials will be placed to meet design elevations within each of four project phase areas. When design height is reached within each phase, the Montezuma Slough levee will be breached in an area corresponding with that phase, allowing the tides to enter. Sediments brought by the ebb and flow of the tides will cause additional build-up of sediments to an elevation needed for a tidal marsh ecosystem to function optimally.

The project also includes a water system related to offloading of dredge materials and to the decanting of dredge materials within the cells. When the dredge material arrives, it must be made into a slurry so that it can be moved from the barge to be placed within the cells. When the slurry is decanted, the remaining water will be transferred to the "makeup water" pond. Decant water taken from non-cover materials will first be put through geotextile fabric filters before discharge to the makeup water pond. Water will be recycled from the makeup water pond out to the barge again, to be mixed with new sediments to create a slurry. Water from on-site wells will be added to the makeup water pond as needed.

The project also includes a rehandling facility. The function of this facility is to dewater and to store cover dredged materials. These materials could be used for perimeter and new project levees. They could also be sold off-site for use in the Sacramento-San Joaquin River Delta for levee stabilization and habitat construction.

The facilities which would be the subject of a lease by the State Lands Commission are:

- Four levee breaches (one in each of four project phases), and portions of certain structures in connection with those breaches;

- Docks, moorings, and electrical service related to the sediment offloading and rehandling facility;

- Two moveable barges used to hold a sediment-laden barge in place;

- A suction pipeline and a water line, both in connection with sediment offloading;

- A deepwater discharge pipeline, to be used in connection with the sediment placement (but not for a rehandling facility, unless a discharge permit is acquired); and

- Portions of two small boat ramps.

The staff of the Commission has negotiated a draft industrial lease currently on file at the Sacramento offices of the Commission and incorporated by this reference. The lease is for a period of 20 years, with an expiration date of December 31, 2020. Rent for the 18.4 acres of state land to be used in connection with the project is set at $3,700 per year, which includes both a return to the value of the state lands and payment for pipelines and conduit on state lands. Particular terms of the draft lease are:

- The lease will incorporate extra protection for any possible historic or cultural resources on state land. It will adopt as a base line level of protection all mitigation measures approved by the County of Solano as lead agency for this project, and will require that work stop or be redirected if any historical or cultural artifacts are found. It will also incorporate standards for historic preservation which are to be developed in consultation with the federal government through a Programmatic Agreement or the "Section 106" process. Also, the lease provides that a marine archeologist approved by the staff of the State Lands Commission will make a determination whether to be on site during any excavation of state lands to ascertain that any artifacts encountered are protected.

- The lease will require that the lessee provide general and environmental liability insurance for the State in the respective coverage amounts of $5 million and $4 million, either naming the State as co-insured of an existing policy or as insured on a new policy. Also, during years 10-15 of the lease term, the lessee will deposit moneys or other form of security into a fund for the purpose of purchasing insurance for the State for a period of 20 years after the lease has ended.

- With each of the four levee breaches, the lessee will deposit moneys or other form of security into a fund for the closing, if necessary, of levee breaches. These funds will be available to the State alone to use in the event that the

lessee does not close the levees in the case of an emergency. Montezuma Wetlands, LLC has entered a separate Financial Agreement with the County of Solano and the Water Board related to closure and post-closure costs.

- The draft lease requires that, prior to a levee breach authorized by this lease, the lessee must have entered a memorandum of understanding or other enforceable agreement with the California Department of Fish and Game regarding the maintenance of the Salt Marsh Harvest Mouse.
- The lease does not allow the use of the deepwater discharge pipe for the rehandling facility unless that use is permitted by the Regional Board. At present, Montezuma Wetlands LLC does not have a permit from the Regional Board to discharge waters from the rehandling facility into Suisun Bay.

The project has been considered by several key agencies, and most permits have already been acquired. There have also been appeals of agency decisions and litigation. On February 2, 1999, Solano County certified the Final EIR/S for the project, and approved amendments to the County General Plan, Zoning Ordinance, and Local Protection Plan amendments. On October 5, 2000, the Solano County Planning Commission approved a Use Permit (U-91-35) and Marsh Development Permit (MD 91-04) for the project. This was followed by an appeal to the Solano County Board of Supervisors to reverse the Planning Commission decision. The appeal was denied by the Board on November 7, 2000. As part of its approvals, the County has made CEQA Findings of Fact for the project; has adopted 102 Conditions of Approval related to the project; has approved a Mitigation Monitoring and Reporting Plan; and has adopted a Statement of Overriding Considerations for an unmitigated impact of air emissions. The CEQA Findings of Fact, the Conditions of Approval, and the Statement of Overriding Considerations are attached to this calendar item as Exhibit C, Exhibit D, and Exhibit E, and are incorporated as parts of it by this reference. The Mitigation Monitoring and Reporting Plan is too lengthy to include as an exhibit. It is on file at the State Lands Commission office in Sacramento, and is also incorporated by reference. Resolutions of the Solano County Board of Supervisors and Planning Commission related to their February 2, 1999, October 5, 2000, and November 7, 2000 actions are shown in Exhibit F (attached to this calendar item and incorporated by reference).

In June 1999, the San Francisco Bay Conservation and Development Commission ("BCDC"), which has statutory authority related to Suisun Marsh protection, has certified Solano County's amendments to plans and policies necessary to approve this project as consistent with the Suisun Marsh Preservation Act and the policies of the Suisun Marsh Protection Plan. BCDC is scheduled to consider the issuance of a Marsh Development Permit in February 2001.

A lawsuit was filed to overturn the certification of the EIR/S (Friends of Suisun Marsh and the Save San Francisco Bay Association v. Solano County (Solano County Superior Court; case no. C12244). The EIR/S was found to be adequate by the trial court. The trial court decision has been upheld on appeal by the First District Court of Appeal. The trial and appellate court determinations that the EIR/S complies with CEQA might be appealed to the California Supreme Court. Even if an appeal is filed, responsible agencies considering permits for the project are required to assume that the EIR/S complies with CEQA until a final determination is made that it does not (Public Resources Code, Section 21167.3).
On December 11, 2000, a second lawsuit regarding the project was filed against the County of Solano. It is titled Stop the Montezuma Wetlands Project and Friends of Suisun Marsh v. County of Solano (Solano County Superior Court; case no. 16087). The new lawsuit asserts several causes of action, among them that the project has changed in ways that require a new or supplemented EIR and recirculation of the EIR; that the project will cause an impermissible taking of the Salt Marsh Harvest Mouse, citing Fish and Game Code Section 4700; and that all Solano County project approvals be set aside.

On August 7, 2000, the Regional Board approved the Waste Discharge Requirements for the project (Final Order No. 00-061). It has not approved Waste Discharge Requirements from the rehandling facility. The issuance of this permit has been appealed to the State Water Quality Control Board in Sacramento. A hearing date has not yet been set.

There are some pending permits and authorizations. The project requires a permit from the U. S. Army Corps of Engineers, which will make a decision in consultation with the U. S. Fish and Wildlife Service and the National Marine Fisheries Service and, as to historic and cultural resources preservation, the State Historic Preservation Officer. An approval of the Department of Water Resources, Division of Dam Safety, will be required for the project. Also, staff has confirmed with Region 3 of the Department of Fish and Game that a memorandum of understanding to avoid taking the Salt Marsh Harvest Mouse will be necessary and is anticipated.

OTHER PERTINENT INFORMATION:

1. The County of Solano has prepared an environmental impact report/environmental impact statement (EIR/S) for the Montezuma Slough project. The EIR/S was certified by Solano County Board of Supervisors on February 2, 1999. Also, the Solano County Planning Commission adopted a Mitigation Monitoring and Reporting Program on October 5, 2000, which adoption was reaffirmed by the Board of Supervisors on November 7, 2000. The Mitigation Monitoring and Reporting Program is on file at the office of the State Lands Commission in Sacramento. The

California State Lands Commission staff has reviewed the EIR/S and the Mitigation Monitoring and Reporting Plan.

2. In connection with the approval of Use Permit No. U-91-35 and Marsh Development Permit No. MD-91-04 for the project on October 5, 2000, the Solano County Planning Commission made CEQA Findings of Fact in conformance with the State CEQA Guidelines (Title 14, California Code of Regulations, section 15091 and 15096). On the same date, the Solano

   County Planning Commission adopted Conditions of Approval for the project, which adoption was reaffirmed by the Board of Supervisors on November 7, 2000. The CEQA Findings of Fact are contained in Exhibit C, and the Conditions of Approval are contained in Exhibit D.

3. A Statement of Overriding Considerations made in conformance with the State CEQA Guidelines (Title 14, California Code of Regulations, section 15093) has been adopted for this project by Solano County in reference to a single unmitigated impact (See Exhibit E). This impact is for air emissions from operation-phase activities in excess of the Bay Area Air Quality Management District standard of 80 pounds per day for ROG, NOx, SOx, and PM10. The Statement of Overriding Considerations was adopted by the Solano County Board of Supervisors on February 2, 1999, and was subsequently referred to in the granting of Use Permit U-91-35 and Marsh Development Permit MD 91-04 by the Solano Planning Commission on October 5, 2000. The action of the Planning Commission, including its reference to the Statement of Overriding Considerations, was reaffirmed by the Solano County Board of Supervisors on November 7, 2000.

4. This activity involves lands indentified as possessing significant environmental values pursuant to Public Resources Code sections 6370, and the sections following. Based upon the staff's consultation with the persons nominating such lands and through the CEQA review process, it is the staff's opinion that the project, as proposed, is consistent with its use classification.

EXHIBITS:

A. Site Map
B. Lease Parcel Maps
C. CEQA Findings of Fact
D. Conditions of Approval
E. Statement of Overriding Considerations
F. County Resolutions

PERMIT STREAMLINING ACT DEADLINE:
April 3, 2001

RECOMMENDED ACTION:
IT IS RECOMMENDED THAT THE COMMISSION:

CEQA FINDINGS:

1. FIND THAT AN EIR WAS PREPARED AND CERTIFIED FOR THIS PROJECT BY THE COUNTY OF SOLANO, AND THAT THE STATE LANDS COMMISSION HAS REVIEWED AND CONSIDERED THE INFORMATION CONTAINED THEREIN.

2. ADOPT THE FINDINGS MADE IN CONFORMANCE WITH TITLE 14, CALIFORNIA CODE OF REGULATIONS, SECTIONS 15091 AND 15096(h), AS CONTAINED IN EXHIBIT C ATTACHED TO THIS CALENDAR ITEM.

3. ADOPT THE MITIGATION MONITORING AND REPORTING PROGRAM, AS NOW ON FILE AT THE OFFICES OF THE STATE LANDS COMMISSION AND THE CONDITIONS OF APPROVAL, AS CONTAINED IN EXHIBIT D ATTACHED TO THIS CALENDAR ITEM.

4. ADOPT THE STATEMENT OF OVERRIDING CONSIDERATIONS MADE IN CONFORMANCE WITH TITLE 14, CALIFORNIA CODE OF REGULATIONS, SECTION 15093, AS CONTAINED IN EXHIBIT E ATTACHED TO THIS CALENDAR ITEM.

SIGNIFICANT LANDS INVENTORY FINDING:
FIND THAT THIS ACTIVITY IS CONSISTENT WITH THE USE CLASSIFICATION DESIGNATED BY THE COMMISSION FOR THE LAND PURSUANT TO PUBLIC RESOURCES CODE SECTION 6370, AND THE SECTIONS FOLLOWING.

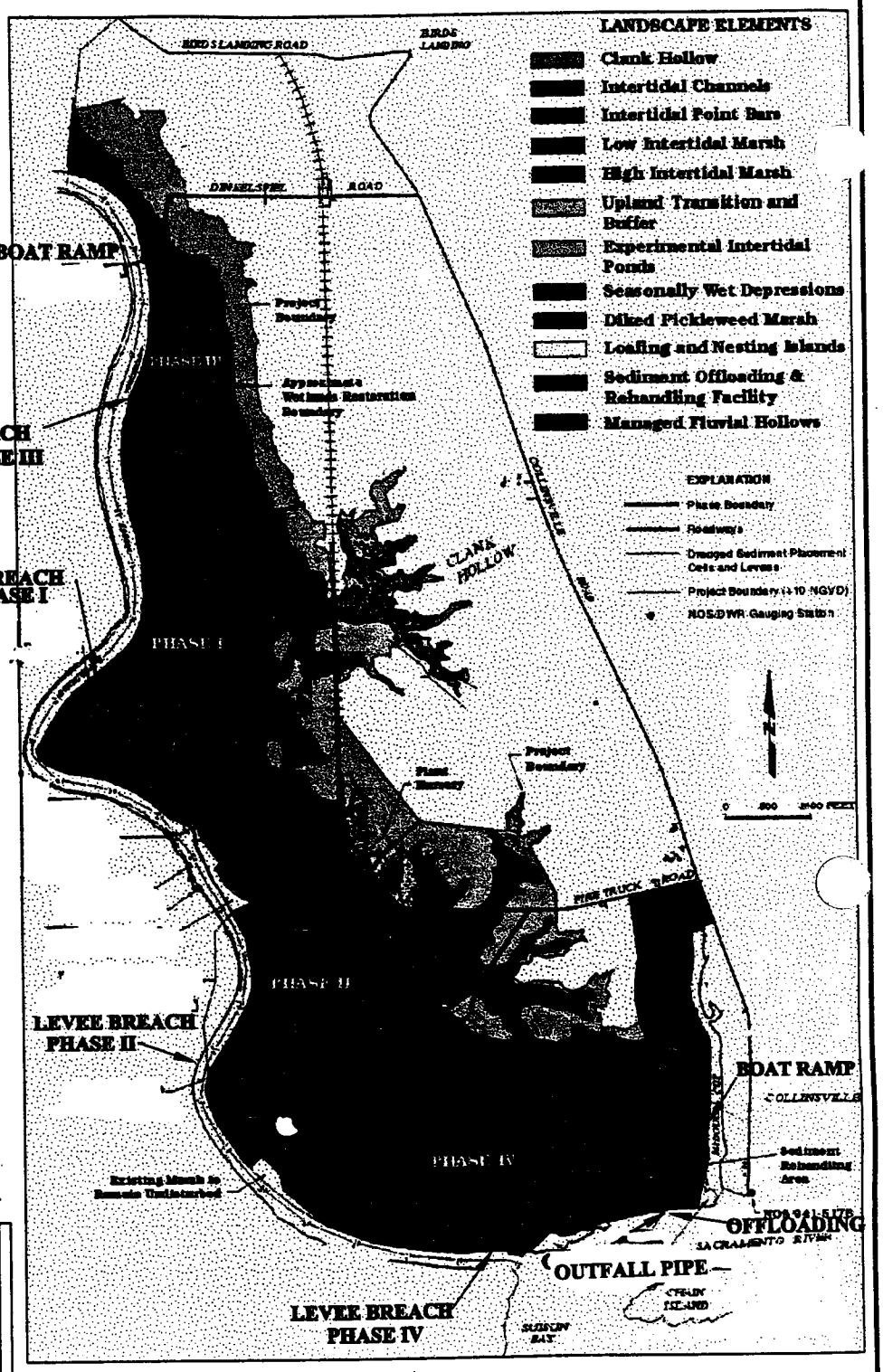
AUTHORIZATION:
AUTHORIZE ISSUANCE OF A LEASE TO MONTEZUMA WETLANDS, LLC OF A GENERAL LEASE - INDUSTRIAL USE, FOR A MAXIMUM TERM OF 20 YEARS, WITH A TERMINATION DATE OF DECEMBER 31, 2020, FOR CONSTRUCTION, USE, AND MAINTENANCE OF AN OFF LOADING BARGE

DOCK, TWO MOVEABLE BARGES, SUCTION PIPELINE, WATERLINE, ELECTRICAL LINES, DEEP WATER DISCHARGE PIPE, TWO SMALL BOAT RAMPS, AND FOUR LEVEE BREACHES AND PORTIONS OF CERTAIN STRUCTURES IN CONNECTION WITH THOSE BREACHES. THE LEASE WILL BE OF THE LANDS SHOWN IN EXHIBIT B. CONSIDERATION WILL BE $3,700 PER YEAR, WITH YEARLY ADJUSTMENTS FOR INFLATION, AND WITH THE RIGHT OF THE STATE TO SET A DIFFERENT RENT IN THE TENTH YEAR OF THE LEASE, AND FOR THAT DIFFERENT RENT TO BE SUBSEQUENTLY ADJUSTED FOR INFLATION.

AUTHORIZE AND DIRECT THE STAFF OF THE STATE LANDS COMMISSION TO TAKE ALL NECESSARY OR APPROPRIATE ACTIONS ON BEHALF OF THE STATE LANDS COMMISSION IN REGARDS TO THE AUTHORIZED LEASE, INCLUDING THE EXECUTION, ACKOWLEDGEMENT, AND RECORDATION OF THE LEASE AND/OR A MEMORANDUM OF THE LEASE.

NO SCALE

SITE MAP



This Exhibit is solely for purposes of generally defining the project area and is not intended to be, nor shall be construed as, a waiver or limitation of any state interest in the subject or any other property.

EXHIBIT A

W24974

Montezuma Slough Marsh Restoration

Levine-Fricke Restoration

Solano County, California

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kmo 1/12/01

EXHIBIT B
1 OF 8

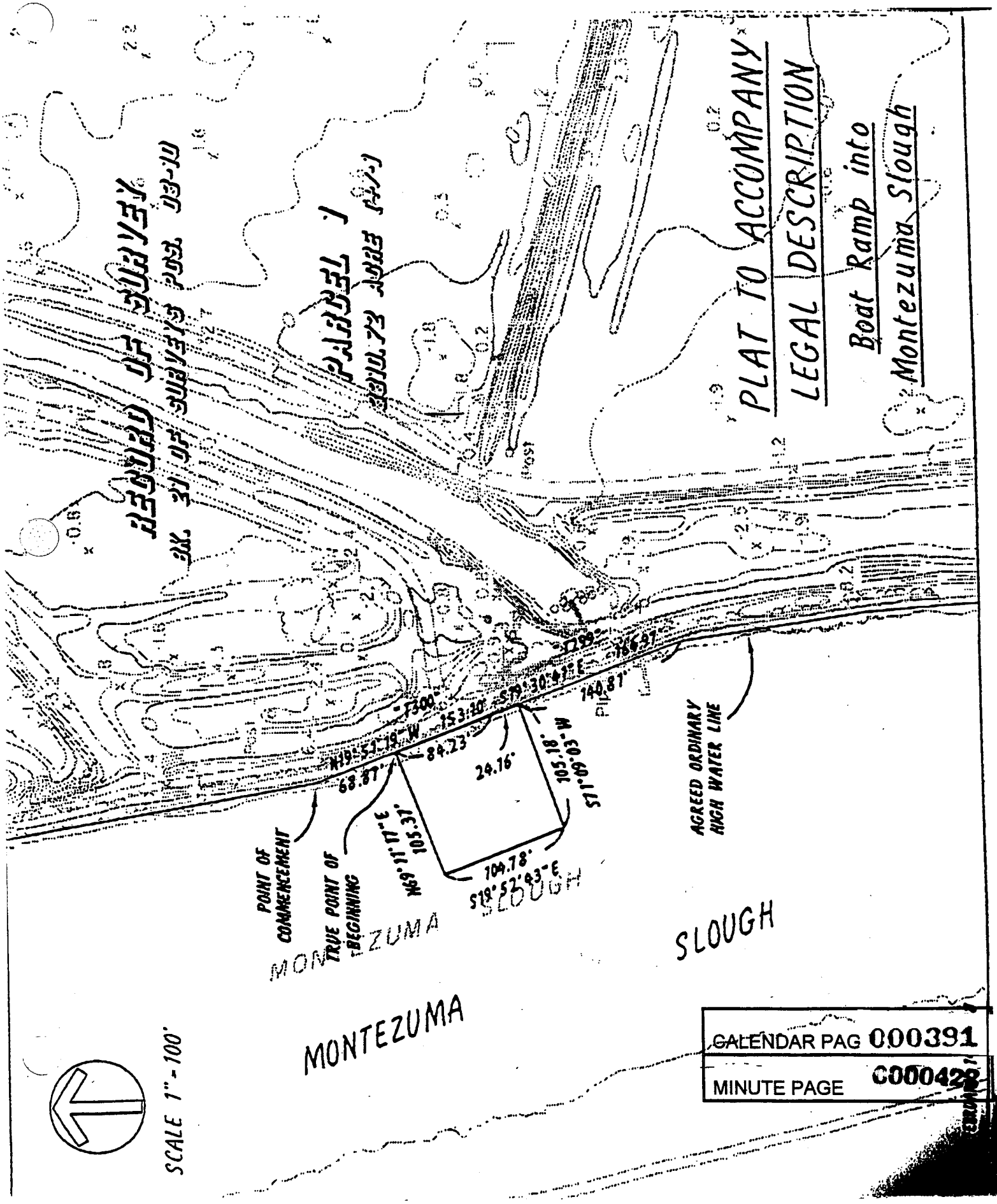

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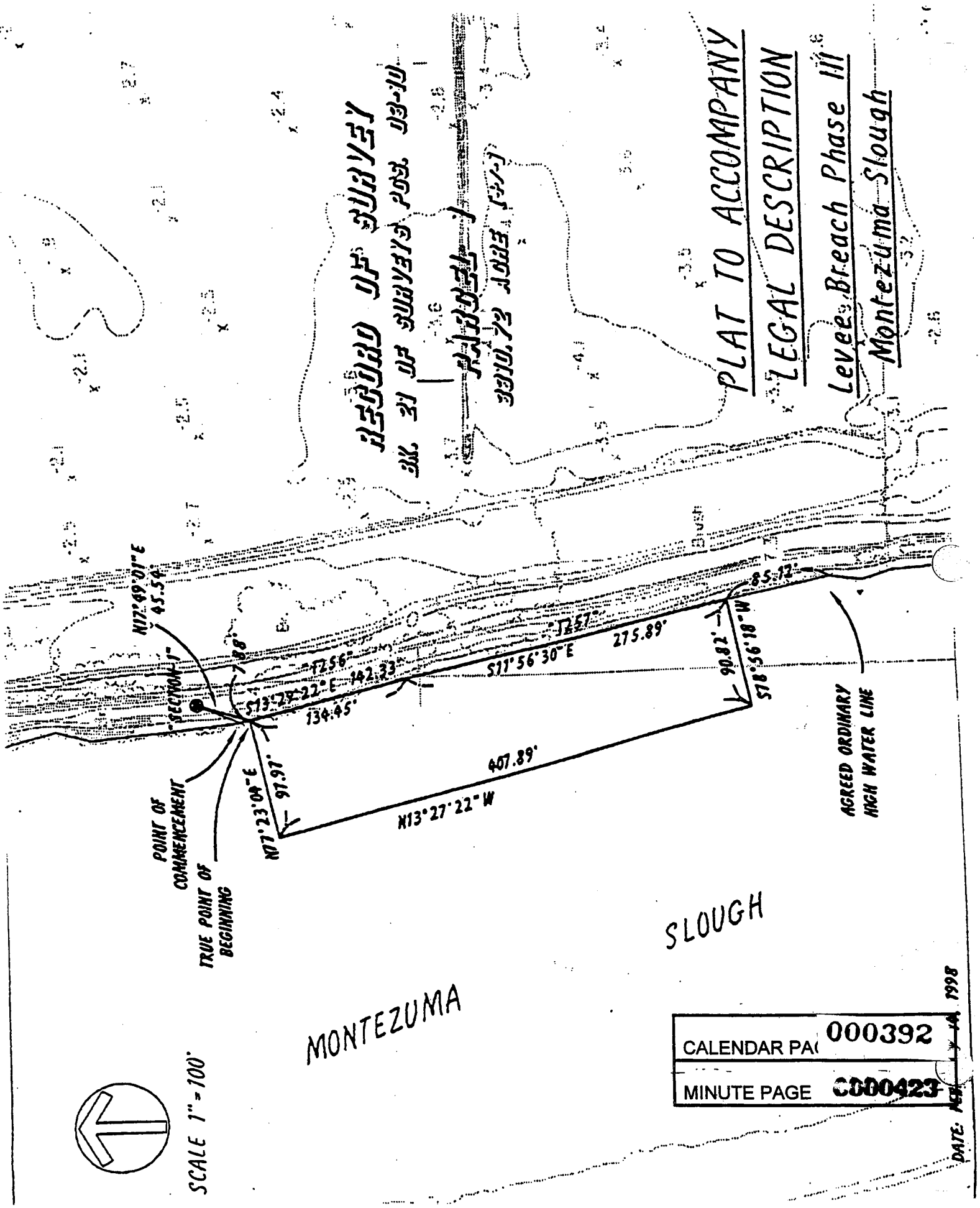
EXHIBIT B
2 OF 8



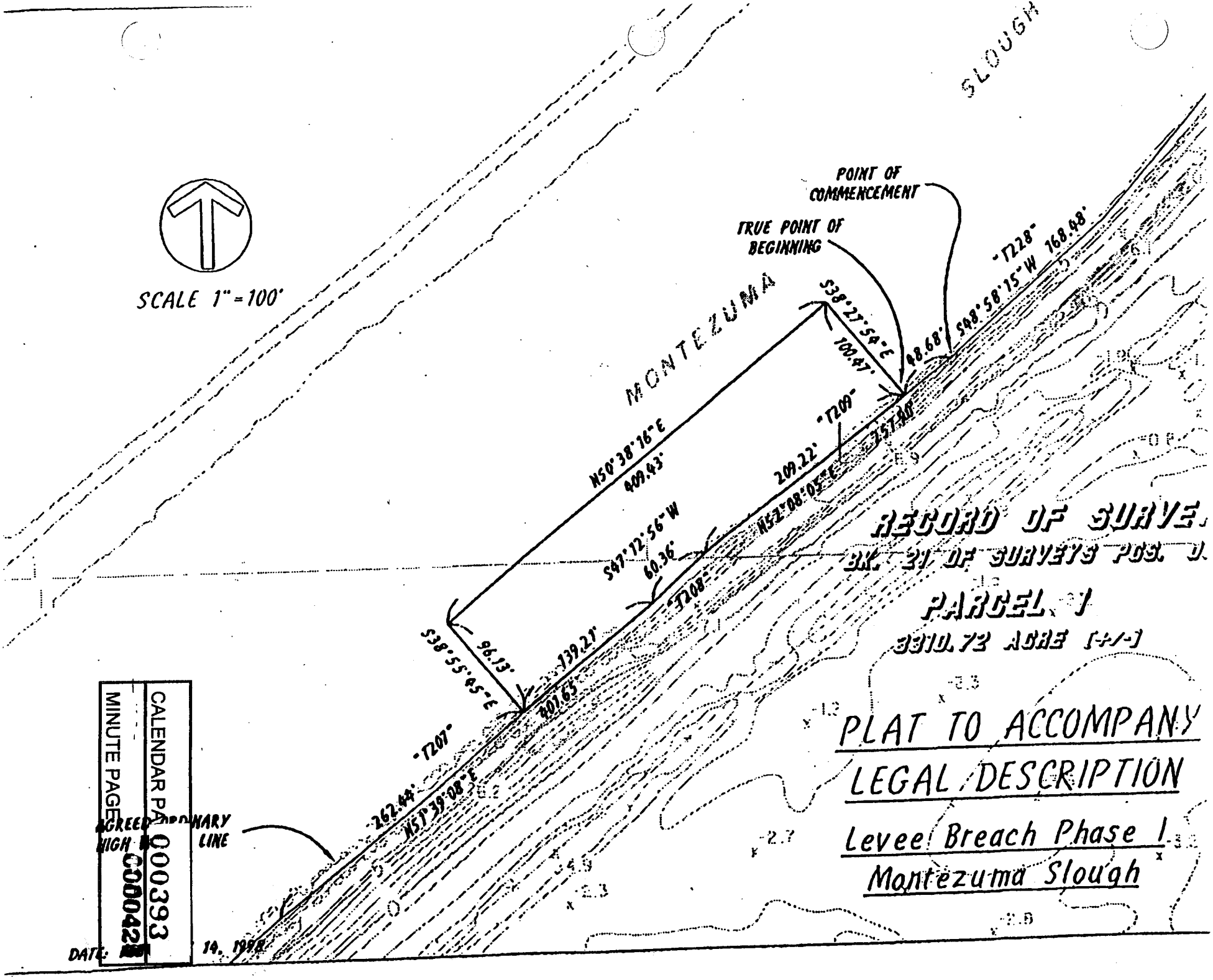


EXHIBIT B
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EXHIBIT B
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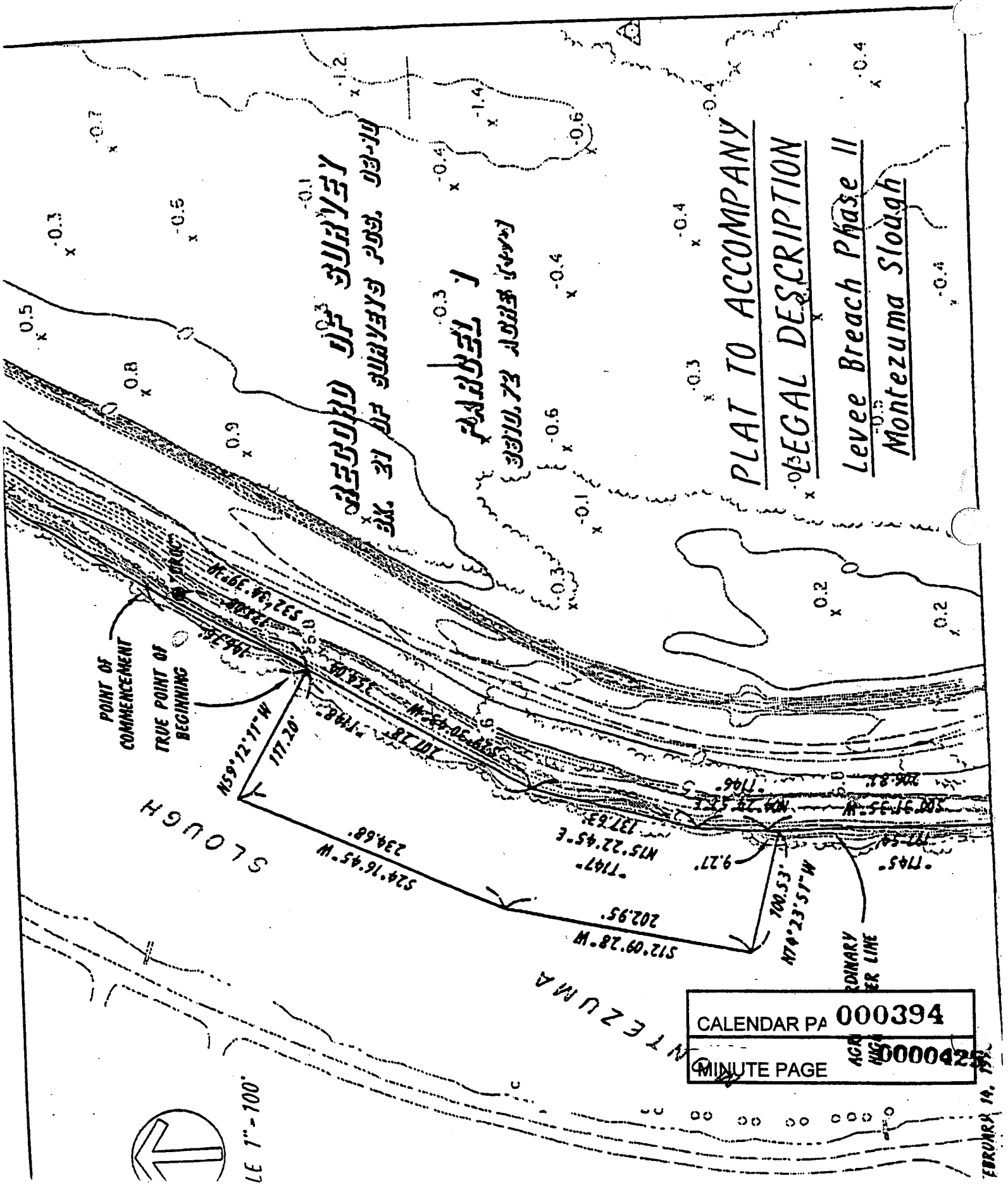

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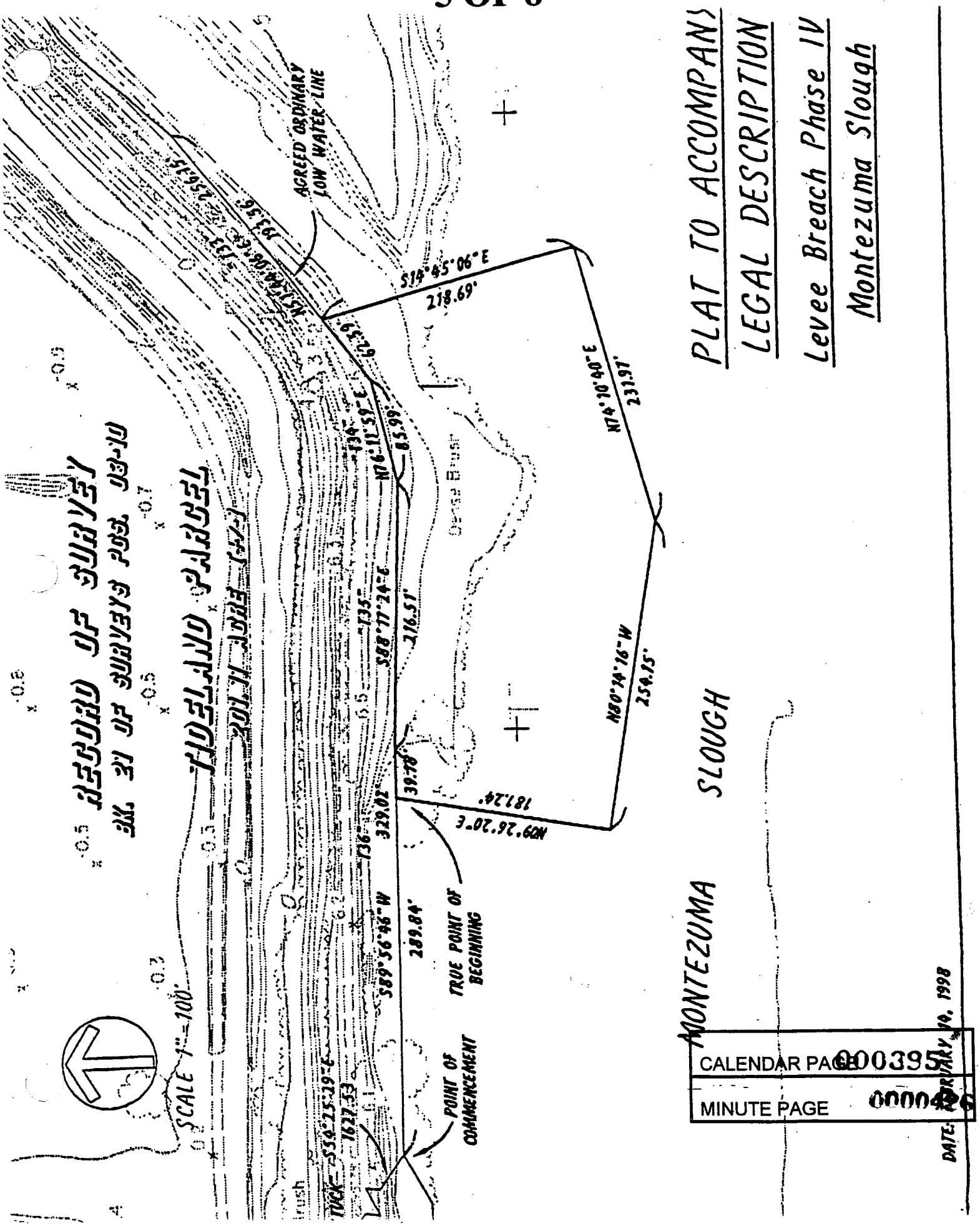

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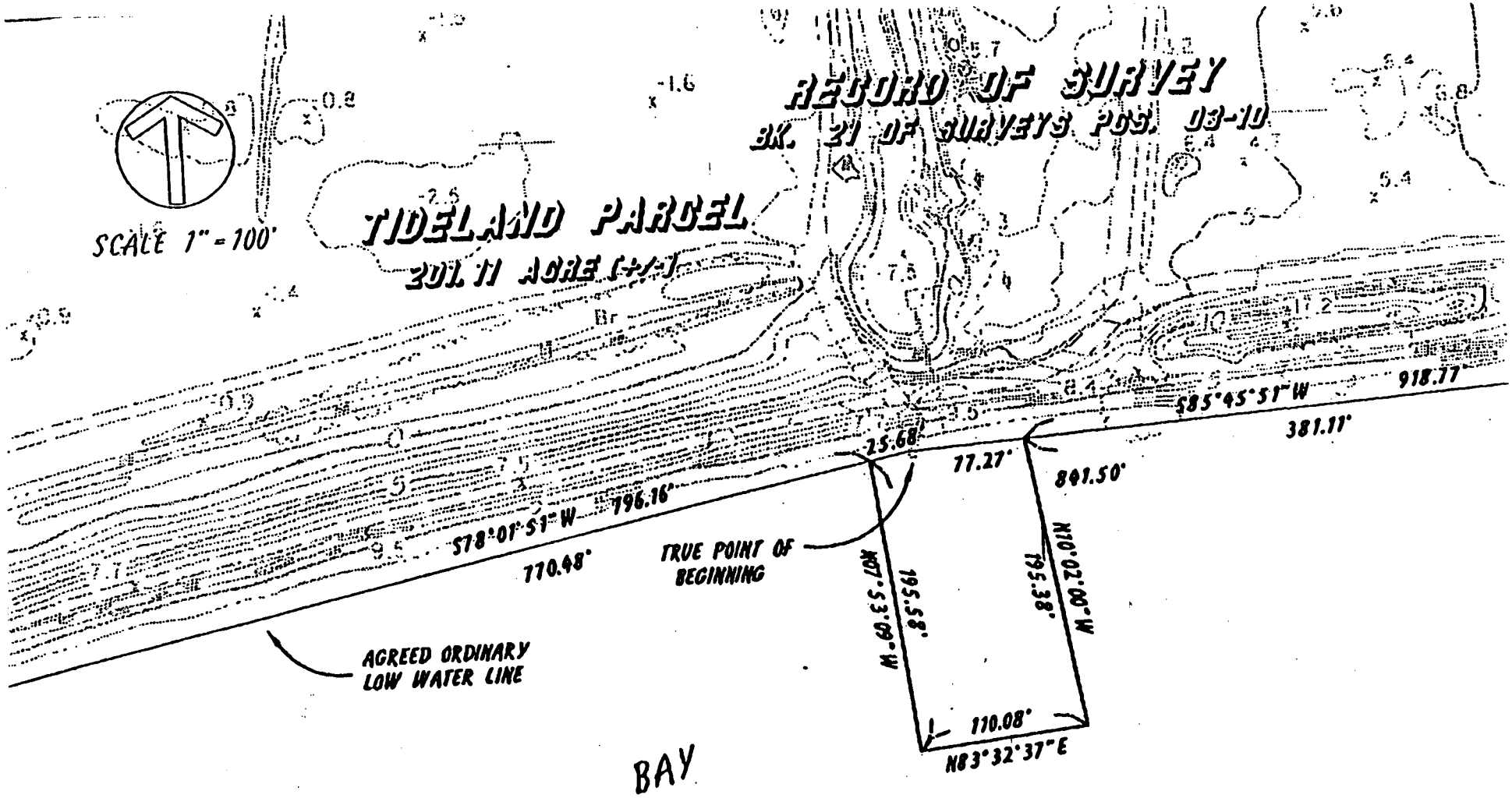

SUN

PLAT TO ACCOMPANY
LEGAL DESCRIPTION

Discharge Pipe into
Suisun Bay

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DATE: JANUARY 14, 1998

EXHIBIT B
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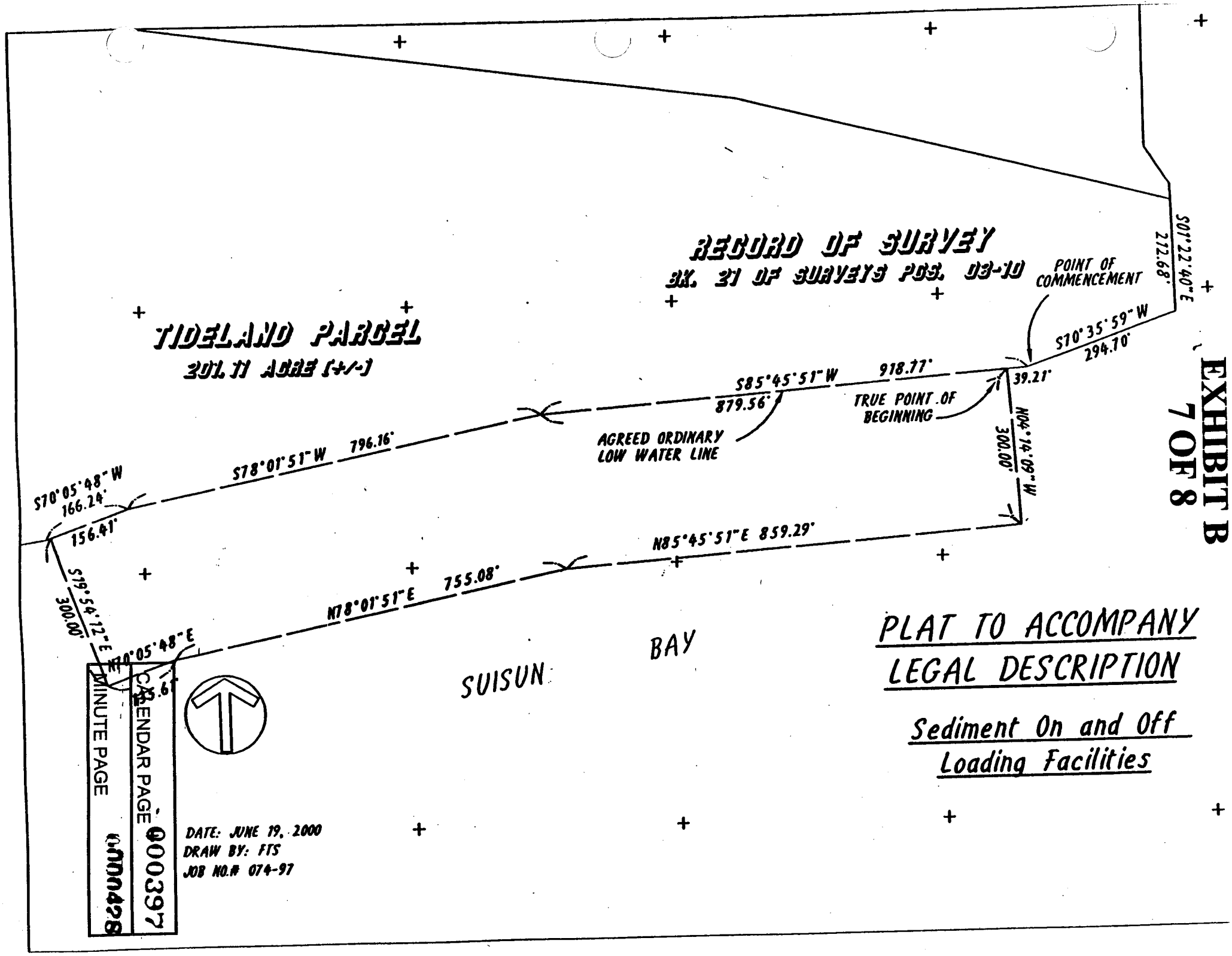

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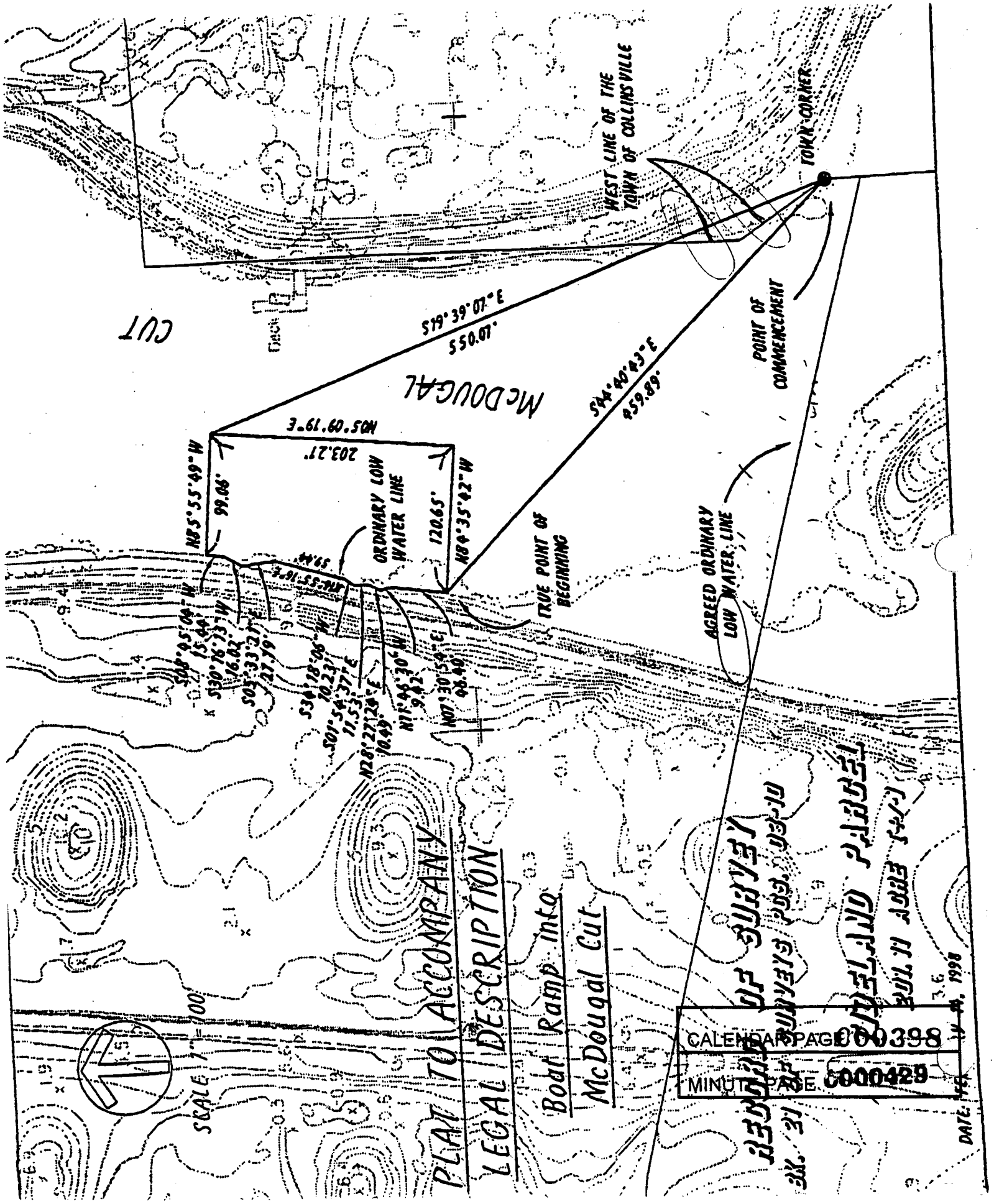

CSLC
EXHIBIT C

CEQA FINDINGS OF FACT
FOR
USE PERMIT NOS. U-91-35; MP-91-04
MONTEZUMA WETLANDS MARSH RESTORATION PROJECT
AND REHANDLING FACILITY

The following findings are presented to comply with the requirements of the California Environmental Quality Act (California Public Resources Sections 21000 et seq.) and Sections 15091, 15092, 15093, and 15162 of the state CEQA guidelines (California Government Code of Regulation s, Title 14, Sections 15000 et seq.). Reference is made to the Final Environmental Impact Report for the Montezuma Wetlands Project. This Final Environmental Impact Report Is the primary source of information provided below and is incorporated herein by reference.

Among the potentially significant impacts identified by said Final Environmental Impact Report were impacts with respect to certain elements of the Solano County General Plan, including the Land Use and Circulation Element, Collinsville Montezuma Hills Area Plan and Program, and Resource Conservation and Open Space Element, and to the Zoning Ordinance and Local Protection Program. These impacts were mitigated by previous approval by the Board of Supervisors of amendments to these plans, policies, and regulations as recommended by the mitigation measures of the Final Environmental Impact Report.

All remaining mitigation measures associated with potentially significant impacts of this project will be implemented through conditions of approval that are required as part of the Conditional Use Permit and Marsh Development Permit for this project, thereby ensuring that the Montezuma Wetlands Project will have no significant adverse environmental impacts, except for that one item listed on the following pages for which a Statement of Overriding Considerations has been previously adopted by the Solano County Board of Supervisors.

A. POTENTIALLY SIGNIFICANT IMPACTS WHICH ARE AVOIDED OR MITIGATED TO A LEVEL OF INSIGNIFICANCE

The following findings discuss impacts which were identified in the Final Environmental Impact Report as being significant or potentially significant impacts, but which can be reduced to a level of less-than-significance through mitigation. The Planning Commission hereby finds that these mitigation measures have either been previously mitigated through amendments to the Solano County General Plan, Zoning Ordinance, and Local Protection Plan, or that they will be mitigated through conditions of approval of the proposed Use Permit and/or Marsh Development Permit.

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ATTACHMENT 1 TO EXHIBIT A

1. Impact

The proposed project would be inconsistent with Solano County plans and policies for placement of dredged materials in marsh and water dependent industrial-designated areas; and the rehandling of dredged materials for on site and off site use would be inconsistent with uses allowed in the I-WD zoning district.

Mitigation

The Solano County General Plan, the Local Protection Plan, and the Zoning Ordinance have been amended by the Board of Supervisors to allow for placement of dredged materials in marsh and water dependent industrial-designated areas;. In addition the zoning ordinance has been amended by the Board of Supervisors to allow for rehandling of dredged materials for on-site and off-site use prior to permit approval.

Finding

Changes or alterations have been required in, or incorporated into, the Montezuma Wetlands Project which avoid or reduce to a level of less-than-significance the significant environmental effect as identified in the Final Environmental Impact Report.

2. Impact

Facilities, especially temporary structures, are subject to damage during a future earthquake by strong ground shaking and liquefaction.

Mitigation

Structures shall be sited, anchored and designed to withstand strong ground shaking and deformation resulting from an earthquake on any identified, potentially seismogenic fault at or near the site.

Finding

Changes or alterations have been required in, or incorporated into, the Montezuma Wetlands Project which avoid or reduce to a level of less-than-significance the significant environmental effect as identified in the Final Environmental Impact Report.

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3. Impact

Critical Project structures, such as cell and perimeter levees, and holding pond levees could fail or be damaged during an earthquake, increasing potential for release of contaminants to the environment and delaying marsh restoration.

Mitigation

Critical Project structures, such as levees, shall be designed to. the current engineering standards of practice for levee construction, such as those of the Corps (U.S. Army Corps of Engineers 1978, 1980). Records for the design and reconstruction of the distressed levee sections as well as maintenance records shall be maintained by the Project proponent for future design and maintenance of Project levees. These records will be used to track on-going levee maintenance and to perform preventative inspection and maintenance of levees prior to the development of problems.

Following repairs to any critical levees damaged during an earthquake event, the survey benchmarks that would be installed as part of the elevation control monitoring program shall be re-surveyed to evaluate deformation that may not be discernible by visual observation. This additional surveying is intended to identify levees weakened but not breached by seismic activity.

Finding

Changes or alterations have been required in, or incorporated into, the Montezuma Wetlands Project which avoid or reduce to a level of less-than-significance the significant environmental effect as identified in the Final Environmental Impact Report.

4. Impact

Because of underlying compressible materials, the Project has the potential to create mudwaves, which could lead to levee instability, increasing the potential for exposure of non-cover sediments to the environment. Secondarily, mud waves could form adjacent to the site,

Mitigation

If mudwaves form, construction shall be stopped until excess pore water pressures dissipate, the mudwave stabilizes, and the extent of surface deformation to levees and to the adjacent slough channel are evaluated by a geotechnical engineer. Levees shall be reinforced or repaired as necessary, and any persistent navigation

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hazards shall be removed. The rate of sediment placement shall be reduced, based on the recommendations of the geotechnical engineer. Additional preventive measures are as follows:

Prior to the placement of any fill on the site, the Project proponent shall fulfill the following requirements:

- A baseline hydrographic survey of the Montezuma Slough immediately adjacent to the site shall be conducted before construction begins in Phase I to provide the basis for identifying and correcting any deformation caused by mudwaves.

- For non-cover separation and cell levees: surcharge loads shall be kept significantly below foundation material shear strengths (thin lifts, slow rate of loading).

- For interphase levees: drainage of foundation shall be facilitated with sand or wick drains if the subdrain system proves ineffective in reducing pore-pressure buildup.

- For all types of project levees: settlement of levees shall be monitored in conjunction with the monitoring program proposed for assessing fill elevations in the sediment placement cells and repairs made, as necessary. The levee design will be modified if the results of the proposed geotechnical evaluations indicate that changes are required for levee stability. The rate of sediment placement operations will be reduced to allow for dissipation of pore water pressures.

Finding

Changes or alterations have been required in, or incorporated into, the Montezuma Wetlands Project which avoid or reduce to a level of less-than-significance the significant environmental effect as identified in the Final Environmental Impact Report.

5. Impact

If the proposed subdrain system fails, long-term settlement of the constructed marsh plain may lower it below project design elevations.

Mitigation

A supplemental system consisting of either wick drains, additional surcharge points, or well points, or a combination of these shall be developed for use should the proposed subdrain system prove ineffective.

Finding

Changes or alterations have been required in, or incorporated into, the Montezuma Wetlands Project which avoid or reduce to a level of less-than-significance the significant environmental effect as identified in the Final Environmental Impact Report.

6. Impact

Chemical concentrations in sediments used on the site may on a small scale exceed the proposed SFRWQCB interim screening criteria.

Mitigation

Sampling of sediments for conformance with the SFRWQCB interim screening criteria shall be conducted according to the protocols outlined in the Montezuma Wetlands Final Environmental Impact Report, Volume II (Technical Appendices), Appendix "E" entitled "Interim Sediment Screening Criteria and Testing Requirements for Wetland Creation and Upland Beneficial Reuse", dated December 1992, Sect. 6.0 (Disposal Option Testing Requirements), 6.1 (Wetlands Creation Cover) and Sect. 6.2 (Wetlands Creation Noncover), and/or as said protocols may be subsequently revised or amended by the Regional Water Quality Control Board.

Details regarding the implementation of this requirement with respect to sampling which may be performed according to other protocols required by or acceptable to regulatory agencies other than the County of Solano shall be worked out as part of the required Conditions of Approval of the Use Permit and Marsh Development Permit, or as part of a Mitigation Monitoring and Reporting Program to be approved by the County prior to approval of said Use Permit/Marsh Development Permit.

The Project proponent shall maintain complete records of the sediment sources, their physical and chemical characteristics, and of the disposition of such sediments within the site. If confirmation sampling indicates that sediments placed on the site have exceeded the required cover or non-cover criteria for placement according to the project design, additional sampling of the affected location(s) shall be undertaken immediately to develop a profile that establishes the nature and extent of the exceedence(s). Based on these results, subject to review and approval by the Corps, County, and RWQCB, one of the following alternative measures shall be implemented:

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- If the exceedence is relatively isolated, small in magnitude (within the range of normally expected variability), and not expected to have adverse effects under the conditions of its placement, it may be left in place.

- If the above circumstances do not apply, the sediments of concern shall be removed to an approved location based on their chemical characteristics. Material shall be removed with mechanical grading equipment or portable dredges capable of working in the marsh environment. Subject to agency review and approval, the sediments may be mixed with confirmed clean sediment to reduce concentrations to within acceptable ranges for placement on the site.

- The need for additional measures such as liming to reduce contaminant mobility, capping with fine sediments, increased depth of burial or horizontal isolation from channels, and increased long-term monitoring shall be considered by the Project proponent and regulatory agencies.

Finding

Changes or alterations have been required in, or incorporated into, the Montezuma Wetlands Project which avoid or reduce to a level of less-than-significance the significant environmental effect as identified in the Final Environmental Impact Report.

7. Impact

Evaporation and concentration of water in ponds could result in a gradual buildup of contaminants to harmful concentrations in sediments and pond water.

Mitigation

Quarterly sampling and analysis of the pond sediments and water shall be conducted. If contaminant concentrations in the sediments exceed the screening criteria for cover material, the pond shall be closed until sediments can be removed by clamshell dredging and placed as non cover material in an available noncover sediment placement cell. If contaminant concentrations in the pond sediments exceed the screening criteria for non cover material the sediments shall be removed by clamshell dredging for disposal at an appropriate class landfill.

Finding

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Changes or alterations have been required in, or incorporated into, the Montezuma Wetlands Project which avoid or reduce to a level of less-than-significance the

significant environmental effect as identified in the Final Environmental Impact Report.

8. Impact

The marsh plain could inadvertently be placed too high. This would prevent the formation of small channels, and the deposition of soft sediments.

Mitigation

The design criteria and action threshold should be stated as follows:

"No more than 50 percent of the low marsh plain shall be higher than an elevation that is 0.5 foot below local MHW. Ninety-five percent of the low marsh plain shall be below the local MHW. No more than 50 percent of the high marsh plain shall be higher than local MHHW; 95 percent of the high marsh plain shall be lower than an elevation 0. 5 foot above local MHHW. Corrective action shall be taken if these goals are not met.

In order to prevent overfilling, sediment placement shall be pulsed when the sediment elevation is estimated to be within I foot of the design elevation for both the noncover layer and the cover layer; i.e., thin lifts of sediment shall be placed into cells, and fill elevation shall be determined for each lift after initial consolidation. Each successive lift shall be thinner, to decrease the margin of error in achieving final design elevations. During placement, the slurry pipeline discharge point shall be moved as required to several locations within each cell to prevent mounding based upon visual observations at the outfall discharge point.

Fill elevations shall also be monitored during sediment placement by means of topographic surveying and a network of resistivity probes. The number of resistivity probes installed within each sediment cell shall be related directly to the acreage and depth of the sediment cell and to the percent of fines in the placed sediment. The number of grade control resistivity probes shall be increased in non-cover cells to enhance elevation control in those cells. The upper lifts of the non-cover sediments shall be gravity consolidated prior to placement of cover sediments. The sediment placement method has been modified from what was evaluated in the circulated Draft Environmental Impact Report to reduce the impact of turbulent flow of cover sediment over the placed noncover sediments.

If monitoring results indicate that fill elevations have exceeded the criteria in Mitigation Measure P-HYDRO-3a, those overfilled areas shall be graded down to design elevations within six months of completion of sediment placement within each cell. Equipment capable of operating in a marsh environment shall be used, in order to avoid dewatering cells and exposing sediment to oxidation. Alternat

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where subdrains are present, additional subdrain pumping could be used to reduce elevations to appropriate levels.

Finding

Changes or alterations have been required in, or incorporated into, the Montezuma Wetlands Project which avoid or reduce to a level of less-than-significance the significant environmental effect as identified in the Final Environmental Impact Report.

9. Impact

Erosion of major channel banks or incision of small first-order and second-order channels into non-cover sediment could expose the noncover sediment to erosion, releasing contaminated material into the environment.

Mitigation

The tops of the non-cover separation levees shall be constructed of compacted cohesive clays to prevent channels from cutting through them. The interior slopes of noncover separation levees shall be built with 2:1 to 5:1 interior slopes (depending on exposure to wind fetch), rather than just 2: 1 as was previously proposed, which geotechnical evaluations indicate is a sufficiently shallow slope to prevent excessive erosion of the levees during sediment placement operations. They would then function as sills to prevent the upstream channel segments from cutting into the non-cover sediment. The formation of first and second order channels shall be assessed and documented on a quarterly basis during the first year following tidal restoration, and annually thereafter. In the unlikely event that channels greater than 2 feet below MHHW develop over non-cover cells, further channel development shall be prevented by placement of straw bales and/or revegetation.

Finding

Changes or alterations have been required in, or incorporated into, the Montezuma Wetlands Project which avoid or reduce to a level of less-than-significance the significant environmental effect as identified in the Final Environmental Impact Report.

10. Impact

There may be an increase in the concentration of contaminants in water in the makeup water pond, which if discharged to the Sacramento River would violate water quality standards.

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Mitigation

If the concentration of any chemical of concern in the makeup water pond exceeds one half of the Basin Plan standard for deep water discharge, or other standard imposed through the WDRs, one or more of the following measures shall be implemented as necessary to ensure that water quality remains in compliance with discharge standards:

- Increase the settling time in the sediment placement cells.
- Increase the filtering capacity of the geotextile fabrics used in the noncover cells.
- Decrease the amount of recycled water used in the water supply system and increase the amount of make up water to reduce concentrations.
- Add limestone to maintain dredged sediment slurry pH above 6.5.
- Add iron chloride or iron sulfate to enhance precipitation.
- Add flocculating agents to increase settling of clays and fine-grained sediments
- Set up and use an alkaline hydroxide treatment system.
- Set up and use a sulfide treatment system.
- Set up and use an ion-exchange or carbon treatment system.

Finding

Changes or alterations have been required in, or incorporated into, the Montezuma Wetlands Project which avoid or reduce to a level of less-than-significance the significant environmental effect as identified in the Final Environmental Impact Report.

11. Impact

The Project's withdrawal of shallow groundwater on the site could reduce groundwater supplies for residents east of the site.

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Mitigation

Mitigation Measure P-GW-1 requires that, prior to receiving Corps Sect. 404 and Sect. 10 permits and County use permits, the Project proponent submit the results of pump tests, supported by data from piezometers and neighboring wells, confirming that the Project's withdrawal of groundwater will not affect neighboring wells. The Project proponent shall also monitor water levels in local supply wells during the start-up and first month of operation of the groundwater supply system. If water levels are reduced in local wells, the Project proponent shall implement one or more of the following measures as necessary to avoid reducing water supplies in neighboring wells: reduce the rate of groundwater pumping; increase on-site water storage capacity; modify well locations or the groundwater extraction system; or provide the affected neighbors with alternative water sources.

A document dated May 12, 1998, containing the pump tests noted above, were submitted by the project proponent on May 13, 1998, and are hereby attached to the Final Environmental Impact Report by reference, as Appendix "R". The results of these pump tests shall be independently evaluated to confirm that the Project's withdrawal of groundwater will not affect neighboring wells.

Finding

Changes or alterations have been required in, or incorporated into, the Montezuma Wetlands Project which avoid or reduce to a level of less-than-significance the significant environmental effect as identified in the Final Environmental Impact Report.

12. Impact

Wildlife could be attracted to sediment placement cells and exposed to potentially harmful levels of contaminants if non-cover material is exposed onsite long enough for plant and/or invertebrate colonization to occur.

Mitigation

During project implementation, the dimensions and sediment holding capacity of individual non-cover sediment cells shall be designed in conformity with a confirmed source of sediment to ensure that they are filled with cover sediment within six months and restoration initiated, with minimal exposure of non-cover material to wildlife. Plant and wildlife colonization or use of the non-cover disposal cells shall be closely monitored, and the permitted interval during which non cover material is left exposed shall be shortened as necessary to minimize plant and invertebrate colonization, and potential wildlife exposure to non-cover sediments.

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Finding

Changes or alterations have been required in, or incorporated into, the Montezuma Wetlands Project which avoid or reduce to a level of less-than-significance the significant environmental effect as identified in the Final Environmental Impact Report.

13. Impact

Once dredged materials are in place and plant colonization has begun, plant uptake of, and wildlife exposure to, contaminants derived from non-cover sediments could occur under certain conditions.

Mitigation

In addition to measures identified in sections 6.6 and 6.7 of the Final Environmental Impact Report, non-cover sediment shall not be placed within the diked pickleweed marsh or within other project design elements where management of the hydrologic regime through controlled flooding and evaporation or water drawdown may be necessary to achieve project goals or mitigation requirements as they relate to the salt marsh harvest mouse (SMHM).

Finding

Changes or alterations have been required in, or incorporated into, the Montezuma Wetlands Project which avoid or reduce to a level of less-than-significance the significant environmental effect as identified in the Final Environmental Impact Report.

14. Impact

It is unlikely but possible that plant growth, animal burrowing, or physical processes could make contaminants in non-cover sediments available for plant and animal uptake. The resulting risks of bio-accumulation and toxicity to wildlife are low but potentially significant.

Mitigation

Remedial steps will be taken if monitoring reveals bio-accumulation of contaminants. Project monitoring shall include sampling of above-ground plant tissues, submerged macrophytes (e.g. *Rupia, Potamogeton*), two species of invertebrates, *Eogammarus conferviculus and Neomysis mercedis*, or other species that are especially appropriate for comparison with regional monitoring data. Samples shall be analyzed to determine if the concentration of any toxic

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contaminant is significantly higher than background concentrations. In the event that the concentration of any chemical exceeds this threshold, or in the event that plant roots extend into the non-cover material in the low marsh habitat, the following contingency measures shall be implemented as appropriate: (1) further sampling and analysis shall be performed to verify the findings; (2) affected areas shall be delineated via additional sampling; (3) higher trophic level species shall be sampled to determine if chemicals identified in the above-ground plant tissue, submerged macrophyte, or invertebrate analyses are significantly higher than background concentrations, and are moving up the food web and causing adverse impacts to wildlife.

if analyses of higher trophic level species indicates an adverse impact, affected areas shall be remediated in one of the following manners: (a) the area can be isolated with levees, capped with clean sediment, and converted into a diked managed wetland; (b) the area can be treated in place [e.g., bioremediation for polynuclear aromatic hydrocarbons (PAHs)] and either retained as tidal marsh or leveed and converted to diked, managed marsh; (c) the area can be excavated to remove the affected sediment and place it in an open available cell for non-cover, or dispose of it at an appropriate disposal facility. The excavated area shall be filled with clean sediment and restored appropriately.

Finding

Changes or alterations have been required in, or incorporated into, the Montezuma Wetlands Project which avoid or reduce to a level of less-than-significance the significant environmental effect as identified in the Final Environmental Impact Report.

15. Impact

Construction of the Proposed Project would result in short-term losses of existing wetland habitats and associated ecological functions and values on the Montezuma Site.

Mitigation

To offset temporary losses of wetland functions and values water management focused on providing interim wetlands enhancement in unfilled project phases shall be incorporated into the Project; Phase II areas shall be managed to provide shorebird and waterfowl habitat, and Phases III and IV shall be managed to provide SMHM habitat. Water management shall start during construction and continue during the period of sediment placement, but shall be terminated prior to construction within that phase.

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Finding

Changes or alterations have been required in, or incorporated into, the Montezuma Wetlands Project which avoid or reduce to a level of less-than-significance the significant environmental effect as identified in the Final Environmental Impact Report.

16. Impact

Construction of the Proposed Project could alter or eliminate vernal pool habitats and affiliated species on the site.

Mitigation

Prior to Project construction and implementation, the Project proponent should prepare a detailed plan which shows how construction activities would avoid impacts on vernal pools outside fill areas. The plan must include detailed site drainage and buffer areas. If impacted, the vernal pools should be replaced at a 3:1 ratio (3.6 acres), preferably near the upland boundary of the Project. To protect regional native plant diversity, native vernal pool-affiliated plant species within areas of dredged sediment placement shall be reestablished in appropriate seasonally ponded habitat within the upland buffer area. Reestablishment shall involve seed collection and propagation or individual transplantation of the plant species listed in Final Environmental Impact Report Table 6.8.32. This mitigation measure may be implemented in conjunction with P-BIO-3c.

Finding

Changes or alterations have been required in, or incorporated into, the Montezuma Wetlands Project which avoid or reduce to a level of less-than-significance the significant environmental effect as identified in the Final Environmental Impact Report.

17. Impact

Using dredged materials that are excessively sandy could slow the establishment of wetland vegetation, which could also increase erosion and reduce the effectiveness of contaminant containment.

Mitigation

To foster successful plant establishment and limit contaminant mobility, cover sediments placed above non-cover sediments should have a maximum sand

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content of 15%, while elsewhere on the site, the top one (1) foot should include a maximum of 73% sand and 6% gravel.

Finding

Changes or alterations have been required in, or incorporated into, the Montezuma Wetlands Project which avoid or reduce to a level of less-than-significance the significant environmental effect as identified in the Final Environmental Impact Report.

18. Impact

High marsh, seasonally flooded depressions, and the upland-transition zone could be invaded by pepperweed, reducing habitat values associated with tidal restoration.

Mitigation

An exotic species control program focused on preventing the establishment of pepperweed in the high marsh and upland transition areas shall be incorporated into the Project. This program should be coupled with the Project proponent's proposed experimentation on methods to enhance pickleweed establishment and growth in high marsh, seasonally wet depressions, managed fluvial hollows, diked marsh, and at the lower edge of the upland transition zone. These measures shall begin during construction and continue for the first three years of tidal restoration in each phase. To demonstrate the viability of habitat restoration, implementation of Phase II shall proceed only after the relative dominance of desirable hydrophytic vegetation in the initial colonization of Phase I landscape elements has been documented.

Finding

Changes or alterations have been required in, or incorporated into, the Montezuma Wetlands Project which avoid or reduce to a level of less-than-significance the significant environmental effect as identified in the Final Environmental Impact Report.

19. Impact

The attainment of restoration and mitigation objectives is uncertain without the development and implementation of a comprehensive monitoring plan that includes monitoring, reporting, and verification procedures, performance standards, and contingencies.

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Mitigation

A comprehensive monitoring plan shall be finalized with the approval of permitting agencies prior to project implementation. The monitoring plan shall include the methodology by which physical, chemical, and biological parameters shall be measured to establish the attainment of project goals. Biological parameters to be measured shall be compared with reference conditions in other Suisun Bay tidal marshes and shall include at a minimum vegetation structure and composition in the landscape elements that are part of the design; the use of constructed channel habitats by fish; and bird use of constructed habitats. The plan shall include reporting and verification procedures and contingency measures and shall be implemented for the life of the project.

Finding

Changes or alterations have been required in, or incorporated into, the Montezuma Wetlands Project which avoid or reduce to a level of less-than-significance the significant environmental effect as identified in the Final Environmental Impact Report.

20. Impact

Sediment placement would eliminate up to 524 acres of habitat known or likely to support the endangered SMHM. The revised Project design would not provide sufficient quality and quantity of replacement habitat.

Mitigation

Mitigation requirements for the SMHM would be finalized by the Corps as part of Section 7 (Endangered Species Act) consultation with USFWS. The lead agencies would require the implementation of measures consistent with the Final Environmental Impact Report recommendations, which derive from the mitigation plan presented in Final Environmental Impact Report Appendix Q.1. The actual habitat acreages and performance criteria required as part of the mitigation would be as described in Appendix Q.I or, if not, as required by USFWS to achieve the same goals.

Finding

Changes or alterations have been required in, or incorporated into, the Montezuma Wetlands Project which avoid or reduce to a level of less-than-significance the significant environmental effect as identified in the Final Environmental Impact Report.

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21. Impact

The project would eliminate burrowing owl nest sites and could injure or kill nesting birds of this species.

Mitigation

To mitigate the loss of burrowing owl nest sites, the Project proponent shall take measures to ensure that the burrowing owl nesting population on the project site remains at levels within or exceeding the range that has been historically observed. The following measures shall be implemented prior to the initiation of grading or fill placement in each phase of the wetland restoration:

- The extent of burrowing owl nesting throughout the project site shall be assessed annually during the May-July nesting season.

- Based on the most recent data available, artificial burrows in excess of the number of burrowing owls that could be impacted in wetland restoration areas shall be constructed in upland buffer portions of the project site, if possible in the vicinity of active ground squirrel colonies.

- A qualified biologist, as permitted by the CDFG, shall capture and relocate any burrowing owls residing in impact areas to the artificial burrow sites. Owl capture and relocation shall occur during early spring, when the owls normally return from migration and initially occupy burrows prior to nesting. The biologist shall confirm the absence of burrowing owls from impact areas and ensure that all sites that could be attractive to owls are collapsed or sealed to prevent future occupancy.

- As permitted by CDFG, owls may be captured and relocated to artificial burrows on the project site from burrows that are about to be destroyed in non project areas such as in the Central Valley.

Finding

Changes or alterations have been required in, or incorporated into, the Montezuma Wetlands Project which avoid or reduce to a level of less-than-significance the significant environmental effect as identified in the Final Environmental Impact Report.

22. Impact

The Project could have localized short-term impacts on special status fish species.

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Mitigation

Fish screens shall be provided at any intakes and outlets during construction and sediment placement phases of the project to reduce impacts to juveniles and adults of special status fish species per specifications of CDFG, NMFS, and USFWS. Levee breaches for each phase shall be sited to avoid well-developed stands of emergent vegetation that provide important habitat for special status fish.

Finding

Changes or alterations have been required in, or incorporated into, the Montezuma Wetlands Project which avoid or reduce to a level of less-than-significance the significant environmental effect as identified in the Final Environmental Impact Report.

23. Impact

The Project would eliminate 0.39 acre of vernal pool habitat that supports the federally listed vernal pool fairy shrimp.

Mitigation

Prior to impacting seasonally ponded areas that provide habitat for federally listed vernal pool invertebrates, the Project proponent shall provide on- or off-site mitigation to preserve and create vernal pool habitats, according to acreage ratios and procedures approved by the USFWS.

Finding

Changes or alterations have been required in, or incorporated into, the Montezuma Wetlands Project which avoid or reduce to a level of less-than-significance the significant environmental effect as identified in the Final Environmental Impact Report.

24. Impact

The Project could eliminate individuals or local populations of special status plants, including the state-listed rare Mason's lilaeopsis.

Mitigation

Measures to protect and enhance populations of rare plants that may occur in areas of project impact shall be implemented as described in the Rare Plant Resource

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Mitigation and Restoration Plan for tire Montezuma Wetlands Project (Fiedler and Zebell 1995), which is included in Final Environmental Impact Report Appendix Q.3.

Finding

Changes or alterations have been required in, or incorporated into, the Montezuma Wetlands Project which avoid or reduce to a level of less-than-significance the significant environmental effect as identified in the Final Environmental Impact Report.

25. Impact

Placement of sediment would cover existing mosquito control ditches. Increased seasonal ponding could increase mosquito populations during Project construction and implementation.

Mitigation

To prevent nuisance and public health effects associated with mosquito production, final designs for each phase of the Project shall be reviewed by the Solano County Mosquito Abatement District. The District will also conduct periodic inspections of the site during construction and following tidal restoration. Based on the District's review, the Project design shall incorporate measures which are non-hazardous to fish and wildlife that are deemed sufficient by the District to limit mosquito production. The project proponent shall provide access and funding as necessary for inspections mosquito control by the District.

Finding

Changes or alterations have been required in, or incorporated into, the Montezuma Wetlands Project which avoid or reduce to a level of less-than-significance the significant environmental effect as identified in the Final Environmental Impact Report.

26. Impact

Grading and excavation in areas of historic and prehistoric uplands have the potential to impact buried cultural resource sites.

Mitigation

If potentially significant archaeological resources are identified, construction shall be temporarily redirected until the materials can be evaluated pursuant to State and federal guidelines. A Programmatic Agreement (PA) shall be developed between

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the project proponent, Solano County, and the Corps of Engineers that provides specifications of this process. The Corps' archaeologist shall make determinations regarding resource significance, and consult with the SHPO on appropriate mitigation.

It is recognized that there is a potential for discovery of maritime resources (and indeed there is documentary evidence that these resources exist) in the project area, and that these associated resources may extend inland to other sites. It is recommended that these resources be evaluated in the PA in light of the document entitled "Historical Evaluation of the Delta Waterways Final Report", prepared for the State Lands Commission, and dated 1978.

Finding

Changes or alterations have been required in, or incorporated into, the Montezuma Wetlands Project which avoid or reduce to a level of less-than-significance the significant environmental effect as identified in the Final Environmental Impact Report.

27. Impact

Given the high potential for cultural resources on the site, previously unidentified human remains could be discovered during construction of the Project.

Mitigation

In addition to the above mitigation measure (P-Cult-1), in the event that potential human remains are encountered, the materials shall be subject to section 7050.5(b) of the California Health and Safety Code and Native American Graves Protection and Repatriation Act of 1990 (P.L. 101-601; 104 Stat. 3048). The representatives onsite shall be members of the tribe most likely to have descended from those individuals prehistorically inhabiting the Project site.

Finding

Changes or alterations have been required in, or incorporated into, the Montezuma Wetlands Project which avoid or reduce to a level of less-than-significance the significant environmental effect as identified in the Final Environmental Impact Report.

28. Impact

The construction of the proposed public access south of Fire Truck Road could disrupt buried artifacts.

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Mitigation

In addition to mitigation measure (P-Cult-1) no grading or excavation shall be done to construct the access area. Fill shall be used to create a level public access area. Buried artifacts, if present, shall remain intact following the completion of construction, and thus will not be adversely impacted. A detailed public access plan which shows existing topography, proposed topography, and proposed improvements shall be prepared and submitted to the County for review and approval prior to commencement of any public access construction.

Finding

Changes or alterations have been required in, or incorporated into, the Montezuma Wetlands Project which avoid or reduce to a level of less-than-significance the significant environmental effect as identified in the Final Environmental Impact Report.

29. Impact

Use of the Project site would affect historical features that are considered potentially eligible for inclusion on the National Register of Historic Places and are potentially significant under the criteria of CEQA Appendix K.

Mitigation

In addition to mitigation measure (P-Cult-1) if avoidance of any prehistoric or historic site is infeasible, a Programmatic Agreement (PA) shall be developed among the Project proponent, Solano County, and the Corps of Engineers. The PA shall incorporate relevant federal, state, and local guidelines for performing the phased data recovery of impacted cultural resources, including significant assessment, mitigation, and evaluation and treatment of unexpected resources encountered during construction.

Finding

Changes or alterations have been required in, or incorporated into, the Montezuma Wetlands Project which avoid or reduce to a level of less-than-significance the significant environmental effect as identified in the Final Environmental Impact Report.

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30. Impact

Construction would create fugitive dust (PM_{10}) which would elevate local levels of suspended particulates. Suspended particulates could reach unhealthful levels at nearby residences.

Mitigation

- Water all active construction areas at least twice daily. During dry weather, treat bare soil in construction area with hygroscopic stabilizers, such as magnesium chloride or calcium chloride) after watering.

- Cover all trucks hauling soil, sand, and other loose materials or require all trucks to maintain at least two feet of freeboard (e.g., distance between hauled material and top of truck).
- Pave, apply water three times daily, or apply (non-toxic) soil stabilizers on all unpaved access roads, parking areas, and staging areas at construction sites.

- Hydroseed or apply (non-toxic) soil stabilizers to inactive construction areas.

- Enclose, cover, water twice daily, or apply (non-toxic) soil binders to exposed stockpiles (dirt, sand, etc.).

- Limit traffic speeds on unpaved roads to 15 mph.

- Replant vegetation in disturbed areas as quickly as possible.

- Suspend excavation and grading activity when winds exceed 25 mph.

Finding

Changes or alterations have been required in, or incorporated into, the Montezuma Wetlands Project which avoid or reduce to a level of less-than-significance the significant environmental effect as identified in the Final Environmental Impact Report.

31. Impact

Equipment, vehicles, and activities during operation would increase noise levels for area residents and recreationists.

Mitigation

- The project shall not cause noise levels in residential areas in Collinsville and along Collinsville Road to exceed 50 dBA CNEL as measured at the boundary of the residential areas, and/or 45 dBA CNEL as measured within the interiors of homes in these areas. Noise levels shall be monitored to confirm compliance with this requirement. If noise levels are exceeded, equipment and/or operations shall be modified as necessary to achieve compliance.

- Construction equipment used by the Project shall include mufflers or shields to reduce noise. Slurry pumps shall be equipped with "critical" grade silencers and shall be enclosed.

- An acoustical engineer shall develop a noise reduction plan to minimize pump levels below noise standards specified in the Collinsville-Montezuma Area Plan.

Finding

Changes or alterations have been required in, or incorporated into, the Montezuma Wetlands Project which avoid or reduce to a level of less-than-significance the significant environmental effect as identified in the Final Environmental Impact Report.

32. Impact

If the Project were to be initiated but abandoned prior to or after its proposed completion, remediation or continued maintenance and operation, may be required to prevent the release of contaminants. This could be a significant impact on County financial resources. Should adequate County financial resources not be available, this in turn could result in potentially significant physical environmental impacts.

Mitigation

A Project Mitigation Monitoring and Reporting Plan (MMRP) shall be prepared before issuance of the County use permit. The MMRP will provide a checklist for all aspects of Project monitoring and will aid County staff in assessing Project progress and the development of potential problems. The Project proponent shall be required to post bonds or appropriate financial assurances in an amount sufficient to perform remediation and restoration, or on-going maintenance and operation. The amount and timing of the bonds would be commensurate with the volume and type of sediment placed at the restoration site. The approach for

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calculating the bond amount will be determined during preparation of the County Use Permit.

Finding

Changes or alterations have been required in, or incorporated into, the Montezuma Wetlands Project which avoid or reduce to a level of less-than-significance the significant environmental effect as identified in the Final Environmental Impact Report.

B. POTENTIALLY SIGNIFICANT IMPACTS WHICH ARE NOT MITIGATED TO A LESS-THAN-SIGNIFICANT LEVEL

This section identifies those impacts, which, according to the Final Environmental Impact Report, cannot be mitigated to a less-than-significant level despite adoption of the identified mitigation measures.

Impact

Emissions from operation-phase activities (including rehandling facility operations) would exceed the BAAQMD standard of 80 pounds per day for ROG, NOx, SOx, and PM_{10}.

Mitigation

Diesel engines shall meet BAAQMD standards and shall be properly maintained and regularly tuned according to the manufacturers' specifications to ensure efficient operation. However, even with this mitigation measure, air quality impacts during operation of the project from sediment placement activities attributable to ROGs and NOx would be significant and unavoidable, and would contribute incrementally to regional air quality problems.

Finding

The above mitigation measures will be required by conditions of approval of the Use Permit and Marsh Development Permit. The Board of Supervisors found that this mitigation measure would mitigate the impact to some degree but not to a level of less-than-significance. The Board of Supervisors also found that none of the alternatives identified in the Final Environmental Impact Report, except for the "no project" alternative, would mitigate this impact to a level of less-than-significance.

CEQA requires the decision-maker to balance the benefits of a proposed Project against its unavoidable environmental risks in determining whether to approve the Project.

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Pursuant to Section 15903 of the state CEQA guidelines, the Board of Supervisors adopted a Statement of Overriding Considerations, finding that the benefits of the Project outweigh its unavoidable adverse environmental effects, and that the adverse environmental effects are, therefore considered acceptable.

CONCLUSION

The mitigation measures listed in conjunction with each of the findings set forth above have eliminated or reduced, or will eliminate or reduce to a level of insignificance, all adverse environmental impacts, except for those items for which a Statement of Overriding Considerations was adopted by the Board of Supervisors. Taken together, the Final Environmental Impact Report, the mitigation measures, and the Statement of Overriding Considerations, provide an adequate basis for approval of the Montezuma Wetlands Project Use Permit and Marsh Development Permit.

CSLC
EXHIBIT D

MONTEZUMA WETLANDS PROJECT
CONDITIONS OF APPROVAL

CONDITIONS PURSUANT TO CEQA/MMRP

1. Structures shall be sited, anchored, and designed to withstand strong ground shaking and deformation resulting from an earthquake on any identified, potentially seismogenic fault at or near the site. Code requirements are presented in the Mitigation Monitoring and Reporting Plan, Table 5 line 3. [P-GEO-1]

2. Critical project structures, such as levees, shall be designed to the current engineering standard of practice for levee construction, such as those of the Corps. Applicable building codes and design requirements are presented in the Mitigation Monitoring and Reporting Plan, Table 5 line 4. [P-GEO-2]

3. Records for the design and reconstruction of the distressed levee sections as well as maintenance records shall be maintained by the permittee for future design and maintenance of Project levees. These records shall be used to track on-going levee maintenance and to perform preventative inspection and maintenance of levees prior to the development of problems. [P-GEO-2]

4. Following repairs to any critical levees damaged during an earthquake event, the survey benchmarks that would be installed as part of the elevation control monitoring program shall be re-surveyed to evaluate deformation that may not be discernible by visual observation. This additional surveying is intended to identify levees weakened but not breached by seismic activity. [P-GEO-2]

5. If mudwaves form, construction shall be stopped in the affected area until excess pore pressures dissipate, the mudwave stabilizes, and the extent of surface deformation to levees and to the adjacent slough channel are evaluated by a geotechnical engineer. Levees shall be reinforced or repaired as necessary, and any persistent navigation hazards shall be removed. The rate of sediment placement shall be reduced, based on the recommendations of a geotechnical engineer. [P-GEO-3]

6. A baseline hydrographic survey of the appropriate sections of Montezuma Slough and Suisun Marsh shall be conducted before construction begins in each Phase to provide the basis for identifying and correcting any deformation caused by mudwaves [P-GEO-3]

7. For noncover separation and cell levees: surcharge loads shall be kept

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significantly below foundation material shear strengths (thin lifts, slow rate of loading). Surcharge loads shall not decrease the factor of safety against failure to a value of less than 1.5. The allowable placement rate shall be determined by the preconstruction geotechnical investigations and analysis by a registered engineer (P.E.) or geologist (R.G.). Lift thickness shall be no greater than 1 foot. If observations during levee construction, i.e. cracking of the levees, bulging of soil at the levee toe, indicate that the soils are deforming, then contingency measures shall be implemented as described in the Mitigation Monitoring and Reporting Plan, see Table 5 line 10. [P-GEO-3]

8. Subdrains shall be constructed where required to control elevations and pore pressure, as indicated by geotechnical analysis by a registered engineer (P.E.) or certified engineering geologist (C.E.G.). If the subdrain system proves necessary but ineffective in reducing pore pressure buildup, drainage of levee foundations shall be facilitated by sand/wick drains where required. [[P-GEO-3]

9. For all types of levees: settlement of levees shall be monitored in conjunction with the monitoring program proposed for assessing fill elevations in the sediment placement cells and repairs made, as necessary. The levee design shall be modified if the results of the proposed geotechnical evaluations indicate that changes are required for levee stability. The rate of sediment placement shall be reduced to allow for dissipation of pore water pressures [P-GEO-3]

10. Subdrains shall be constructed where required to control elevations and pore pressure, as indicated by geotechnical investigations and analysis by a registered engineer (P.E.) or certified engineering geologist (C.E.G.). If the subdrain system proves necessary but ineffective, a supplemental system consisting of either wick drains, additional surcharge points, or well points, or a combination of these shall be developed where required to control elevations. [P-GEO-4]

11. Sampling of sediments for conformance with the SFRWQCB interim screening criteria shall be conducted according to the protocols outlined in the Montezuma Wetlands Final EIR/S, Volume II (Technical Appendices), Appendix "E" entitled "Interim Sediment Screening Criteria and Testing Requirements for Wetland Creation and Upland Beneficial Reuse", dated December 1992, Sect. 6.0 (Disposal Option Testing Requirements), 6.1 (Wetlands Creation Cover) and Sect. 6.2 (Wetlands Creation Noncover), and/or as said protocols may be subsequently revised or amended by the Regional Water Quality Control Board.

Details regarding the implementation of this requirement ~~with respect to sampling~~ which may be performed according to other protocols required by or acceptable to regulatory agencies other than the County of Solano shall ~~be worked out as part of~~ the required Conditions of Approval of the Use Permit and Marsh Development

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Permit, or as part of a Mitigation Monitoring and Reporting Program to be approved by the County prior to approval of said Use Permit/Marsh Development Permit.

The permittee shall maintain complete records of the sediment sources, their physical and chemical characteristics, and of the disposition of such sediments within the site. If confirmation sampling indicates that sediments placed on the site have exceeded the required cover or non-cover criteria for placement according to the project design, additional sampling of the affected location(s) shall be undertaken immediately to develop a profile that establishes the nature and extent to the exceedence(s)). Based on these results, one or more or the contingency measures described in the MMRP (see Table 5 line 15) shall be implemented. [P-SED-1]

12. Sediments placed on the site shall not exceed the cover and noncover criteria set by the RWQCB and other agencies (see MMRP Table B-5) or the grain size criteria described in Mitigation Monitoring and Reporting Plan, Table 5 line 54 [Mitigation Monitoring and Reporting Plan Table 5, Line 15].

13. The permittee shall analyze the concentrations of dioxins and radioactivity in imported sediments as part of confirmation sampling of sediments and compare the results to background concentrations [see MMRP Table 5 line 15) . The results of testing shall be submitted to the County, the SFRWQCB, and other appropriate resource agencies for review, and their recommendations as to appropriate placement of sediment affected by these contaminants, and removal of these contaminants if necessary, shall be followed [Project Design Feature]

14.. A maximum of 400,000 cubic yards of noncover sediment, but not more than 10% of the total capacity of Phase 1, shall be placed in Phase I. No noncover sediment shall be placed in Phase II until Phase I is breached and water quality and tidal hydrology monitoring has been conducted for one year with no evidence of channel erosion into noncover cells or leaching of contaminants into surface water. Not more than 20% of the volume of the overall project shall be non-cover. Project Design Feature]

15. Quarterly sampling and analysis of the makeup-water pond sediments shall be conducted as described in the MMRP (see Table 5 line 17, and Appendix B). If contaminant concentrations in the sediments exceed the screening criteria for cover material, the pond shall be closed until sediments can be removed by clamshell dredging or other appropriate means and placed as non-cover material in an available non-cover sediment placement cell. If contaminant concentrations in the pond sediments exceed the screening criteria for non-cover material, the sediments shall be removed by clamshell dredging for disposal at an appropriate class landfill. [P-SED-2]

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16.. Sediments sold for offsite reuse in the Delta shall meet salinity limits set by the RWQCB and other permitting agencies [Project Design Feature].

17.. To alleviate the concern that marsh restoration may be delayed because of off-site sale of sediments, the permittee shall limit rehandling of sediments for off-site sales to not more than 20% of the volume of dredged sediments actually received, and actually suitable for marsh restoration use (i.e., sand content not excessive), in any given year while wetland restoration in an open phase is in progress.

Further, the permittee shall not selectively choose sandy sediments over sediments that meet the criteria for cover material when significant quantities of both are available.

18.. No more than 50 percent of the low marsh plain shall be higher than an elevation that is 0.5 foot below local MHW; 95% percent of the low marsh plain shall be below the local MHW. No more than 50 percent of the high marsh plain shall be higher than local MHHW; 95 percent of the high marsh plain shall be lower than an elevation of 0.5 foot above local MHHW. Corrective action shall be taken if these goals are not met [P-HYDRO-3a].

19. In order to prevent overfilling, sediment placement shall be pulsed when the sediment elevation is estimated to be within one foot of the design elevation for both the cover and noncover layers; i.e. thin lifts of sediment shall be placed into cells, and fill elevation shall be determined for each lift after initial consolidation. Each successive lift shall be thinner, to decrease the margin of error in achieving final design elevations [P-HYDRO-3b].

20. During sediment placement, the slurry pipeline discharge point shall be moved as required to several locations within each cell to prevent mounding based on visual observations at the outfall discharge point [P-HYDRO-3b]

21. Fill elevations shall be monitored during sediment placement by means of topographic surveying and a network of resistivity probes. The number of resistivity probes installed in each cell shall be related directly to the acreage and depth of the cell and the percent fines in the placed sediment. The number of grade control resistivity probes shall be increased in noncover cells to enhance elevation control in those cells [P-HYDRO-3b].

22. The upper lifts of noncover sediments shall be gravity consolidated prior to placement of cover sediments [P-HYDRO-3b]

23. In order to minimize turbulent flow and mixing of noncover sediment, cover sediment shall be placed in the 200-foot setback area betwe interior cell levees and noncover separation levees and allowed to sheet flow

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over the noncover separation cell levees [P-HYDRO-3b]

24. If monitoring results indicate that fill elevations have exceeded the performance criteria in the MMRP (see Table 5 line 21) those overfilled areas shall be graded down to design elevations within six months of completion of sediment placement within each cell. Equipment capable of operating in a marsh environment shall be used, in order to avoid dewatering cells and exposing sediment to oxidation [P-HYDRO-3b]

25. Although significant wave fetch is not expected to prevent sediment from settling out of suspension and accumulating under normal conditions, marsh vegetation shall be introduced into sediment cells where the wind fetch exceeds 1,000 feet to reduce potential wave action and re-suspension of sediments that could occur under higher flood tides and storm events [P-HYDRO-4].

26. Noncover subcells shall be constructed at least 200 feet from nearest constructed channel or other waterway [Project Revision].

27. The tops of noncover separation levees shall be constructed of cohesive clays or erosion resistant soils to prevent channels from cutting through them [P-HYDRO-5].

28. The interior slopes of noncover separation levees shall be built with 2:1 to 5:1 interior slopes (depending on wind fetch) rather than just 2:1 as was previously proposed, which geotechnical evaluations indicate is a sufficiently shallow slope to prevent erosion of the levees during sediment placement operations. They would then perform as sills to prevent the upstream channel segments from cutting into noncover sediment. [P-HYDRO-5]

29. The formation of first & second order channels shall be assessed and documented on a quarterly basis during the first year following tidal restoration, and annually thereafter. In the unlikely event that channels greater than 2 feet below MHHW develop over noncover cells, further channel development shall be prevented by placement of straw bales, and/or revegetation. [P-HYDRO-5]

30. If the concentrations of any chemical of concern in the make-up water pond exceeds one-half of the Basin Plan standard for deep water discharge, or of the SFRWQCB permit limit, one or more of the measures described in the MMRP (Table 5 line 36) shall be implemented as necessary to ensure that water quality remains in compliance with discharge limits. [P-WQ-1]

31. Water quality in active sediment placement cells receiving noncover sediment shall be monitored as described in the Mitigation Monitoring and Reporting Plan, Table 5 line 37, and Appendix B. [Project Design Feature]

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32. Water quality in shallow and deep on-site groundwater monitoring wells (two per Phase) shall be monitored as described in the Mitigation Monitoring and Reporting Plan, Table 5 line 38 and Appendix B. [Project Design Feature]

33. The Final Environmental Impact Report required that prior to receiving Corps 404 and 10 permits and County use permits, the permittees should submit the results of pump tests, supported by data from piezometer and neighboring wells confirming that the Project's withdrawal of ground water will not affect neighboring wells. The permittee shall also monitor water levels in local supply wells during the start-up and first month of operation of the GWSS. If water levels are reduced in local wells, the permittee shall implement one of more of the measures described in the Mitigation Monitoring and Reporting Plan, Table 5 line 39. [P-GW-1] to avoid reducing water supplies in neighboring wells.

    A document dated May 12, 1998, containing the required pump tests were submitted by the permittee on May 13, 1998, and are attached to the Final Environmental Impact Report by reference as Appendix R. The results of these pump tests have been independently evaluated by the RWQCB. The evaluation confirmed that the project's withdrawal of groundwater will not affect neighboring wells.

34. Non-cover sediment shall be covered with a minimum of 3 feet of cover sediment to maintain noncover sediment in a saturated anaerobic state and to minimize biotic exposure to noncover sediment [Project Design Feature].

35. During project implementation, the dimensions and sediment holding capacity of individual noncover cells shall be designed in conformity with a confirmed source of sediment to ensure that they are filled with cover sediment within six months after the last noncover layer is placed in a cell, and restoration initiated with minimal exposure of noncover sediment to wildlife. Plant and wildlife colonization or use of the noncover cells shall be closely monitored, and the permitted interval during which noncover sediment is left exposed shall be shortened as necessary to minimize plant and invertebrate colonization, and potential wildlife exposure to noncover sediment. [P-BIO-1a]

36. Noncover sediment placed on the site shall be covered with cover sediment within six months after the last noncover layer is placed in a cell. During the migratory waterfowl season (October 1 through April 30), the 6-month time period shall be reduced to 2 months. [Project Revision]

37. In addition to measures specified in sections 6.6 and 6.7 of the Final Environmental Impact Report, noncover sediment shall not be placed within the diked pickleweed marsh, or within other project design elements [illegible]

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management of the hydrologic regime through controlled flooding and evaporation or water drawdown may be necessary to achieve project goals or mitigation requirements as they relate to the SMHM. [P-BIO-1b]

38. Remedial steps shall be taken if monitoring reveals bioaccumulation of contaminants. Project monitoring shall include sampling of above-ground plant tissues, submerged macrophytes (e.g. Rupia, Potamogeton), two species of invertebrates (Eogammarus conferviculus and Neomysis mercedis) or other species that are especially appropriate for comparison with regional monitoring data. Samples shall be analyzed to determine if the concentration of any toxic contaminant is significantly higher than background concentrations. In the event that the concentration of any chemical exceeds this threshold, or in the event that plant roots extend into noncover material in the low marsh habitat, one or more of the measures listed in the Mitigation Monitoring and Reporting Plan, Table 5 line 45, shall be implemented as appropriate. [P-BIO-1c]

39. To offset temporary losses of wetland functions and values, water management focused on providing interim wetlands enhancement in unfilled project phases shall be incorporated into the project; Phase II areas shall be managed to provide shorebird and waterfowl habitat, and Phases III and IV shall be managed to provide SMHM habitat (described also in the MMRP; see Table 5 line 66). Water management shall consist of operating existing pumps and drainage structures to control the extent and duration of seasonal flooding, and shall start during construction and continue during the period of sediment placement, but shall be terminated prior to construction within that phase. [P-BIO-2a]

40. Prior to project construction and implementation, the Project permittee shall prepare a detailed plan which shows how construction activities would avoid impacts on vernal pools outside fill areas. The plan shall include detailed site drainage and buffer areas. [P-BIO-2b]

41. If impacted, the vernal pools should be replaced at a 3:1 ratio, preferably near the upland boundary of the project. To protect regional native plant diversity, native vernal pool-affiliated plant species within areas of dredged sediment placement shall be reestablished in appropriate seasonally ponded habitat within the upland buffer area. Reestablishment shall involve seed collection and propagation or individual transplantation of the plant species listed in Final Environmental Impact Report, vol 1., table 6.8.3-2 and in the Mitigation Monitoring and Reporting Plan, Appendix D. Mitigation and monitoring for vernal pool invertebrate species is presented in the MMRP (see Table 5 line 79, and Appendix H) and is discussed separately below in Condition of Approval number 51 [P-BIO-2b].

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42. An exotic species control program focused on preventing the establishment

pepperweed (Lepidium latifolium) in the high marsh and upland transition areas shall be incorporated into the project. The program shall be coupled with the permittee's proposed experimentation on methods to enhance pickleweed establishment and growth in high marsh, seasonally wet depressions, managed fluvial hollows, diked marsh, and at the lower edge of the upland transition zone. These measures shall begin during construction and continue for the first three years of tidal restoration in each phase. To demonstrate the viability of habitat restoration, implementation of Phase II shall proceed only after relative dominance of desirable hydrophytic vegetation in the initial colonization of Phase I landscape elements has been documented.[P-BIO-2d]

43. A comprehensive monitoring plan shall be finalized with the approval of the responsible agencies prior to project implementation. The monitoring plan shall include the methodology by which physical, chemical, and biological parameters shall be measured to establish the attainment of project goals. Biological parameters to be measured shall be compared with reference conditions in other Suisun Bay tidal marshes and shall include at a minimum vegetation structure and composition in the landscape elements that are part of the design; the use of constructed channel habitats by fish; and bird use of constructed habitats. The plan shall include reporting and verification procedures and contingency measures and shall be implemented for the life of the project. [P-BIO-2e]

44. Mitigation requirements for the SMHM shall be finalized by the Corps as part of Section 7 (Endangered Species Act) consultation with the USFWS. The lead agencies shall require implementation of measures consistent with the Final Environmental Impact Report recommendations, which derive from the mitigation plan presented in the Final Environmental Impact Report Appendix Q.1. The actual habitat acreages and performance criteria required as part of the mitigation shall be as described in Final Environmental Impact Report Appendix Q.1, the Mitigation Monitoring and Reporting Plan, Table 5 lines 63 to 66, and Appendix F, or as required by USFWS to achieve the same goals. [P-BIO-3a]

45. To minimize the impacts to the SMHM of habitat conversion from diked seasonal to tidal wetland, four strategies should be employed: 1) Create a mosaic of wetland habitat types connected by corridors that shall replace the quality and extent of existing SMHM habitat; 2) Use a phased habitat conversion approach that will allow for establishment of the appropriate vegetation and residence of SMHM prior to destruction of habitat containing major existing populations 3) Translocate and monitor the SMHM using a phased, experimental strategy ; and 4) Actively manage unfilled areas of the site a) in Phases III and IV to sustain viable populations while habitat restoration is underway in earlier phases; and b) in the upland transition zone adjacent to the restored wetlands to provide high intertidal and above-tidal habitat for the species. Additional details regarding each of the above are provided in the Final Environmental Impact Report, C

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6.8, pg. 6-136 and in the Mitigation Monitoring and Reporting Plan, Table 5, lines 62-66 [P-BIO-3a]

46. To mitigate the loss of burrowing owl nest sites, the permittee shall take measures to ensure that the burrowing owl nesting population on the project site remains at levels within or exceeding the range that has historically observed. The measures described in the MMRP (see Table 5 lines 69 through 72) shall be implemented prior to the initiation of grading or fill placement in each phase of the wetland restoration. [P-BIO-3b]

47. The extent of burrowing owl nesting throughout the project site shall be assessed annually during the May through July nesting season. [P-BIO-3b]

48. Based on the most recent data available, artificial burrows in excess of the number of burrowing owls that could be impacted in wetland restoration areas shall be constructed in the upland-buffer portions of the project site, if possible in the vicinity of active ground squirrel colonies. [P-BIO-3b]

49. A qualified biologist, as permitted by CDFG, shall capture and relocate any burrowing owls residing in impact areas to the artificial burrow sites. Owl capture and relocation shall occur in early spring, when the owls normally return from migration and initially occupy burrows prior to nesting. The biologist shall confirm the absence of burrowing owls from impact areas and ensure that all sites that could be attractive to owls are collapsed or sealed to prevent future occupancy. [P-BIO-3b]

50. As permitted by CDFG, owls may be captured and relocated to artificial burrows on the project site from burrows that are about to be destroyed in non-project areas such as in the Central Valley.[P-BIO-3b]

51. Fish screens shall be provided at any intakes or outlets during construction and sediment placement phases of the project to reduce impacts to juveniles and adults of special status fish species per specifications of CDFG, NMFS, and USFWS). [P-BIO-3c]

52. Levee breaches for each phase shall be sited to avoid well-developed stands of emergent vegetation that provide important fish habitat for special status fishes. [P-BIO-3c]

53. Prior to impacting seasonally ponded areas that provide habitat for federally listed vernal pool invertebrates, LFRC shall provide on- or off-site mitigation to preserve and create vernal pool habitats, according to acreage ratios and procedures approved by USFWS, as described in the Final Environmental Impact Report. The detailed mitigation plan is presented in the Mitigation

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Monitoring and Reporting Plan, Table 5 line 79, and Appendix H. [P-BIO-3d]

54. Measures to protect and enhance populations of rare plants that may occur in areas of project impact shall be implemented as described in the Rare Plant Resource Mitigation and Restoration Plan for the Montezuma Wetlands Project (Fiedler and Zebell 1995) which is included in the Final Environmental Impact Report as Appendix Q.3, and in the Mitigation Monitoring and Reporting Plan, Table 5 line 81 and Appendix D. [P-BIO-3e]

55. To prevent nuisance and public health effects associated with mosquito production, final designs for each phase of the project shall be submitted to and reviewed by the Solano County Mosquito Abatement District (SCMAD). SCMAD may also conduct periodic inspections of the site during construction and following tidal restoration. Based on the District's review, the project design shall incorporate measures which are non-hazardous to fish and wildlife and that are deemed sufficient by the District to limit mosquito production. LFRC shall provide access and funding as necessary for inspections and mosquito control by the District [P-BIO-4]

56. Occurrence of red swamp crayfish (Procambarus clarkii) shall be monitored in noncover cell areas in the created low marsh as described in the Mitigation Monitoring and Reporting Plan, Table 5 line 87. [Project Revision]

57. If potentially significant archaeological resources are identified, construction shall be temporarily redirected until the materials can be evaluated pursuant to state and federal guidelines. A Programmatic Agreement shall be developed between the permittee, Solano County and the Corps of Engineers that provides specifications of this process. The Corps' archaeologist shall make determinations regarding resource significance, and consult with the SHPO on appropriate mitigation.

    It is recognized that there is a potential for discovery of maritime resources (and indeed there is documentary evidence that these resources exist) in the project area, and that these associated resources may extend inland to other sites. These resources shall be evaluated in the PA in light of the document entitled "Historical Evaluation of the Delta Waterways Final Report", prepared for the State Lands Commission, and dated 1978. [P-CULT-1]

58. In addition to mitigation measure P-CULT-1, in the event that potential human remains are encountered, the materials shall be subject to section 7050.5(b) of the California Health and Safety Code and Native American Graves Protection and Repatriation Act of 1990 (P.L. 101-602; 204 Stat. 3048). Tribal representatives onsite shall be members of the tribe most likely to have descended from those individuals prehistorically inhabiting the project site. [P-CULT-2]

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59. In addition to mitigation measure P-CULT-1, no grading or excavation shall be done to construct the public access area. Fill shall be used to create a level public access area. Buried artifacts, if present, shall remain intact following the completion of construction, and thus shall not be adversely impacted. A detailed public access plan which shows existing topography, proposed topography, and proposed improvements shall be prepared and submitted to the County for review and approval prior to commencement of any public access construction. [P-CULT-3]

60. In addition to mitigation measure P-CULT-1, if avoidance of any prehistoric or historic site (including maritime resources) is infeasible, a Programmatic Agreement shall be developed among LFRC, the County, and the COE. The Programmatic Agreement shall incorporate relevant federal, state, and local guidelines for performing phased data recovery of impacted cultural resources, including significance assessment, mitigation, and evaluation and treatment of unexpected resources encountered during construction. [P-CULT-4]

61. Any pavement damage to roads resulting from project activity shall be restored to the pre-construction condition to the satisfaction of the County Transportation Department. [P-CIR-2]

62. The following dust control measures shall be implemented: 1) water all active construction areas at least twice daily; 2) during dry weather, treat bare soil in construction area with hygroscopic stabilizers, such as magnesium chloride or calcium chloride) after watering; 3) cover all trucks hauling soil, sand, and other loose material or require all trucks to maintain at least two feet of freeboard; 4) pave, apply water three times daily, or apply (non-toxic) soil stabilizers on all unpaved access roads, parking areas, and staging areas at construction sites; 5) hydroseed or apply (non-toxic) soil stabilizers to inactive construction areas; 6) enclose, cover, water twice daily, or apply (non-toxic) soil binders to exposed stockpiles (dirt, sand, etc.); 7) Limit traffic speeds on unpaved roads to 15 mph; 8) Replant vegetation in disturbed areas as quickly as possible; 9) Suspend excavation and grading activity when winds exceed 25 mph. [P-AIR-1]

63. Diesel engines shall meet BAAQMD standards and shall be properly maintained and regularly tuned according to the manufacturers' specifications. [P-AIR-2]

64. To reduce construction noise levels, intake and exhaust ports on power construction equipment shall be muffled or shielded, and shrouds or shields used to reduce noise from impact tools. [P-NOISE-1]

65. The project shall not cause outdoor noise levels in residential areas in Collinsville and along Collinsville Road to exceed 50 dBA CNEL as measured at the

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boundary of the residential areas, and/or 45 dBA CNEL as measured within the interiors of homes in these areas. Noise levels shall be monitored to confirm compliance with this requirement. If noise levels are exceeded, equipment and/or operations shall be modified as necessary to achieve compliance. [P-NOISE-2]

66. Construction equipment used by the project shall include mufflers or shields to reduce noise. Slurry pumps shall be equipped with "critical" grade silencers and shall be enclosed. [P-NOISE-2]

67. An acoustical engineer shall develop a noise reduction plan to minimize pump levels below noise standards specified in the Collinsville-Montezuma Area Plan. [P-NOISE-2]

68. Access shall be provided to the Day-Use Area during construction. Any short-term temporary road closures shall be reviewed & approved by the responsible agencies. [P-REC-2]

69. Improvements proposed along the river shall be designed to blend with surroundings as much as possible. A paint scheme shall be developed for the pumping facilities, the off-loading suction pipe, fuel storage tanks, and ancillary buildings, which is compatible with the natural setting. [P-VIS-1]

70. All night lighting shall be designed to direct light onto work areas and prevent unnecessary direct exposure of lights to adjacent areas. [P-VIS-3]

71. A Project Mitigation Monitoring and Reporting Plan (MMRP) has been prepared in conjunction with the issuance of the County Use Permit. The MMRP provides a checklist for all aspects of project monitoring and will aid County staff in assessing project progress and the development of potential problems. The permittee shall post bonds or appropriate financial assurances in an amount sufficient to perform closure, post-closure (including on-going maintenance and monitoring), and remediation in the event of environmental impairment. The amount and timing of the financial assurances would be commensurate with the volume and type of sediment placed at the restoration site. [P-ECON-4]

72. The permittee shall establish a self-supporting fund to reimburse any public or non-profit entity that takes over the site and provides long term management, maintenance, and monitoring. [P-ECON-5] The Montezuma Wetlands Project shall not be turned over to a public agency unless sufficient money remains in the post closure and environmental remediation funds to endow the agency with funds or funding mechanisms sufficient to complete all required post-closure activities and to fund any environmental remediation that may become necessary during the remainder of the post-closure period. These funds or funding mechanisms shall be turned over to any agency that inherits or takes over

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ownership of the project.

GENERAL CONDITIONS

73. The Montezuma Wetlands Project shall be established in substantial conformance with the project description contained in the Montezuma Wetlands Project Final Environmental Impact Report, with the Mitigation Monitoring and Reporting Plan, Operations Plan and Grading plans submitted with Use Permit Application No. U-91-35 and Marsh Development Permit Application No. MP-91-04, and with all applicable regulations and permits issued by applicable federal, State, and local regulatory agencies.

74. Operation of the rehandling facility shall only be permitted for the duration of the marsh restoration project. In the event that the project proponent wishes to continue operation of the rehandling facility after closure of the last of the marsh restoration cells, such continued operation shall be considered a new project, and a new permit application and environmental review shall be required.

    After completion of the marsh restoration project, if no new Use Permit/Marsh Development Permit for the continued use of the rehandling facility has been requested by the project proponent, or if it is denied by the County, all project structures and utilities, including but not limited to the office trailer, soils laboratory, off-shore facilities, levee road, and the power lines constructed as part of the rehandling facility, shall be removed at the Director of Environmental Management's discretion.

75. Any expansion or change in the use may require a new or modified permit and environmental review if required.

76. All requirements of the Solano County Department of Environmental Management and Transportation Department shall be met including:

    a The permittee(s) shall obtain any necessary permits from the Transportation Department and/or the Department of Environmental Management, as pertinent, prior to construction, erection, enlargement, altering, repairing, moving, improving, removing, converting, or demolishing any building or structure, fence, retaining wall, or roadway regulated by Solano County Ordinance.

    b. Except as exempted in Chapter 31 of the Solano County Code, no person shall commence or perform any grading, filling, excavation, or clearing of vegetation for any purpose without having first obtained a grading permit.

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from the Department of Environmental Management.

c. A building permit is required for the temporary or permanent placement of manufactured, modular, or mobilehomes. Submit four (4) sets of plans to the building and Safety Division for plan review and permits prior to beginning any improvements.

77. All requirements of the Solano County Environmental Health Services Division shall be met including:

a. Prior to issuance of the Grading Permit, the permittee shall provide written consent from owners of property adjacent to Clank Hollow approving the opening of their properties to tidal action, or alternatively, shall demonstrate that acquisition of said properties has been completed by the permittee.

b. Prior to issuance of a grading permit by the Department of Environmental Management , and/or prior to issuance of a Notice to Proceed by signature of the Director of Environmental Management,

1. permits from all of the remaining regulatory agencies shall be obtained, including the U.S. Army Corps of Engineers, San Francisco Bay Conservation and Development Commission, and the Department of Water Resources, Division of Dam Safety

2. A Final Design Geotechnical Report, shall be submitted to and approved by the Solano County Department of Environmental Management. The Report shall include the following items:

- QA/QC testing program for construction of the levees and the evaluation and control of borrow source materials;
- An engineering analysis evaluating whether subdrains are required for achieving levee stability and elevation control in areas containing peaty soils;
- An evaluation of the one foot levee overbuild on peaty areas;
- Levee foundation stability analysis for all loading and soil conditions;
- Shear strength tests and analysis which have been performed on the borrow materials;
- A family of soil compaction curves for each of the proposed borrow areas evaluating the types of materials to be encountered in the borrow areas;
- An engineering analysis for the underseepage control to be used in the design of the levees;
- Stability of the borrow areas and access to those areas;
- Mapping of the geophysical tests which were performed for

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conditions along the alignment of the proposed levees;

- Layout/location of all the piezometers shown on a topographic map;
- All of the above reports/evaluations shall be stamped and signed by the projects Civil or Geotechnical Engineer.

c. The Quality Assurance monitor or his designee shall visually survey the project for signs of noncompliance or levee failure on a daily basis.

d. Prior to the acceptance of new sources of dredge material,

1. At least 60 days prior to the acceptance or arrival of a new source of dredge material from a "New Works" dredging project such as the Port of Oakland's channel deepening project, or from a project containing noncover sediment, the permittee shall submit the site characterization of the dredge material source to the Solano County Department of Environmental Management. The site characterization shall include Constituents of Concern (COCs) and grain size distribution. For all other dredging projects (i.e., those not classified as "New Works") containing sediment classified only as cover sediment (i.e., the majority of the Corps' operations and maintenance projects), the dredge materials source characterization shall be submitted to the Department of Environmental Management at least 10 days prior to acceptance of these sediments at the site. For dredging projects classified as "Emergency" projects that contain cover sediment only, the characterization shall be submitted to the Department of Environmental Management at least 48 hours prior to sediment acceptance at the site.

2. The applicant shall verify by a statistically valid sampling program that both cover and noncover sediments from a source proposed for import to Solano County fall within a 95% degree of certainty with regards to their respective sediment screening criteria, in order for that sediment source to be considered acceptable to Solano County.

e. At least 15 days prior to placement of any dredge sediments, a construction observation report verifying that the containment levees have been constructed in accordance with the approved Grading Plans and Specifications and certified by the Engineer-of-Record, shall be submitted to the County Department of Environmental Management for review and approval.

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f. Prior to placement of cover sediments,

1. final noncover fill elevations shall be determined prior to the placement of cover sediments. If elevations for non-cover sediments exceed those elevations proposed by the design documents, then additional settling shall be permitted or excess non-cover sediments shall be removed before placement of cover material.

2. All final non-cover fill elevations of shall be submitted by a California licensed land surveyor and verified by the Solano County Department of Environmental Management.

g. Prior to breaching perimeter levees, final elevations of the reconstructed marsh shall be surveyed by a California licensed land surveyor and verified by the Solano County Department of Environmental Management.

h. prior to proceeding with subsequent phases

1. baseline hydrographic surveys shall be performed within reasonable time limits, as established by the ACOE, for adjacent portions of the Montezuma Slough, the Suisun Bay and Sacramento River.

2. Detailed Grading Plans for the subsequent phase shall be submitted to the Solano County Department of Environmental Management for review and approval.

i. <u>Requirements</u>

1. If a statistically significant exceedance of Constituents of Concern (COCs), as stipulated by the sites' WDRs, is determined to exist, the Solano County Department of Environmental Management shall be immediately notified. The notification shall include a detailed description of contingency measures and/or remedial steps taken and/or proposed if further action is required. Within a week of completion of the contingency measures and/or remedial steps, the County shall be notified of the results. Sediment placement in affected area shall be discontinued in accordance with the performance criteria and contingency measures described in the Mitigation Monitoring and Reporting Plan, until the contingency and/or remedial steps have been completed and determined to be successful.

2. If long-term monitoring is being considered as a contingency

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measure for areas that display an exceedance of COCs, then County approval of this option shall be obtained in accordance with the provisions of the Mitigation Monitoring and Reporting Plan.

3. In the event that sediments are accepted with COC's in exceedance of those allowed by the Final Environmental Impact Report and WDRs, the Solano County Department of Environmental Management will work with the SFRWQCB and the Corps of Engineers to select an appropriate mitigation measure(s), but ultimately reserves the right to reject any mitigation measures not deemed appropriate by the Director of Environmental Management.

j. Provisions

1. The operator shall maintain accurate records of:
   i. the number and size of barges arriving and unloaded;
   ii. the chemical characterization of the dredged material source and volume of sediments pumped from each barge;
   iii. the specific destination cell(s) of each barge-load of sediment;
   iv. the total volume of all sediments placed.

2. The County shall be provided access to inspect and sample dredge barges, noncover cell sediments, cover cell sediments, return water, makeup water pond and/or any other aspect or location of the facility.

3. The operator shall maintain a daily log of special/unusual occurrences and actions taken by the operator in response to each individual special occurrence. This includes, but is not limited to, fires, earth slides, unusual and sudden settlement, injury and property damage accidents, explosions, discharge of hazardous or other wastes not permitted, and flooding. This log shall be kept onsite by the Operator at all times.

4. Copies of all written complaints regarding this facility shall be forwarded to the County within 24 hours of receipt. The operator's actions taken to resolve these complaints shall be forwarded to the County within 72 hours of receipt.

5. Notification of any significant injury to a worker, fire, spill, explosion, vehicle or equipment accident shall be reported to the County within 24 hours.

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6. During filling of cells, and for five years after breaching of the perimeter levees in each phase, topographic maps showing all filled areas of the facility shall be submitted on an annual basis.

7. The operator shall at all times provide adequate staffing, as agreed upon between the permittee and the Solano County Department of Environmental Management, to deal effectively and promptly with matters of operation at the site.

8. Facility personnel shall be properly outfitted and trained to perform their specific job duties so as to ensure adequate protection of personal health and safety.

9. The operator shall submit the most current list of responsible personnel for the operation of this facility to the Solano County Department of Environmental Management on an annual basis. The list shall be updated upon any changes.

10. Record of receipt of a Notice of Violation or any other legal enforcement action taken against the facility by any responsible regulatory agency shall be reported to the Solano County Department of Environmental Management within 24 hours of receipt.

11. Adequate lighting shall be provided for all work done after daylight hours at the site, but shall be provided in a manner consistent with conditions no. 79 below.

12. At all times there shall be an adequate number and type of operable vehicles used for the placement of dredge materials, spoils and earth at this facility. Information as to the location of backup equipment shall be readily available at the site.

13. Drinking water supply and adequate toilet facilities shall be properly maintained at all times for employee use.

14. The permittee shall meet all the requirements of the Environmental Health Division for the installation, operation and maintenance of the onsite wastewater holding tanks.

15. The operator shall submit copies of all correspondence between representatives of the facility and regulating agencies relating to the design, construction, and operation of the facility to the Solano

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County Department of Environmental Management.

16. All operations shall be conducted in substantial conformance to the procedures outlined in the most recently approved Operations Plan.

17. Additional information concerning the design and operation of this facility shall be furnished on request to the Solano County Department of Environmental Management.

k. Prohibitions

1. Dredge materials not conforming to the Sediment Screening Criteria as regulated by the San Francisco Regional Water Quality Control Board and other agencies involved with the interagency DMMO that make determinations regarding sediment suitability for different uses, including wetland restoration purposes. The voting members of the DMMO include the San Francisco Regional Water Quality Control Board, United States Environmental Protection Agency, Bay Conservation and Development Commission, the U.S. Army Corps of Engineers, and State Lands Commission. Commenting agencies include the US Fish and Wildlife Service, National Marine Fisheries Service, and California Department of Fish and Game. Solano County reserves the right to participate as a commenting agency on all matters pertaining to DMMO determinations regarding sediment suitability for Montezuma Wetlands restoration purposes.

2. Handling or disposal of dredge materials which fails to adequately protect the environmental or public health and safety.

3. Dredge material placement shall occur only in those areas as specified in the most current Operations Plan for the facility and approved by pertinent federal, State, and local regulatory agencies.

4. Additional prohibitions may be imposed after notice from the Solano County Department of Environmental Management.

5. Acceptance of any dredge materials containing dioxins and/or radiation in exceedance of Suisun Marsh sediment background levels and levels that are likely to cause adverse human health effects and/or adverse ecological effects as determined by the pertinent federal and State permitting agencies, shall be prohibited.

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I. Specifications

1. The Solano County Department of Environmental Management reserves the right to require additional measures as needed to adequately control nuisances resulting from project operations.

2. The Solano County Department of Environmental Management reserves the right to suspend or modify dredge receiving operations when deemed necessary due to an emergency, a potential health hazard or the creation of a public nuisance

3. The operator shall submit an application for revision to this Use Permit for any significant change proposed in the design or operation of the project at least 60 days prior to the expected implementation of the design or operation change.

4. A final closure plan and post-closure maintenance plan shall be submitted at least 1 years in advance of the projected closing.

5. This permit shall remain valid only as long as the facility maintains valid permits from all other federal, State, and local regulatory agencies.

6. The permit is subject to review by the Solano County Department of Environmental Management and may be suspended at any time for sufficient cause, after hearing by the Solano County Planning Commission.

78. The site shall be maintained in a neat and orderly manner and kept free of accumulated debris and junk. The existing debris and/or junk shall be removed from the subject site.

79. The use shall be operated in such a manner as to not constitute a nuisance or be detrimental to the health, safety, comfort, or general welfare of the people of the County, or be detrimental to adjacent properties or improvements or to the general welfare of the County.

80. The permittee shall be responsible for taking measures necessary or as may be required by the County to prevent light, glare, traffic congestion, visual distraction, or other impacts which constitute a nuisance to motorists, persons or property in the

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surrounding area.

81. At the direction of the Solano County Department of Environmental Management, the permittee shall dismantle and remove all equipment and infrastructure brought to the site upon expiration of the subject permit, unless a new Use Permit/Marsh Development Permit has been approved for the continuation of the use.

82. There shall be no outside storage of materials, trailers, equipment, inoperable and recreational vehicles, parts and supplies onsite, unless required for the active operation of the use.

83. The permittee shall maintain a comprehensive General Liability and Worker s Compensation insurance policy in the minimum amount of $1,000,000 during the term of this permit which shall name the County of Solano as additional insured. Evidence of such coverage shall be filed with the Director of Environmental Management and shall comply with the requirements of the County Risk Manager.

84. By acceptance of this permit, the permittee and its successors in interest agree that the County of Solano, its officers and employees shall not be responsible for injuries to property or person arising from exercise of this permit. The permittee shall defend, indemnify and hold harmless the County of Solano, its officers and employees from all claims, liabilities, losses, or legal actions arising from any such injuries. The permittee shall reimburse the County for all legal costs and attorney's fees related to litigation based on the issuance of and/or interpretation of this permit. This agreement is a covenant that runs with the land and shall be binding on all successors in interest of the permittee.

85. The permittee shall defend, indemnify, and hold harmless the County of Solano, its officers, employees, agents, and servants, of any and all liability caused by the negligence or wrongful act of the permittee, its agents, employees, or assignees arising out of the issuance or exercise of this use permit/marsh development permit. The permittee shall reimburse the County for any court cost incurred in the interpretation of the provisions of this use permit, and shall pay all County legal costs, attorney fees and any other fees related thereto.

86. The permittee shall defend, indemnify and hold harmless the County or its agents, officers, and employees from any claim, action, or proceeding against the County or its agents, officers, or employees, to attack, set aside, void, or annul, in whole or in part, the County's approval of the Use Permit and Marsh Development Permit. In the event that the County fails to promptly notify the permittee of any such claim, action or proceeding, or that the County fails to cooperate fully in the defense of said claim, this condition shall thereafter be of no further force or effect.

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87. In the event that the permittee challenges the approval by the Planning Commission and/or Board of Supervisors of any condition of approval in an action filed in a court of law, which action is brought within the time period provided for by law, the approval of this project by the Planning Commission and/or Board of Supervisors shall be suspended pending dismissal or final resolution of such action. If any condition of approval of this project is invalidated by a court of law, the entire project shall be reviewed by the Planning Commission and/or Board of Supervisors and substitute conditions may be imposed at the Planning Commission's and/or Board of Supervisors' discretion.

88. Emergency Repairs: In the event of an emergency resulting in an imminent hazard to public health and safety (such as levee failure, slope failure, plant equipment failure), the operator shall take whatever immediate measures are deemed prudent and necessary to avoid or eliminate said hazard. Said measures shall be carried out in consultation with the Solano County Department of Environmental Management and/or other applicable regulatory agency, when possible. Should emergency action be required when consultation with said agencies cannot take place (i.e. weekends, holidays), the operator shall notify the Solano County Department of Environmental Management and all other applicable agencies on the next business day following the emergency action and shall obtain any necessary emergency permits for said actions as required. Said emergency permits may approve, modify or rescind any emergency action taken by the operator if determined to be necessary by the Solano County Department of Environmental Management to protect public health and safety and maintain consistency with project conditions.

89. The Department of Environmental Management shall verify ongoing compliance with the terms and conditions of this permit through a program of regular compliance reviews. The first such compliance review shall occur one year following issuance of a grading permit by the Department of Environmental Management; the second compliance review shall occur three years following the first compliance review [year 4]; and subsequent reviews shall occur at five year intervals following this second compliance review [years 9, 14, 19, etc].

90. The site design and operations shall meet the requirements of all federal, State, regional, and local regulatory agencies with jurisdiction over this project. Changes or amendments to the design and/or operation of the facility required by the agencies which regulate this site, if in substantial conformance with the provisions of the Final Environmental Impact Report and the Mitigation Monitoring and Reporting Plan, shall be reported to the Department of Environmental Management, Divisions of Planning and Environmental Health, by the ~~permittee(s) at least sixty~~ (60) working days prior to the proposed enactment.

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91. Substantial or significant change(s) in the permitted operation and/or facilities, as determined by the Director of Environmental Management, shall require an application for an amended Use Permit and/or Marsh Development Permit for continuance of the permitted activity.

92. Subsequent to approval of the permit(s), the Director may set for hearing by the Planning Commission a review of the permitted operation to coincide with the required five year compliance review, or more frequently at the discretion of the Director, for the purpose of modifying any conditions previously imposed or adding conditions that may be required to guarantee the continuance of the findings made by the Planning Commission for approval of these permit(s).

    This reconsideration may include, but is not limited to, the imposition of requirements for the modification, closure, and/or removal of facilities, operations, materials or equipment from the premises affected by these permit(s) within thirty days of notification, or the requirement that appropriate guarantees to secure such changes or removal be filed and maintained.

    Any condition modified or added shall be of the same force and effect as if originally imposed. This periodic review shall be for project facilities or any part thereof, and each review, although to be accomplished in accordance with CEQA, shall not be considered a separate project under CEQA. The review of the permitted operation and the imposition of amended or additional requirements shall not be unreasonably applied such that the long term, continued viability of the Montezuma Wetlands Project is unreasonably constrained or unreasonably limited.

93. Non-compliance with the approved Use Permit/Marsh Development Permit or any condition(s) set forth therein shall be cause for revocation by the Planning Commission of said permit(s).

94. Subsections (i) and (j) of Section 28-52 and (j) and (k) of Section 28-53 of the Solano County Code concerning revocation of a Marsh Development Permit and Use Permit for non-compliance with conditions of the Marsh Development Permit and Use Permit respectively, and subsections (l) of Section 28-52 and (m) of Section 28-53 concerning minor revisions to a Marsh Development Permit and Use Permit respectively, are expressly made applicable to these permits. Upon any revocation, permittee(s) shall reclaim the site in accordance with conditions of the permit(s) and the closure requirements. If necessary, the County may resort to any security to accomplish such reclamation. In addition, any term or condition of these permit(s) and any violation of these permit(s) may be enforced by injunction issued out of the Superior Court upon suit by the County. In the event of permit(s) revocation, the permittee(s) shall submit within 90 days a report to the Department of Environmental Management fully describing their reclamation of the site. The permittee(s) shall make periodic reports, as required by the Department of

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Environmental Management, on the progress and conclusion of site reclamation procedures.

95. The permittee(s) shall comply with all applicable Federal, State, regional, and local enactments, laws, and regulations, as they now exist and as they may be amended. A copy of correspondence concerning any enforcement action shall be provided to the Department of Environmental Management. Compliance with any enforcement action shall be summarized in the annual compliance report.

96. The permittee(s) shall allow the enforcement personnel of any regulatory agency with enforcement jurisdiction over the site to have access to the permitted site.

97. The permittee(s) shall implement the Mitigation Monitoring and Reporting Program, and any future modifications thereof, in accordance with the requirements and guidelines contained in Exhibit B of the Planning Commission staff report, in order to mitigate or avoid the significant environmental effects identified in the Final Environmental Impact Report. Failure to implement a mitigation to reduce impacts could result in revocation or modification to the permit(s).

98. The permit shall be considered exercised, pursuant to Sections 28-52 (i)(2) and 28-53 (j)(2)of the Solano County Code, upon issuance of all required federal, State, regional, and local agency entitlements, and of a Notice to Proceed from the Department of Environmental Management.

99. Compliance reports shall be submitted to the Department of Environmental Management annually to document compliance with the Conditions of Approval contained in this permit. These compliance reports shall be in addition to all reports required to be submitted by the reporting requirements of the Mitigation Monitoring and Reporting Program (Exhibit B), and in accordance with the report schedules outlined therein.

100. The permittee(s) shall reimburse the Department of Environmental Management pursuant to Solano County Code Section 11-111 for the Department's reasonable cost of monitoring, enforcing and verifying compliance with the terms of these permit(s). This provision includes but is not limited to any third-party peer review reasonably required by the Solano County Department of Environmental Management in conjunction with any technical reports, analyses, and studies submitted to the Department.

101. Prior to the issuance of a Grading Permit by signature of the Director of Environmental Management, the Director shall approve a [illegible] Program which provides financial assurances covering all closure, post-closure, and environmental impairment issues identified in the Final Environmental Impact

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Report, the Mitigation Monitoring and Reporting Plan, and the Planning Commission Staff Report of October 5, 2000. The structure of the Financial Assurances Program shall be as outlined in Planning Commission Staff Report of October 5, 2000, under the section entitled "*Logistics of financial assurance for closure, post closure, and financial impairment*". Financial instruments acceptable to the County under this program include cash, CDs, and irrevocable letters of credit. Surety bonds or environmental insurance may be accepted if the following criteria are satisfied:

a. The County, not the permittee, should be indemnified against risk or be the prime beneficiary of the financial assurances instrument;
b. The County alone should decide when and under what circumstances money becomes payable;
c. Money should be quickly and easily accessible, especially in an emergency;
d. Financial assurance instruments should pose minimum risk of litigation in order to collect; and
e. Financial assurance instruments should cover the entire period set forth by the Conditional Use Permit, and should not be subject to cancellation at any time without adequate substitute.

Minor deviations from this structure may be administratively approved at the discretion of the Director of Environmental Management. Substantial deviations shall be submitted to the Planning Commission for approval.

102. Prior to the issuance of a Grading Permit by signature of the Director of Environmental Management, the permittee(s) shall submit and the Director shall approve cost estimates:

a. for each and every activity required as part of the closure of each phase of the proposed project, and for closure of the site as a whole,

b. for each and every activity required as part of the post closure requirements over the 20 year post-closure period, and

c. for environmental impairment in an amount sufficient, as determined by the Director of Environmental Management, to clean up or remediate the most reasonably foreseeable catastrophic event or series of events that may be anticipated during the construction of each phase of the project, after the closure of each phase, and during the 20 year post-closure period of the project.

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County financial resources. Should adequate County financial resources not be available, this in turn could result in potentially significant physical environmental impacts.

Mitigation

A Project Mitigation Monitoring and Reporting Plan (MMRP) shall be prepared before issuance of the County use permit. The MMRP will provide a checklist for all aspects of Project monitoring and will aid County staff in assessing Project progress and the development of potential problems. The Project proponent shall be required to post bonds or appropriate financial assurances in an amount sufficient to perform remediation and restoration, or on-going maintenance and operation. The amount and timing of the bonds would be commensurate with the volume and type of sediment placed at the restoration site. The approach for calculating the bond amount will be determined during preparation of the County Use Permit.

Finding

Changes or alterations have been required in, or incorporated into, the Montezuma Wetlands Project which avoid or reduce to a level of less-than-significance the significant environmental effect as identified in the FEIR.

B. POTENTIALLY SIGNIFICANT IMPACTS WHICH ARE NOT MITIGATED TO A LESS-THAN-SIGNIFICANT LEVEL

This section identifies those impacts, which, according to the Final EIR, cannot be mitigated to a less-than-significant level despite adoption of the identified mitigation measures.

Impact

Emissions from operation-phase activities (including rehandling facility operations) would exceed the BAAQMD standard of 80 pounds per day for ROG, NOx, SOx, and PM_{10}.

Mitigation

Diesel engines shall meet BAAQMD standards and shall be properly maintained and regularly tuned according to the manufacturers' specifications to ensure efficient operation. However, even with this mitigation measure, air quality impacts during

operation of the project from sediment placement activities attributable to ROGs and NOx would be significant and unavoidable, and would contribute incrementally to regional air quality problems.

Finding

The above mitigation measure would mitigate the impact to some degree but not to a level of less-than-significance. These mitigation measures will be required by conditions of approval of the Use Permit and Marsh Development Permit. None of the alternatives identified in the FEIR, except for the "no project" alternative, would mitigate the impacts to a level of less-than-significance. However, the "no project" alternative would not fulfill the project proponent's purpose or need. It would also not meet the Bay Area region's needs to:

a) restore the region's tidal marshes historically lost through development of Bay shorelines, and

b) find alternatives for the disposal of clean and contaminated sediments dredged from San Francisco Bay.

C. STATEMENT OF OVERRIDING CONSIDERATION

CEQA requires the decision-maker to balance the benefits of a proposed Project against its unavoidable environmental risks in determining whether to approve the Project. Pursuant to Section 15903 of the state CEQA guidelines, the Board of Supervisors finds that the benefits of the Project outweigh the unavoidable adverse environmental effects listed above in Section B, and that the adverse environmental effects are, therefore considered acceptable, for the reasons stated below.

Marsh Restoration

Federal, State, and local wetland protection policies now encourage and/or require restoration of wetlands to offset the impacts of historic development of wetland area in and around San Francisco Bay. The restoration of tidal wetlands on subsided diked baylands requires both the reintroduction of tidal circulation and the reestablishment of appropriate intertidal elevations. Marsh reestablishment can occur through natural sedimentation, but can take from ten to twenty years or more following the reintroduction of tidal circulation. Placing dredged materials on subsided diked baylands can

accelerate the restoration process and reduce the uncertainties of natural sedimentation, while enhancing the habitat value of the site.

Dredged Sediment Disposal

It is estimated that over the next 50 years, up to 300 million cubic yards of sediment will have to be dredged from the Bay to accommodate maritime trade, recreational boating, and other purposes. Dredged materials have historically been transported from the Bay's ports and shipping channels to one of the federally designated areas in the Bay or ocean. But recent concern with respect to the capacity of the Bay and ocean disposal sites, the effects on water quality from the disposal of materials that in some cases contained contaminants, and the effect of disposal on the Bay's fishery resources, have resulted in the adoption of new polices by the agencies with authority over dredging and disposal of bay sediments.

One alternative for disposal of dredged sediments identified by the LTMS, an interagency cooperative group established to resolve the dredged material disposal issue, is the beneficial reuse of dredged materials for the restoration of diked baylands.

Statement of Overriding Considerations

The benefits of this Project will outweigh the unavoidable adverse environmental effects listed in Section B above, and the adverse environmental effects are therefore considered acceptable, since the project will meet the need to restore the region's tidal marshes historically lost through development of Bay shorelines, in turn enhancing habitat values at the site, while also meeting the need to find alternatives for the disposal of clean and contaminated sediments dredged from San Francisco Bay, in turn facilitating maintenance of channels necessary for shipping in the Bay.

D. CONCLUSION

The mitigation measures listed in conjunction with each of the findings set forth above will eliminate, or reduce to a level of insignificance, all adverse environmental impacts, except for those items for which a Statement of Overriding Considerations has been adopted. Taken together, the FEIR, the mitigation measures, findings, and Statement of Overriding Considerations, provide an adequate basis for approval and implementation of the Montezuma Wetlands Project and the proposed amendments to the General Plan, Zoning Ordinance, and Local Protection Plan.

CSLC EXHIBIT F

RESOLUTION NO. 99-30
SOLANO COUNTY BOARD OF SUPERVISORS
CERTIFICATION OF FINAL ENVIRONMENTAL IMPACT REPORT
MONTEZUMA WETLANDS PROJECT

WHEREAS, the Solano County Board of Supervisors ("Board") has considered, in public hearing, certification of the Final Environmental Impact Report/Environmental Impact Statement (Final EIR/S) for the Montezuma Wetlands Project, and

WHEREAS, the Board has reviewed the report and recommendation of the Department of Environmental Management, and

WHEREAS, the Board has reviewed the minutes of the Planning Commission hearings of October 15, 1998 and November 5, 1998, and the recommendation of the Planning Commission, and

WHEREAS, after due consideration, the Board finds the following in regard to the Final Environmental Impact Report:

1. The County of Solano ("County") in accordance with the requirements of the California Environmental Quality Act (California Public Resources Code §§ 21000 et seq.; "CEQA"), the State CEQA Guidelines (Title 14, California Code of Regulations §§ 15000 et seq.) and the Solano County EIR Guidelines, has caused to be prepared and completed a Final Environmental Impact Report ("Final EIR") which analyzes the environmental impacts of the Project and provides mitigation measures to reduce environmental impacts.

2. This document has been jointly prepared as an Environmental Impact Report by the County acting as local lead agency under the provisions of CEQA, and as an Environmental Impact Statement (EIS) by the U.S. Army Corps of Engineers (Corps) acting as federal lead agency under the provisions of NEPA (National Environmental Policy Act), and is referred to therein as the Montezuma Wetlands Project Final Environmental Impact Report/Environmental Impact Statement (Final EIR/S). However, for purposes of County action or project approval, this document is hereafter referred to as the Montezuma Wetland Project Final Environmental Impact Report (Final EIR/S).

3. On November 4, 1991, a Notice of Preparation was circulated to the appropriate federal, state, regional and local agencies and interested parties, which required a minimum 30-day review period closing on April 26, 1992.

4. On November 20, 1991, the County held a scoping meeting with federal, state, regional and local agencies having jurisdiction over or interest in the proposed project.

5. Two task force meeting were convened on November 5, 1991 and February 18, 1992 to review and comment on technical reports prepared as part of the EIR process, and to solicit agency comments so that they could be considered in the impact analysis and development of mitigation measures.

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6. The County received, and provided responses to, various comments from public agencies and interested parties on the Notice of Preparation, which public comments were used as a guide in preparing the Draft EIR/S.

7. On October 31, 1994, a Draft EIR/S was completed and circulated for public review through the State Clearinghouse at the Governor's Office of Planning and Research. Along with a Notice of Completion, the Draft EIR/S was distributed to the appropriate federal, state, regional and local agencies, interested organizations and private citizens, and was delivered to a list of persons requesting it, to those noted on the distribution list in the Draft EIR/S and to adjacent property owners; the Notice of Completion observed a sixty (60) day public review period closing on December 30, 1994.

8. On December 15, 1994, the Planning Commission held a duly advertised public hearing on the Draft EIR/S, at which opportunity was given for public comment, and public comment was received on the Draft EIR/S.

9. On December 30, 1994, the sixty (60) day public comment period for the Draft EIR/S was closed, prior to which the County received written comments on the Draft EIR/S.

10. In response to comments received at the December 15, 1994 public hearing, and in writing during the sixty (60) public comment period for the Draft EIR/S, the County caused to be prepared revisions to the text of the Draft EIR/S and responses to the comments submitted; and presented this material, along with a list of organizations and individuals submitting comments, in a document entitled "Final Environmental Impact Report/Environmental Impact Statement", consisting of three volumes, including Volume I (Final Environmental Impact Report/Environmental Impact Statement), Volume II (Technical Appendices), and Volume III (Response to Comments), which were published in July, 1998, together with an errata sheet dated November 5, 1998, and which were distributed to the Planning Commission, the County Board of Supervisors ("Board"), and to all parties who commented on the Draft EIR/S, and were available to others upon request at the Solano County Department of Environmental Management office.

11. Vol. I of the Final EIR/S consists of the Draft EIR/S, fully revised to reflect various revisions made to the project design by the project proponent in response to comments submitted on the Draft EIR/S and/or to suggestions made by resource agency representatives during the Corps-sponsored technical meetings. It also reflects revisions by the County's consultant in response to comments submitted on the Draft EIR/S questioning the information or data contained in the Draft EIR/S, and the adequacy of various mitigation measures recommended by the Draft EIR/S.

Some impacts originally identified in the Draft EIR/S as potentially significant were reduced to a level of less-than-significance by the revisions made to the project design, as noted in the Final EIR/S, while some others were substantially reduced, but

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not to a less-than-significant level, and were therefore accompanied in the Final EIR/S by further recommended mitigation measures which reduced their levels of significance to a less-than-significant level.

12. The Project EIR files have been made available for review by the public and are part of the record before the Board.

13. The Board of Supervisors held a duly noticed public hearing on December 8, 1998, which hearing was continued to January 12, 1999 and then to February 2, 1999, and heard testimony regarding the environmental documentation prepared for the project, reviewed the Final EIR/S and found that the contents of the Final EIR/S and the procedures through which the Final EIR/S was prepared, publicized, circulated and reviewed comply with the provisions of CEQA, the State CEQA Guidelines, and the County EIR Guidelines, including meeting the CEQA requirements of providing a brief summary, description of the project and environmental setting, significant environmental effects, unavoidable environmental effects, proposed mitigation measures, a sufficient range of reasonable alternatives to the proposed project, including a no-project alternative, significant irreversible changes, growth-inducing impacts, effects found not to be significant, organizations and persons consulted, cumulative impacts, and economic and fiscal effects.

14. The Final EIR/S identifies impacts, both less-than-significant and potentially significant, from the proposed development relative to Policy issues, Geology and Seismicity, Sediment Quality, Hydrology and Water Quality, Biological Resources, Cultural Resources, Traffic, Access, and Circulation, Air Quality, Noise, Recreation, Population, Housing, and Employment, Visual Resources, Utilities and Public Services, and Economic and Fiscal Factors.

15. The Final EIR/S concludes that if the mitigation measures required by the EIR/S are followed, all potentially significant impacts will be reduced to a level of insignificance, except for potential air quality impacts. The specific air quality impacts identified will require adoption of findings of overriding consideration as part of approval of the project.

16. All comments raised during the public review period of the Draft EIR/S in 1994 were responded to adequately in the Responses to Comments, Final EIR/S vol. 3 and an errata sheet to vol. 3 dated November 30, 1998 (attachment #10 to MWP December 8, 1998.

17. The Final EIR/S has been presented to the Board prior to the certification hearing and the Board has reviewed and considered the information contained in the Final EIR/S prior to taking action on the project.

18. On December 8, 1998 the Board held a public hearing, which hearing was continued to January 12, 1999 and then to February 2, 1999, to consider certification of the Final EIR/S and to consider public testimony thereon.

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BE IT, THEREFORE, RESOLVED, that the Solano County Board of Supervisors does hereby CERTIFY that the Final EIR/S for the Montezuma Wetlands Project General Plan Application No. G-91-03, Rezoning Petition No. Z-91-05, and associated Amendments to the Solano County Local Protection Plan has been completed in compliance with the California Environmental Quality Act (CEQA), the California CEQA Guidelines, and the Solano County EIR Guidelines; that the Final EIR/S was presented to the Board of Supervisors and that the Board of Supervisors reviewed and consdered the information contained in the Final EIR/S prior to approving the project; and that the Final EIR/S reflects the Board of Supervisors' independent judgement and analysis.

* *

On the motion of Supervisor Kondylis, and second of Supervisor Thomson the Solano County Board of Supervisors adopted this resolution on February 2, 1999, by the following vote:

AYES: Supervisors Carroll, Kondylis, Kromm, Thomson, and Chairman Silva

NOES: Supervisors None

ABSTAIN: Supervisors None

ABSENT: Supervisors None

John F. Silva

Chairman John F. Silva, Board of Supervisors

ATTEST:
Michael Johnson, Clerk
of the Board of Supervisors

By: Myra Chirila, deputy
Maggie Jimenez, Deputy Clerk
Reggi Blancett, Deputy Clerk

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RESOLUTION NO. 99-31
SOLANO COUNTY BOARD OF SUPERVISORS
GENERAL PLAN AMENDMENTS
MONTEZUMA WETLANDS PROJECT

WHEREAS, the Solano County Board of Supervisors (Board) has duly considered, in public hearing, a request for amendments to the text of the Solano County General Plan (Application No. G-91-03), pertaining to uses allowed on lands designated "Marsh" and "Water Dependent Industrial" by the General Plan Land Use and Circulation Map, and

WHEREAS, the requested amendments to the Solano County General Plan would include amendments to the text of the Land Use and Circulation Element (LUCE), the Collinsville Montezuma Hills Area Plan and Program (CMHP), and the Resource Conservation and Open Space Element (RCOSE), and

WHEREAS, the Board has duly considered, in public hearing, a request for amendments to the text of the Solano County Policies and Regulations Governing the Suisun Marsh (Local Protection Program), which contains a compilation of County policies and regulations pertaining to the Suisun Marsh; specifically in this case, the Land Use and Circulation Element (LUCE), Resource Conservation and Open Space Element (RCOSE), and Collinsville-Montezuma Hills Area Plan and Program (CMHP), and

WHEREAS, said amendments to the text of the Land Use and Circulation Element, Collinsville Montezuma Hills Area Plan and Program, Resource Conservation and Open Space Element, and Local Protection Program, in conjunction with certain amendments to the Solano County Zoning Ordinance as proposed by the project proponent, and in conjunction with the Use Permit and Marsh Development Permit as requested by the project proponent, would permit restoration of a historic tidal wetland ecosystem using cover and non-cover sediments dredged from the San Francisco Bay and ports, and allow rehandling of dredged sediments for on-site and off-site uses in the Suisun Marsh, and

WHEREAS, said Board has reviewed the report of the Department of Environmental Management, and

WHEREAS, said Board has reviewed staff's proposed amendments to the Land Use and Circulation Element, Collinsville Montezuma Hills Area Plan and Program, Resource Conservation and Open Space Element, and Local Protection Program, and

WHEREAS, said Board has held a duly noticed public hearing and heard testimony relative to said amendments, and

WHEREAS, said Board has reviewed and considered the certified Final Environmental Impact Report (FEIR) prepared for the Montezuma Wetlands Project and all related approvals and actions, and

WHEREAS, approval of amendments to the Solano County Zoning Ordinance and approval of a Conditional Use Permit and Marsh Development Permit will be required following

approval of the amendments to the Land Use and Circulation Element, Collinsville Montezuma Hills Area Plan and Program, Resource Conservation and Open Space Element, and Local Protection Program under consideration herein, and prior to implementation of the proposed project, and

WHEREAS, excepting for those mitigation measures which will be implemented through approval of the proposed amendments to the Land Use and Circulation Element, Collinsville Montezuma Hills Area Plan and Program, Resource Conservation and Open Space Element, Zoning Ordinance, and Local Protection Program as has been recommended by the Montezuma Wetlands Project FEIR/S, all other recommended mitigation measures will be implemented as part of the approval process for the required Conditional Use Permit, Marsh Development Permit, and/or any other required permits or entitlements which may follow, and

WHEREAS, a Mitigation Monitoring and Reporting Program will be presented to the Planning Commission for adoption as part of the approval process for the required Conditional Use Permit and Marsh Development Permit, and

WHEREAS, Environmental Impact Findings, pursuant to Public Resources Code Section 15091, for the Montezuma Wetlands Project General Plan Amendments are identified in Exhibit "B", which Exhibit is attached hereto and incorporated herein by reference, and are thereby expressly adopted herein, and

WHEREAS, four alternatives to the proposed project were analyzed as part of the FEIR. Both the proposed project and Alternative #4 (Hamilton) were identified as the environmentally superior alternatives; advantages and disadvantages differ and neither one is clearly superior to the other. Alternative 4 was not selected because it would not fulfill the project proponent's purpose or need, and because it would not be feasible due to jurisdictional differences, and

WHEREAS, mitigation measures identified by the FEIR and incorporated into the Montezuma Wetlands project description or required by conditions of approval of the Use Permit, Marsh Development Permit, or other appropriate stage of development, will reduce all of the remaining potentially significant adverse effects on the environment to a less-than-significant level, as shown in the findings in the attached Exhibit "B", with the exception of certain impacts on Air Quality, and

WHEREAS, a Statement of Overriding Considerations addressing those residual impacts (Air Quality) not reduced to a less-than-significant level, and which have been found to be unavoidable, is set forth in Exhibit "B".

WHEREAS, the public benefits of the Montezuma Wetlands Project outweigh the unavoidable adverse environmental impacts on air quality as described in the proposed Statement of Overriding Considerations set forth in Exhibit "B".

NOW, THEREFORE, BE IT RESOLVED, that the Solano County Board of Supervisors does hereby ADOPT the Findings and Statement of Overriding Considerations set forth in Exhibit "B" attached hereto, and does hereby ADOPT the proposed amendments to the General Plan

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(G-91-03) and associated **Solano County Policies and Regulations Governing the Suisun Marsh** (Local Protection Program), incorporating the text as shown in Exhibit A, attached hereto and made a part hereof by reference.

****

On the motion of Supervisor Kondylis, and second of Supervisor Thomson the Solano County Board of Supervisors adopted this resolution on February 2, 1999, by the following vote:

AYES: Supervisors Carroll, Kondylis, Kromm, Thomson, and Chairman Silva

NOES: Supervisors None

ABSTAIN: Supervisors None

ABSENT: Supervisors None

Chairman John F. Silva, Board of Supervisors

ATTEST:
Michael Johnson, Clerk
of the Board of Supervisors

By: Maggie Jimenez, Deputy Clerk
Maggie Jimenez, Deputy Clerk
Reggi Blancett, Deputy Clerk

ORDINANCE NO. 1569

AN ORDINANCE AMENDING CHAPTER 28, SECTIONS 28-36(a)(b) AND 28-38(c), OF THE SOLANO COUNTY CODE ENTITLED ZONING REGULATIONS MONTEZUMA WETLANDS PROJECT

The Board of Supervisors of the County of Solano, State of California, does ordain as follows:

SECTION I.

Section 28-36, subsections (a) and (b), of Chapter 28 of the Solano County Code are hereby amended to read as follows:

(a) The Board of Supervisors finds that certain waterfront lands within Solano County are of statewide and regional significance because they are among the few remaining deep-water sites suitable for water-dependent industries. Furthermore, significant agricultural and marsh lands are nearby resources which the County is committed to preserve. For this reason, the water-dependent industrial district is established to reserve waterfront lands for large-scale, water-dependent industries to assure the efficient use of waterfront industrial sites, and to ensure that impact upon nearby environmentally sensitive lands are minimized.

The provisions of this Section shall be strictly interpreted to assure that only those industries which depend on a waterfront site are to locate within this district. It is expressly understood that prior to consideration of any industrial proposal within the district, the Planning Commission shall determine the industry's need for a waterfront site and assure its conformance with the provisions of the Solano County general plan, this Chapter, and where applicable, the Suisun Marsh Preservation Act of 1977. Industries seeking to locate in the area designated Water Related Industrial Reserve on the Suisun Marsh Protection Plan Map are to be governed by the definition of water-related industry contained in the San Francisco Bay Plan. Those industries which are not considered to be water dependent may continue to locate within other industrial districts.

Some of the land in this District is lowland grassland or seasonal marsh which has existing value as wetland habitat or is suitable for restoration to wetland habitat. These areas have subsided and may be filled, using approved dredged sediments, and restored to tidal, managed, or seasonal wetlands, for the purpose of increasing their natural resource value and restoring some of the formerly natural tidal wetland area. Restored wetlands shall remain as wetlands and not be developed for industrial uses.

(b) Uses allowed:

Agriculture as an interim use, and buildings and uses clearly accessory or incidental to such use, except that those uses indicated below, may be established only after the conditions for a use permit, set forth in Section 28-53, are fulfilled.

(1) As an interim use: animal feed yard, poultry operation.

(2) Oil and gas wells.

(3) Dredge disposal site.

(4) As a limited-term use within the area designated for commercial recreation use on the General Plan: marinas, including boat harbor, boat launching facilities, boat and boat trailer storage; boat construction, servicing, sales, repair; commercial lodging; restaurants and refreshment stands; water-related recreational shop, store and service for retail sales when conducted entirely within a building.

(5) Restoration of tidal, managed and seasonal wetlands using approved dredged sediments.

(6) Rehandling of dredged materials for on-site and off-site use.

Where a use is granted pursuant to a Planned Unit Development, the further requirement for a use permit is waived.

SECTION II.

Section 28-38, subsection (c) of Chapter 28 of the Solano County Code is hereby amended to read as follows:

(c) Conditional uses, provided the conditions for a use permit and requirements set forth in Section 28-53 are fulfilled:

(1) Marsh-oriented recreational use and use incidental to recreation, including park, interpretive center, day-use facility, lodge, club or resort for swimming, boating, sailing, fishing, hunting or shooting, and raising of game, fishing pier and boat ramp, small craft docking and storage incidental to a small craft docking facility; commercial recreation use, including bait shop and refreshment stand, and similar types of uses as may be determined by the Planning Commission.

(2) Additional one-family dwellings or manufactured dwellings for caretakers or persons employed on the premises when such residential use is clearly

accessory or incidental to the allowed use of the property.

(3) Oil and gas wells, and storage of natural gas in abandoned wells.

(4) Public service facility.

(5) Scientific research and educational facility directly related to the marsh environment, and similar uses as may be determined appropriate by the Planning Commission.

(6) Dredging of minerals or natural materials.

(7) Temporary facilities for the transfer of levee maintenance material from shore to barge.

(8) Restoration of tidal, managed and seasonal wetlands using approved dredged sediments.

SECTION III. The Board of Supervisors has made the following findings in regard to said zoning ordinance amendments:

1. The Board has duly considered, in public hearing, a request for amendments to the text of the Solano County Zoning Ordinance (Application No. Z-91-05), pertaining to uses allowed on lands zoned MP ("Marsh Preservation") and I-WD ("Water Dependent Industrial") and associated text amendments to the Solano County Policies and Regulations Governing the Suisun Marsh (Local Protection Program) which contains a compilation of County policies and regulations pertaining to the Suisun Marsh; specifically in this case, policies and regulations contained in the Solano County Zoning Ordinance..

2. The amendments to the text of the Zoning Ordinance and Local Protection Program, in conjunction with certain amendments to the Solano County General Plan as proposed by the project proponent, and in conjunction with approval of the Use Permit and Marsh Development Permit as requested by the project proponent, would permit restoration of a historic tidal wetland ecosystem using cover and non-cover sediments dredged from the San Francisco Bay and ports, and allow rehandling of dredged sediments for on-site and off-site uses in the Suisun Marsh.

3. The Board has reviewed the report of the Department of Environmental Management, and

4. The Board has reviewed staff's proposed amendments to the Zoning Ordinance and Local Protection Program, and

5. The Board has held a duly noticed public hearing and heard testimony relative to said amendments, and

6. The Board has reviewed and considered the certified Final Environmental Impact Report (FEIR) prepared for the Montezuma Wetlands Project and all related approvals and actions, and

7. Approval of a Conditional Use Permit and Marsh Development Permit will be required following approval of the amendments to the Zoning Ordinance and Local Protection Program under consideration herein, and prior to implementation of the proposed project, and

8. Excepting for those mitigation measures which will be implemented by amendments to the Land Use and Circulation Element, Collinsville Montezuma Hills Area Plan and Program, Resource Conservation and Open Space Element, Zoning Ordinance, and Local Protection Program as recommended by the Montezuma Wetlands Project FEIR/S, all other recommended mitigation measures will be implemented as part of the approval process for the required Conditional Use Permit, Marsh Development Permit, and/or other required stage of development, as appropriate, and

9. A Mitigation Monitoring and Reporting Program will be presented to the Planning Commission for adoption as part of the approval process for the required Conditional Use Permit and Marsh Development Permit, and

10. Environmental Impact Findings, pursuant to Public Resources Code Section 15091, for the Montezuma Wetlands Project Zoning Ordinance Amendments are identified in Attachment "4" of the Board of Supervisor's staff report of December 8, 1998, which Attachment is incorporated herein by reference, and thereby expressly adopted herein, and

11. Four alternatives to the proposed project were analyzed as part of the FEIR. Both the proposed project and Alternative #4 (Hamilton) were identified as the environmentally superior alternatives; advantages and disadvantages differ and neither one is clearly superior to the other. Alternative 4 was not selected because it would not fulfill the project proponent's purpose or need, and because it would not be feasible due to jurisdictional differences, and

12. Mitigation measures identified by the FEIR and incorporated into the Montezuma Wetlands project description or required by conditions of approval of the Use Permit, Marsh Development Permit, or other appropriate stage of development, will reduce all of the remaining potentially significant adverse effects on the environment to a less-than-significant level, as shown in the findings in said Attachment "4", with the exception of certain impacts on Air Quality, and

13. A Statement of Overriding Considerations addressing those residual impacts (Air Quality) not reduced to a less-than-significant level, and which have been found to be unavoidable, is set forth in said Attachment "4".

14. The public benefits of the Montezuma Wetlands Project outweigh the unavoidable adverse environmental impacts on air quality as described in the proposed Statement of Overriding Considerations set forth in said Attachment "4".

SECTION IV. This ordinance shall be published once in the Daily Republic, a newspaper of general circulation in the County of Solano, not later than fifteen (15) days after the date of its passage and adoption and shall take effect thirty (30) days from and after its passage.

On the motion of Supervisor Kondylis, and second of Supervisor Thomson the Solano County Board of Supervisors adopted this resolution on February 2, 1999, by the following vote:

AYES: Supervisors Carroll, Kondylis, Kromm, Thomson, and Chairman Silva

NOES: Supervisors None

ABSTAIN: Supervisors None

ABSENT: Supervisors None

John F. Silva

Chairman John F. Silva, Board of Supervisors

ATTEST:
Michael Johnson, Clerk
of the Board of Supervisors

By: Myra Chisila deputy
Maggie Jimenez, Deputy Clerk
Reggi Blancett, Deputy Clerk

RESOLUTION NO. 4285
SOLANO COUNTY PLANNING COMMISSION
USE PERMIT NOS. U-91-35; MP-91-04
MONTEZUMA WETLANDS PROJECT

WHEREAS, the Solano County Planning Commission has considered, in a public hearing, Use Permit Application Nos. U-91-35-01 and Marsh Development Permit No. MD-91-04 of Levine-Fricke Restoration Corp. to permit restoration of a historic tidal wetland ecosystem using cover and non-cover sediments dredged from the San Francisco Bay and ports, and to allow rehandling of dredged sediments for on-site and off-site uses in the Suisun Marsh, and

WHEREAS, said Commission has reviewed the report of the Department of Environmental Management, and

WHEREAS, an Environmental Impact Report was certified by the Board of Supervisors pursuant to the California Environmental Quality Act, Public Resources Code Sections 21000 et. seq., the State CEQA Guidelines, and the Solano County EIR Guidelines, and

WHEREAS, said Commission has reviewed and considered the certified Final Environmental Impact Report prepared for the Montezuma Wetlands Project and all related approvals and actions, and

WHEREAS, said Commission held a duly noticed public hearing on October 5, 2000 and heard testimony regarding the environmental documentation and permit applications for the proposed project,

WHEREAS, after due consideration, the said Planning Commission has made the following findings in regard to said proposal:

1. Use Permit No. U-91-35 and Marsh Development Permit MD-90-04 have been requested to authorize restoration of a historic tidal wetland ecosystem using cover and non-cover sediments dredged from the San Francisco Bay and ports, and allow rehandling of dredged sediments for on-site and off-site uses in the Suisun Marsh, and

2. The project and issuance of permit numbers U-90-35 and MD-91-04 meet the general conditions described in the Solano County Zoning Ordinance and County Code Section 28-53 for issuance of a Use Permit, and Section 28-52 for issuance of a Marsh Development Permit, including CEQA compliance and conformance with the General Plan, as outlined in the Planning Commission staff report, and

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Exhibit D

3. Mitigation measures identified by the Final Environmental Impact Report and incorporated into the Montezuma Wetlands Project by the Applicant, or required by the recommended Conditions of Approval (attached hereto as Attachment 2 and incorporated herein by reference), will reduce all of the project's potentially significant adverse effects on the environment to a less-than-significant level, as described more fully in the CEQA Findings of Fact (attached hereto as Attachment 1 and incorporated herein by reference), with the exception of certain impacts on Air Quality; and

4. The public benefits of the Montezuma Wetlands Project outweigh the project's unavoidable and potentially significant adverse environmental impacts on air quality, as described more fully in the attached CEQA Findings of Fact; and

5. No subsequent EIR is needed since, on the basis of the evidence in the record, the following conditions exist:

   a. No substantial changes are proposed which will require major revisions of the previous EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects;

   b. No substantial changes have occurred with respect to the circumstances under which the project is undertaken which will require major revisions of the previous EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects;

   c. Per the provisions of CEQA Sect. 15162, no new information of substantial importance, which was not known and could not have been know with the exercise of reasonable diligence at the time the previous EIR was certified as complete, shows any of the following:

      1. The project will have one or more significant effects not discussed in the previous EIR.

      2. Significant effects previously examined will be substantially more severe than shown in the previous EIR.

      3. Mitigation measures or alternatives previously found not to be feasible would in fact be feasible, but the project proponent declines to adopt the measure.

      4. Mitigation measures or alternatives which are considerably different from those analyzed in the previous EIR would substantially reduce

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one or more significant effects but the project proponent declines to adopt the measure.

6. A Mitigation Monitoring and Reporting Program has been prepared and proposed as part of the conditions of approval for each permit pertaining to the project, and has been included as Exhibit B to the Planning Commission staff report, to ensure compliance with mitigation measures required or incorporated into the project in order to mitigate or avoid the significant environmental effects identified in the Final Environmental Impact Report.

BE IT, THEREFORE, RESOLVED, that the Solano County Planning Commission does hereby adopt the proposed Mitigation Monitoring and Reporting Program for the Montezuma Wetlands Project; and

BE IT FURTHER RESOLVED, that the Solano County Planning Commission does hereby approve Use Permit No. U-91-35 and Marsh Development Permit No. MD-90-04 of Levine-Fricke Restoration Corp. subject to the Conditions of Approval attached hereto as Attachment 2 and incorporated herein by reference.

* *

I hereby certify that the foregoing resolution was adopted at the regular meeting of the Solano County Planning Commission on October 5, 2000 by the following vote:

AYES:	Commissioners	Hawkes, Campbell, Stahl, Robbins
NOES:	Commissioners	
ABSTAIN:	Commissioners	
ABSENT:	Commissioners	Plutchok

By: Birgitta E. Corsello
Birgitta Corsello, Secretary

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RESOLUTION NO. 2000-246

RESOLUTION OF THE BOARD OF SUPERVISORS OF SOLANO COUNTY DENYING AN APPEAL AND AFFIRMING THE PLANNING COMMISSION'S APPROVAL OF USE PERMIT NO. U-91-35 AND MARSH DEVELOPMENT PERMIT NO. MD-91-04 FOR THE MONTEZUMA WETLANDS PROJECT

WHEREAS, on October 5, 2000, the Solano County Planning Commission approved Use Permit Application Nos. U-91-35-01 and Marsh Development Permit No. MD-91-04 of Levine-Fricke Restoration Corp./Montezuma Wetlands LLC, to permit restoration of a historic tidal wetland ecosystem using cover and non-cover sediments dredged from the San Francisco Bay and ports, and to allow rehandling of dredged sediments for on-site and off-site uses in the Suisun Marsh; and

WHEREAS, on October 11, 2000, Save San Francisco Bay Association, San Francisco BayKeeper, and Friends of Suisun Marsh appealed the decision of the Planning Commission, based on the following allegations of error:

1. Until and unless the Regional Water Quality Control Board issues NPDES permits or Waste Discharge Requirements for all effluent discharges from this project, including the Rehandling Facility and the 2 overflow pipes, Solano County should not issue the proposed Use Permit and Marsh Development Permit.

2. Solano County should await a determination of the State Water Resources Control Board on the proposed decant water discharges to Suisun Bay and the Sacramento River.

3. The proposed Use and Marsh permits conflict with Solano County's General Plan and Zoning Code, including the Collinsville Montezuma Hills Area Plan and Program and the Land Use and Circulation Element.

4. Issuance of the proposed Use Permit and Marsh Permit would result in violation of Cal. Fish & Game Code section 4700 for take of the Salt Marsh Harvest Mouse.

5. The EIR certified by the County on February 2, 1999 fails to comply with the California Environmental Quality Act. In the absence of a legally valid EIR, the Use Permit and Marsh Development Permit may not be granted by the County.

6. A subsequent EIR is required to analyze new significant environmental impacts related to substantial changes in the project.

Exhibit A

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7. All mitigation measures identified by the EIR have not been made fully enforceable, including Mitigation Measures Econ-4 and Econ-5, as the approach for calculating the bond amount to cover remediation and maintenance has not been determined at the time of issuance of the use permit.

8. The amendments to the County's General Plan and Zoning Ordinance adopted February 2, 1999 (Resolution No. 99-31 and Ordinance No. 1569) were based on a legally invalid EIR. Therefore, adoption of the proposed Use Permit and Marsh Permit conflict with the County's General Plan and Zoning Ordinance.

9. The Use Permit and Marsh Permit do not comply with the Suisun Marsh Protection Plan performance guidelines to prevent adverse affects on the marsh.

10. The proposed MMRP is inadequate as it does not ensure compliance through monitoring and reporting for the changes made to the project and the conditions of project approval to mitigate significant environmental effects.

11. Given the experimental nature of this proposed project and the representations of the project proponent that the design features of Phase One would be proven before proceeding with Phases Two through Four, it is inappropriate at this time to grant a Use Permit and Marsh Permit governing all four phases of the project; and

WHEREAS, the Board has reviewed and considered information contained in the Final Environmental Impact Report for the Montezuma Wetlands Project, certified by the Board of Supervisors on February 2, 1999; and

WHEREAS, the Board has reviewed and considered the Planning Commission staff report prepared by the Department of Environmental Management, the Mitigation Monitoring and Reporting Plan, and the minutes of the Planning Commission's hearing; and

WHEREAS, the Board has reviewed and considered the Planning Commission's Resolution No. 4285, including the CEQA Findings of Fact and Conditions of Approval attached thereto; and

WHEREAS, the Board has reviewed and considered the Appellants' submittal and the Board Transmittal prepared by the Department of Environmental Management; and

WHEREAS, the Board has heard and considered all comments regarding said appeal at a duly noticed public hearing held on November 7, 2000, and

WHEREAS, none of Appellants' allegations of error present factual issues or legal arguments justifying reversal of the Planning Commission's decision; and

WHEREAS, the Board affirms the CEQA Findings of Fact made by the Planning Commission on October 5, 2000, and adopts those findings as its own (a copy of the Planning Commission CEQA Findings of Fact is attached hereto as Attachment 1 and incorporated herein by this reference); and

WHEREAS, the Board makes the following additional findings:

1. The project and issuance of Use Permit U-90-35 and Marsh Development Permit MD-91-04 meet each of the specific conditions described in the Solano County Zoning Ordinance and County Code Section 28-53 for issuance of a Use Permit, and Section 28-52 for issuance of a Marsh Development Permit, including compliance with the California Environmental Quality Act and conformance with the General Plan, as outlined in the Planning Commission staff report, and

2. Mitigation measures identified by the Final Environmental Impact Report and incorporated into the Montezuma Wetlands Project by the Applicant, or required by the Conditions of Approval imposed by the Planning Commission, will reduce all of the project's potentially significant adverse effects on the environment to a less-than-significant level, as described more fully in the CEQA Findings of Fact, with the exception of certain impacts on Air Quality; and

3. The public benefits of the Montezuma Wetlands Project outweigh the project's unavoidable and potentially significant adverse environmental impacts on air quality, as described more fully in the attached CEQA Findings of Fact; and

4. No subsequent Environmental Impact Report is needed or warranted; and

5. The Mitigation Monitoring and Reporting Program adopted by the Planning Commission will ensure compliance with all mitigation measures during project implementation.

NOW, THEREFORE, BE IT RESOLVED, that the Solano County Board of Supervisors does hereby deny the subject appeal filed by Save San Francisco Bay

Association, San Francisco BayKeeper, and Friends of Suisun Marsh; and

BE IT FURTHER RESOLVED, that the Solano County Board of Supervisors does hereby affirm the Planning Commission's decision adopting the Mitigation Monitoring and Reporting Plan (MMRP) and approving Use Permit Application No. U-91-35-01 and Marsh Development Permit No. MD-91-04 of Levine-Fricke Restoration Corp./Montezuma Wetlands LLC, subject to the Conditions of Approval as imposed by the Planning Commission on October 5, 2000 (a copy of the Planning Commission's Conditions of Approval is attached hereto as Attachment 2 and incorporated herein by this reference).

****

Passed and adopted by the Solano County Board of Supervisors at its regular meeting on November 7, 2000, by the following vote:

AYES:	Supervisors	Carroll, Thomson, and Chairwoman Kondylis
NOES:	Supervisors	None
EXCUSED:	Supervisors	Kromm, Silva

Barbara R Kondylis
BARBARA KONDYLIS, Chairwoman

ATTEST:
Michael D. Johnson, Clerk
of the Board of Supervisors
By: Maggie Jimenez, Deputy

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November 7, 2000

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