MINUTE ITEM
This Calendar Item No. C01 was approved as Minute Item No. 01 by the California State Lands Commission by a vote of 3 to 0 at its 6-18-02 meeting.

CALENDAR ITEM
C01

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06/18/02
PRC 8410 W 25827
B. Crandall

CONSIDER APPROVAL OF THE MEMORANDUM OF UNDERSTANDING BETWEEN THE CALIFORNIA STATE LANDS COMMISSION AND THE UNITED STATES DEPARTMENT OF THE INTERIOR, BUREAU OF LAND MANAGEMENT, FOR THE CONSTRUCTION, MAINTENANCE, MONITORING, AND ABANDONMENT OF THAT PORTION OF THE ORD MOUNTAIN EXCLUSION FENCE WHICH CROSSES STATE SCHOOL LAND IN SAN BERNARDINO COUNTY

PARTIES:

California State Lands Commission
100 Howe Avenue, Suite 100-South
Sacramento, California 95825

U.S. Department of the Interior
Bureau of Land Management
Barstow Field Office
2601 Barstow Road
Barstow, CA 92311
Attn: Mr. Tim Read

AREA, LAND TYPE, AND LOCATION:

1.93 acres, more or less, of State school land located within Section 16, T. 7 N., R. 3 E, SBBM, San Bernardino County.

AUTHORIZED USE:

Construction, maintenance, monitoring and abandonment of a portion of the Ord Mountain Exclusion Fence for a term of ten years beginning on the date of execution of the Memorandum of Understanding (MOU). The authorized area is ten feet wide on either side of the fence for a distance of 4,200 feet, more or less, (approximately 0.8 miles).

PURPOSE:

The MOU is to establish an agreement between the California State Lands Commission (CSLC) and the Bureau of Land Management (BLM) for the purpose of constructing, maintaining, monitoring and abandoning a BLM grazing allotment

pasture fence constructed within the BLM's California Desert District Ord Mountain Allotment. The MOU is required because the fence route crosses, in addition to BLM lands, approximately 0.8 miles of a State school land parcel located in San Bernardino County. Staff believes it is in the best interest of the State to enter into the MOU, as opposed to leasing, because staff costs associated with establishing and maintaining a low revenue-producing lease outweighs the revenue that would be generated. This MOU is also in the best interest of the State as it contributes to the protection of desert tortoise habitat. The fence is to be constructed, maintained, monitored and abandoned by the BLM at no cost to the State.

BACKGROUND:

BLM was required to consult with the U. S. Fish and Wildlife Service (FWS) to ensure that adoption and implementation of the California Desert Conservation Area Plan (CDCA Plan), as amended, was not likely to jeopardize the continued existence of threatened and endangered (T & E) species or to result in the destruction or adverse modification of critical habitat. Although BLM had consulted with and received Biological Opinions from FWS on selected activities, including livestock grazing, it was alleged by the Center for Biological Diversity, et. al. that the overall impacts on T & E species of activities authorized, permitted or allowed under the CDCA Plan were not adequately addressed and that a more complete consultation on the overall CDCA Plan would ensure consideration of the cumulative effects of all the activities authorized by the CDCA Plan on T & E species.

To avoid potential litigation concerning the effects that activities authorized, permitted, or allowed under the CDCA Plan may have on T & E species, BLM agreed to further consult with FWS and to implement certain interim actions while FWS completed its consultation. These interim agreements have allowed BLM to continue to authorize activities throughout the planning area during the lengthy consultation process while providing appropriate protection to the desert tortoise in the short term. One interim action undertaken by BLM has been the construction of fencing for the purpose of keeping cattle from accessing sensitive desert tortoise habitat areas during certain parts of the year.

CSLC has jurisdiction over several parcels of land within the CDCA Plan, one of which is affected by the Ord Mountain Exclusion Fence. The BLM approached the CSLC seeking authorization to construct a portion of the fence on State school land. CSLC staff determined the appropriate authorization would be through an MOU. BLM was under a time constraint to meet its obligations under

the negotiated agreements; therefore, on February 25, 2002, staff issued a Letter of Non-Objection as an interim approval measure. The Letter of Non-Objection states that formal authorization by the CSLC is required and issuance of the Letter of Non-Objection was no assurance that such approval would be forthcoming.

PROJECT SUMMARY:

The Ord Mountain Exclusion Fence is intended to facilitate a seasonal exclusion of livestock from the eastern portion of the Ord Mountain Allotment. The purpose of the fence is to act as a barrier to assure that critical and non-critical habitat for the desert tortoise is excluded from livestock grazing during the important spring and fall seasons. The fence consists of approximately 8 miles of interior drift and gap fences constructed in three segments, with standard gates along the fence line to facilitate the movement of livestock into the exclusion area at the end of the exclusion period. The second segment includes the crossing of approximately 0.8 miles on State land. The placement of the fence on the State school land parcel effectively acts as a terminus to the fence as it ties into the natural barrier of the Rodman Mountains and ensures an effective barrier. The fence will be a four-strand barbed wire fence with the bottom wire barb-less. There are no gates along that portion of the fence on State land.

STATUTORY AND OTHER REFERENCES:

A. Public Resources Code Section: Div. 6, Part 1; Div. 7.7; Div. 13
B. Cal. Code of Regs.: Title 3, Div. 3; Title 14, Div. 6

OTHER PERTINENT INFORMATION:

1. The BLM prepared an Environmental Assessment (document number CA-680-02-34) and issued a Decision Record/Finding of No Significant Impact (DR/FONSI) on February 4, 2002. The DR/FONSI finds no significant impact on the environment. The project is being conducted in accordance with the California Desert Conservation Area (CDCA) Plan (1980, as amended), the Endangered Species Act, BLM Regulations at 43 CFR 4100, and the Allotment Management Plan (Ord Mountain Allotment) approved November 18, 1985. Commission staff has reviewed the information within the DR/FONSI.

2. Pursuant to the Commission's delegation of authority and the State CEQA Guidelines (Title 14, California Code of Regulations, Section 15061), the staff has determined that this activity is exempt from the requirements of the CEQA under the general rule that the CEQA applies only to projects

which have the potential for causing a significant effect on the environment. The staff believes, based on the information available to it, that there is no possibility that the project may have a significant effect on the environment.

Authority: Title 14, California Code of Regulations, Section 15061 (b)(3).

3. This activity involves lands identified as possessing significant environmental values pursuant to Public Resources Code sections 6370, et seq. 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. Project Description
B. Locality Map
C. Area Map

PERMIT STREAMLINING ACT DEADLINE:
N/A

RECOMMENDED ACTION:
IT IS RECOMMENDED THAT THE COMMISSION:

1. FIND THAT THE ACTIVITY IS EXEMPT FROM THE REQUIREMENTS OF THE CEQA PURSUANT TO TITLE 14, CALIFORNIA CODE OF REGULATIONS, SECTION 15061 BECAUSE THERE IS NO POSSIBILITY THAT THE ACTIVITY MAY HAVE A SIGNIFICANT EFFECT ON THE ENVIRONMENT; TITLE 14, CALIFORNIA CODE OF REGULATIONS, SECTION 15061 (b)(3).

2. FIND THAT THIS ACTIVITY IS CONSISTENT WITH THE USE CLASSIFICATION DESIGNATED BY THE COMMISSION FOR THE LAND PURSUANT TO PUBLICE RESOURCES CODE SECTION 6370, ET. SEQ.

3. AUTHORIZE THE EXECUTIVE OFFICER, OR HIS DESIGNEE, TO EXECUTE ON BEHALF OF THE COMMISSION THE MEMORANDUM OF UNDERSTANDING AS ON FILE IN THE MAIN OFFICE OF THE

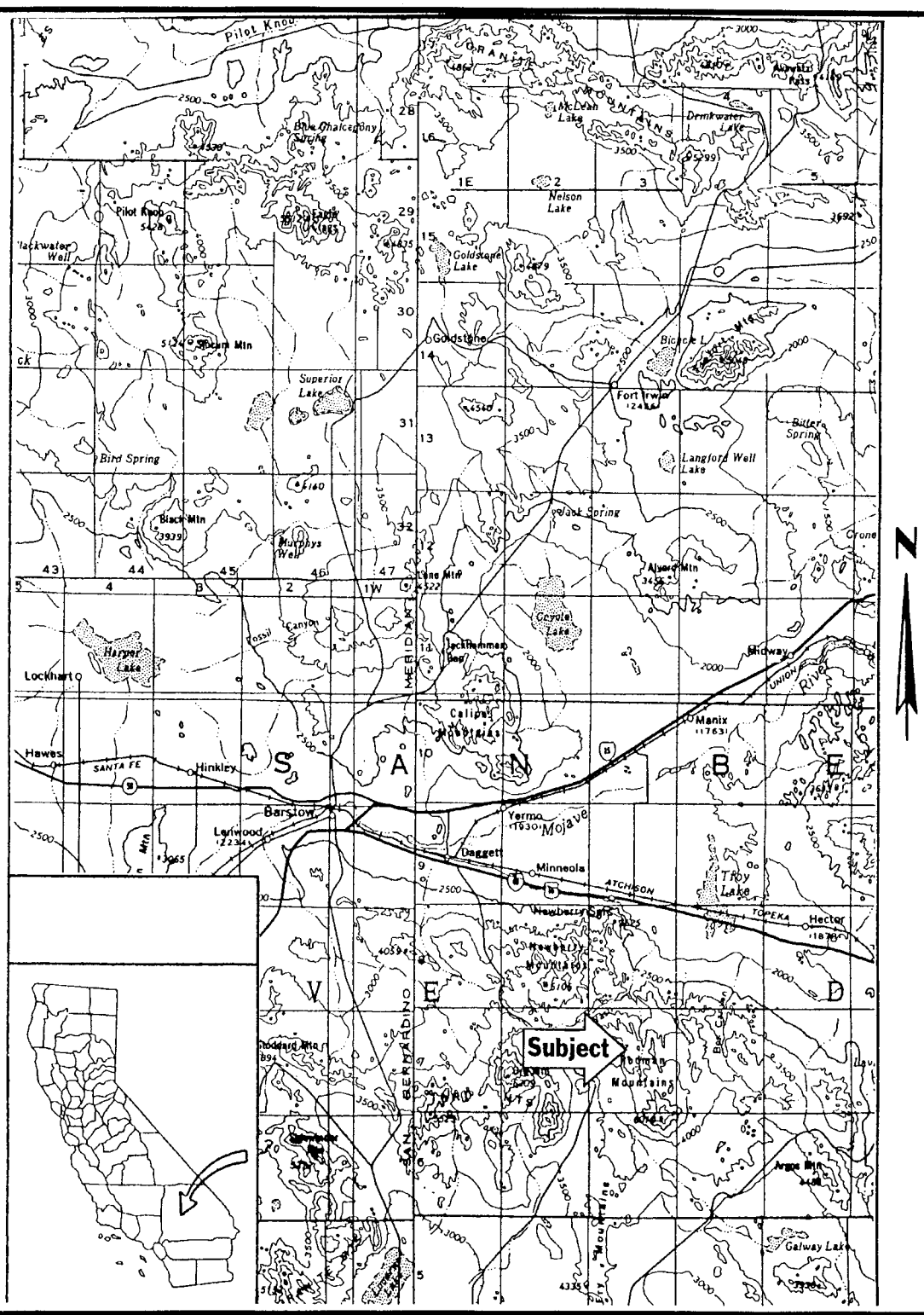
CALIFORNIA STATE LANDS COMMISSION BETWEEN THE CALIFORNIA STATE LANDS COMMISSION AND THE BUREAU OF LAND MANAGEMENT FOR A TERM OF TEN YEARS BEGINNING ON THE DATE OF EXECUTION FOR THE PURPOSE OF CONSTRUCTING, MAINTAINING, MONITORING AND ABANDONING THE ORD MOUNTAIN EXCLUSION FENCE ON THAT SCHOOL LAND PROPERTY IDENTIFIED IN EXHIBIT A ATTACHED AND BY THIS REFERENCE MADE A PART HEREOF.

EXHIBIT A

Project Description Area

The fence is located within that parcel of State-owned school land in the County of San Bernardino, State of California, identified as Section 16, T. 7 N., R. 3 E, SBBM.

The alignment of the fence is generally described as starting in the southwest quarter of the southwest quarter of the above identified Section of State-owned school land, extending in a northeasterly direction at an angle of approximately 45 degrees for a distance of approximately 4,200 feet.



This exhibit is solely for the purposes of showing the general location of the Ord Mountain Exclusion Fence and is not intended to be, nor shall it be construed as, a waiver or limitation of any State interest in the subject or other property.

Exhibit B Locality Map
W 25827
June 18, 2002

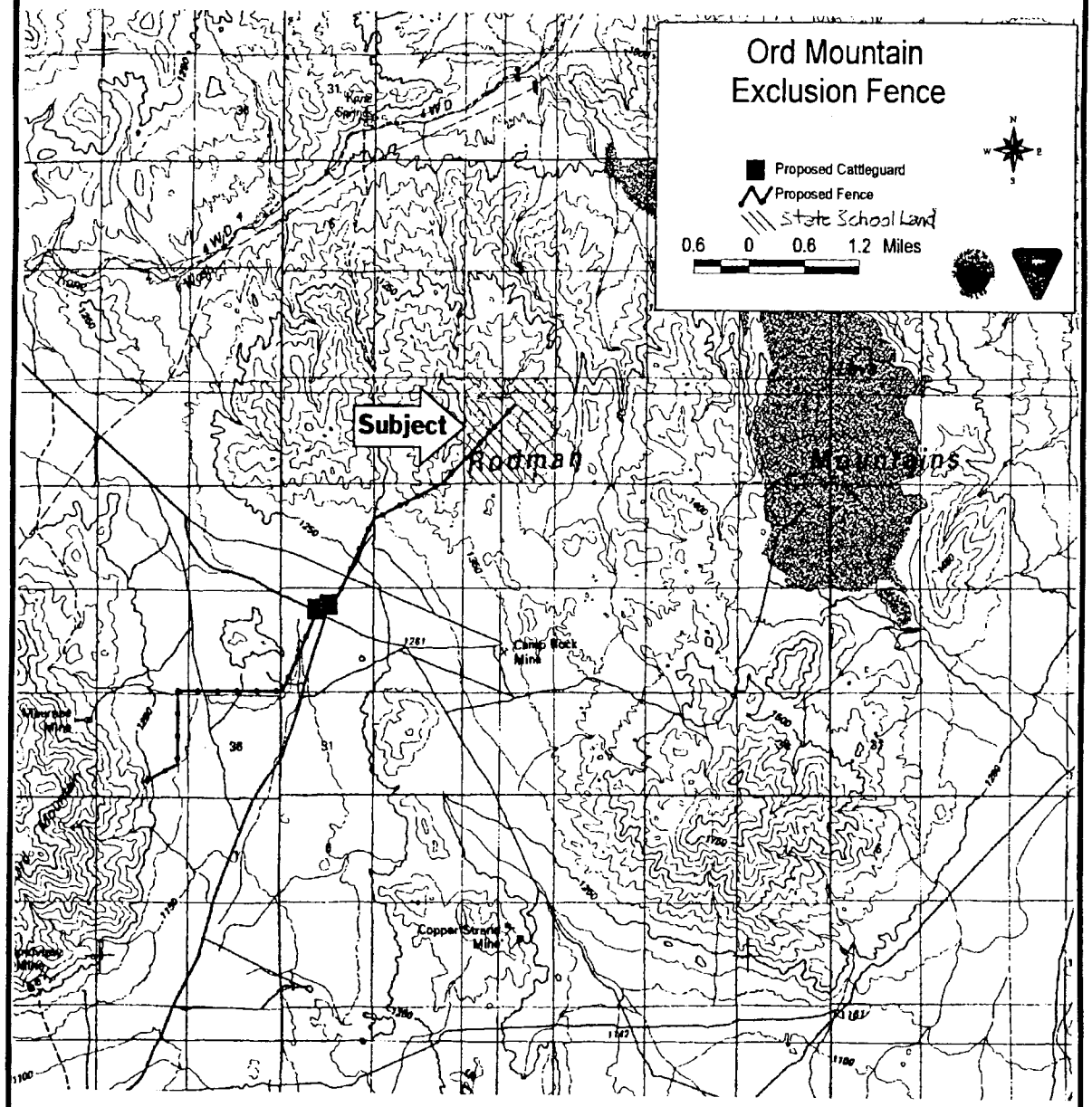


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Exhibit C Area Map
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