

MINUTE ITEM

This Calendar Item No. C46 was approved as Minute Item No. 46 by the California State Lands Commission by a vote of 3 to 0 at its 12/9/04 meeting.

CALENDAR ITEM

C46

A 27

12/09/04

AD 488

PRC 7196 WP 7196

S 15

N. Smith
D. Plummer
K. Olin
C. Fossum

CONSIDERATION OF A PROPOSED TITLE SETTLEMENT AND EXCHANGE AGREEMENT, BETWEEN THE PELICAN HOMEOWNERS ASSOCIATION, A NON-PROFIT MUTUAL BENEFIT CORPORATION AND THE CALIFORNIA STATE LANDS COMMISSION, SETTling VARIOUS TITLE AND BOUNDARY DISPUTES ON LANDS LOCATED IN AND ALONG THE PAJARO RIVER, WATSONVILLE SLOUGH, AND MONTEREY BAY, SANTA CRUZ COUNTY; MODIFICATION OF A LEASE AND ACCEPTANCE OF TRANSFER OF JURISDICTION FROM THE CALIFORNIA DEPARTMENT OF PARKS AND RECREATION OF 3105± SQUARE FEET OF LAND

PARTIES:

Pelican Homeowners Association
Attn: Board President
2661 Beach Road
Watsonville, CA 95076

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

California Department of Parks and Recreation
Attn: Warren Westrup, Real Estate
Attn: David Vincent, District Director – Santa Cruz
1416 Ninth Street
Sacramento, CA 95814

LOCATION This agreement concerns property on and adjacent to the Pajaro Dunes Sandspit at the confluence of Watsonville Slough with the Pajaro River and Monterey Bay of the Pacific Ocean in the County of Santa Cruz. The Subject Property is depicted on Exhibit A and includes the Trust Termination Parcel, the State Exchange Parcels (Riverwall and Seawall) and the PHA Exchange Parcel.

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Pajaro Dunes is a condominium development located along Monterey Bay and the Pajaro River immediately west of Watsonville. The Pelican Homeowners' Association (PHA) represents the 87 condominium owners within the Pelican Point area of the Pajaro Dunes development. A river wall was constructed in 1971 to prevent the Pajaro River from eroding into the area occupied by the condominiums that were constructed in the late 1960s and early 1970s. A seawall was constructed in 1988. A new riverwall was constructed in 2003.

Road access to the PHA properties is controlled through a locked gate on adjacent property to the north owned and controlled by the Pajaro Dunes Association, a private homeowners association. Public access rights exist and will continue to exist adjacent to the Subject Property on the west and south within Sunset State Beach and within the waters to the west (Monterey Bay), south (Pajaro River) and east (Watsonville Slough).

In 2003 the County of Santa Cruz published the **Watsonville Sloughs Watershed: Resource Conservation & Enhancement Plan**. This plan is the result of a collaborative effort of nine federal, state, county, city agencies and public interest groups that have worked together to identify specific measures for the long-term protection and enhancement of the natural resources of the Watsonville Sloughs watershed. The area encompassing the Watsonville Sloughs system includes the largest remaining freshwater wetland on the Central Coast and is an environmental resource of tremendous value. The lower sections of Watsonville Slough include estuarine and salt-water habitat. A number of rare and endangered species have been identified in the area. Two local public interest groups -- the Watsonville Wetlands Watch and Friends of Pajaro Dunes have identified a number of actions to protect and enhance native dune habitat and wetland plant communities along the portion of Watsonville Slough involved in the Subject Property and part of the area known as "The Last Mile". These plans include removal of non-native plant species and re-vegetation with native species.

TITLE HISTORY The area to the east of Pajaro Dunes was included in an 1837 Mexican land grant, Bolsa del Pajaro, to Sebastian Rodriguez. This grant was confirmed by the United States District Court and patented by the United States on January 4, 1860. The patent for Rancho Bolsa del Pajaro indicates its westerly boundary to be up Watsonville Slough. It appears the survey in the confirmation proceedings leading to the federal confirmatory patent used the centerline of the Pajaro

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River and Watsonville Slough as boundaries. The final survey of the area west of the Pajaro River was completed in 1860. A later survey lotting portions of Section 36, south and east of the Subject Property was conducted in 1867. The official US township plats and BLM Master Title Plat for T12S, R1E, MDB&M do not indicate any former or current federal interest on the peninsula of the Pajaro Dunes.

In 1869 the Santa Cruz County Surveyor surveyed the area west of Watsonville Slough and east of Monterey Bay as Tideland Survey #2 (TLS 2 Santa Cruz). A Tideland Patent found in Tideland Patent Book 1, page 46 was drafted in 1871 for a portion of the Subject Property, and a note written thereon states that it was not signed by the Governor. Subsequently, an affidavit sworn to by a new Santa Cruz County Surveyor in 1876 stated that the lands embodied in TLS 2 were salt marsh, should be characterized as swamp land "and that no portion of said land is below the line of ordinary high tide". The State subsequently issued a patent, for the identical lands previously referred to in 1869 as tideland, under Swamp and Overflowed lands (S & O) Survey 2 (Santa Cruz). A copy of which is filed in Book S&O 7, Page 251, Patent No. 2123, June 1, 1876, in the Sacramento office of the California State Lands Commission (CSLC). No patent from the United States to California confirming lands on Pajaro Dunes as swamp and overflowed lands has taken place. The waterward boundary of swamp and overflowed lands and landward boundary of tidelands is the ordinary high water mark (California Civil Code Sections 670 and 830).

Record title to portions of the Subject Property, involving the land where construction of the seawall and riverwall to protect the PHA development took place, was initially acquired in 1969 by the California Department of Parks and Recreation (DPR) as part of Sunset State Beach. As a result of evidence of sovereign land claims, the Commission issued a lease for lands under its jurisdiction at the mouth of the Pajaro River to DPR in 1983, including the site of the riverwall and seawall, for inclusion in the operation of Sunset State Beach (lease PRC 4742). Jurisdiction over portions of the Seawall, involving the State Exchange Parcel – Seawall, was subsequently (1989) transferred to the Commission pursuant to Government Code Section 14673, which together with portions of the seawall and riverwall already under Commission jurisdiction, were included in the lease amendment entered into by the Commission and PHA for construction and maintenance of the seawall and riverwall (lease PRC 7196) -- pending this proposed settlement of title and boundary issues with PHA. Therefore, in addition to terminating any public trust claims within the Trust Termination Parcel the State will exchange the property currently under lease to the PHA for the PHA's interests in the

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lands in and adjacent to Watsonville Slough (PHA Exchange Parcel). The proposed settlement agreement will require an additional transfer of approximately 3105 square feet of DPR's record title in the riverwall to the CSLC pursuant to Government Code Section 14673 prior to closing. Lease PRC 4742 will then be amended to reflect the removal of the riverwall land.

TITLE AND BOUNDARY DISPUTE Following an investigation of historical surveys, maps, photos and other materials CSLC staff contends that: 1) portions of the Subject Property, at the time of the admission of the State of California into the Union and in their natural condition thereafter, lay waterward of the mean high tide line (tidelands) and were subject to the ordinary tides of Monterey Bay, the Pajaro River and Watsonville Slough; 2) portions of the Subject Property, at the time of the admission of the State of California into the Union and in their natural condition thereafter, lay waterward of the mean low tide line (submerged lands) and were subject to the ordinary tides of Monterey Bay, the Pajaro River and Watsonville Slough; 3) portions of the Subject Property, at the time of the admission of the State of California into the Union and in their natural condition thereafter, lay landward of the mean high tide line and included marsh and sand dunes

The PHA contends that it derived title to the Trust Termination Parcel and PHA Exchange Parcel from one or more of the following sources: a) as the successors-in-interest to the recipient of a state swamp and overflowed land patent -- S&O 2 (Santa Cruz); b) as the successors-in-interest by mesne conveyances from title emanating from the Rancho Bolsa del Pajaro or San Andreas Rancho land grants; or c) State action in that the lands were tidelands in their last natural state and defects in the application and patenting of the lands by the State as swamp and overflowed lands have been cured by subsequent legislation. Further, PHA contends that the State had knowledge of the filling of portions of the Subject Property and permitted sand to be dredged from State property for those purposes.

There is a bona fide dispute between the Parties as to the existence, extent, nature and location of their respective rights, titles, and interests in the Subject Property. Portions of the PHA Exchange Parcel are today factually tide and submerged lands beneath the waters of Watsonville Slough. Each of the other parcels constituting the Subject Property are lands above the current mean high tide line, and either were not tide or submerged lands in their natural state and have no State public trust right or interest claim or have been filled and reclaimed as part of the development of the PHA

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properties are no longer necessary, available, useful or reasonably susceptible of use for public trust purposes.

In the interest of settlement, the Parties have each conducted independent studies and evaluations of the title evidence, the principles of law and the merits of their respective legal positions. A land appraisal and interest evaluation study completed by the State concludes that the value of the claimed State sovereign property interests in the Trust Termination Parcel together with the interests in the State Exchange Parcels -- Seawall and Riverwall, are less than the value of the property interests to be conveyed to the State in the PHA Exchange Parcel.

A resolution of the Parties' rights, titles, and interests in the Subject Property would require costly, protracted, and vigorously disputed litigation with uncertain results if the controversy could not be resolved by a settlement agreement. The Parties intend to permanently fix the location of the legal boundary separating the State's title interests in and along Monterey Bay, the Pajaro River and Watsonville Slough from the PHA's title interests within the Subject Property. As an element of the proposed agreement the State acknowledges that periodically PHA may need to perform certain non-mechanized maintenance to the riverwall. Mechanized maintenance involving either the riverwall and or the seawall will require subsequent consent of the Commission and Department of Parks and Recreation.

The Trust Termination Parcel is approximately 252,475 square feet (5.8 acres) and includes a State claim of a public trust property interest of approximately 31,750 (0.73± acres); and the State Exchange Parcels -- Seawall and Riverwall), which are approximately 14,442 square feet and 3,105 square feet (0.40 + acres) respectively, include a State claim of public trust property interest of approximately 2,060 square feet (.07± acres). The total area of land subject to State tide and submerged lands claims within the area to be quitclaimed to PHA constitutes a relatively small area (0.8 acres) that have been filled, reclaimed, improved and partially bulkheaded (by a riverwall) and have thereby been excluded from the public channels.

The conveyances made pursuant to this Agreement will not interfere with the rights of fishing and navigation in Monterey Bay, the Pajaro River or Watsonville Slough. The value of sovereign interests in the Trust Termination Parcel together with the State Exchange Parcels -- Seawall and Riverwall is less than the value of the property interests to be conveyed to the State in the PHA Exchange Parcel.

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The staff believes and the facts support that the proposed exchange is consistent with the Public Trust needs in the area. Staff has received several letters of support from local environmental groups. The lands, to be acquired by the CSLC as trust lands (PHA Exchange Parcel) have been the subject of restoration activities pursuant to terms of the Coastal Permit issued for the riverwall construction. Discussions with the Watsonville Wetlands Watch and the Friends of Pajaro Dunes reflect a desire in those groups to work with the CSLC and possibly include the PHA Exchange Parcel in their ongoing restoration and management efforts in and along Watsonville Slough.

Staff therefore recommends that the Commission approve the Exchange Agreement and authorize its execution and the execution and recordation of all documents necessary to implement it, including acceptance of the transfer of any and all interest held by the California Department of Parks and Recreation within the State Exchange Parcel – Riverwall and modification of lease PRC 4742.

STATUTORY AND OTHER REFERENCES:

- A. P.R.C.: Div. 6, Parts 1 and 2; Div. 13.
- B. Cal. Code of Regs.: Title 2, Div. 3; Title 14, Div. 6.
- C. Pursuant to Government Code section 66412(e), provisions of the Subdivision Map Act do not apply to title settlement agreements to which the CSLC is a party.
- D. Pursuant to the Commission's delegation of authority and the State CEQA Guidelines (14 CCR 15061), the staff has determined that this activity is exempt from the requirements of the CEQA pursuant to 14 Cal. Code Regs. 15061 as a statutorily exempt project pursuant to Public Resources Code sections 21080.11, a land exchange agreement settling title and boundary disputes.
- E. This Agreement is in settlement of a title dispute and is therefore exempt from the California Coastal Act pursuant to Public Resources Code Section 30416 (c).
- F. The State, acting by and through the CSLC, is authorized under Division 6 of the Public Resources Code, and specifically pursuant to sections 6307 of such code, to enter into exchange agreements.
- G. Permit Streamlining Act Deadline : N/A

EXHIBITS:

- A. Site Plat showing location of the Subject property and the PHA Exchange Parcel, Trust Termination Parcel and State Exchange Parcels (Riverwall and Seawall).

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IT IS RECOMMENDED THAT THE COMMISSION:

1. FIND THAT THE ACTIVITY IS EXEMPT FROM THE REQUIREMENTS OF THE CEQA PURSUANT TO 14 CAL. CODE REGS. 15061 AS A STATUTORILY EXEMPT PROJECT PURSUANT TO PUBLIC RESOURCES CODE SECTIONS 21080.11, A LAND EXCHANGE AGREEMENT SETTling TITLE AND BOUNDARY DISPUTES.
2. ACCEPT TRANSFER OF JURISDICTION AND CONTROL, PURSUANT TO GOVERNMENT CODE 16473, OF APPROXIMATELY 3105 SQUARE FEET OF LAND FROM THE CALIFORNIA DEPARTMENT OF PARKS AND RECREATION INVOLVING THE LANDS SHOWN ON EXHIBIT "A" AS STATE EXCHANGE PARCEL – RIVERWALL.
3. MODIFY THE LEGAL DESCRIPTION FOR LEASE PRC 4742 ISSUED TO THE DEPARTMENT OF PARKS AND RECREATION TO EXCLUDE THE LANDS WITHIN STATE EXCHANGE PARCEL – RIVERWALL.
4. FIND THAT, WITH RESPECT TO THE PROPOSED EXCHANGE AGREEMENT EXCHANGE, AGREEMENT ON FILE IN THE SACRAMENTO OFFICE OF THE COMMISSION, WHICH FINDINGS SHALL BE EFFECTIVE UPON CLOSE OF ESCROW AS PROVIDED IN THE AGREEMENT, INCLUDING THE EXCHANGE OF THE STATE'S INTEREST WITHIN THE AREAS DESIGNATED AS STATE EXCHANGE PARCEL – RIVERWALL, STATE EXCHANGE PARCEL SEAWALL AND TRUST TERMINATION PARCEL (SHOWN FOR REFERENCE PURPOSES ON EXHIBIT A) TO THE PELICAN HOMEOWNERS ASSOCIATION FOR THE PHA'S INTERESTS IN THE PHA EXCHANGE PARCEL (ALSO SHOWN ON EXHIBIT A) TO BE CONVEYED TO THE STATE:
 - A. THE EXCHANGE AGREEMENT IS IN THE BEST INTERESTS OF THE STATE AND CONSISTENT WITH PRESENT AND FUTURE PUBLIC TRUST NEEDS FOR FLOOD PROTECTION, AND TO ENHANCE THE CONFIGURATION OF THE SHORELINE FOR THE IMPROVEMENT OF THE WATER AND UPLAND.
 - B. THE CONVEYANCES PROPOSED BY THE AGREEMENT WILL NOT INTERFERE WITH THE PUBLIC'S RIGHTS OF NAVIGATION, FISHING

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AND ACCESS TO WATSONVILLE SLOUGH, THE PAJARO RIVER AND MONTEREY BAY OF THE PACIFIC OCEAN.

- C. THAT THE VALUE OF THE LAND (PHA EXCHANGE PARCEL) TO BE CONVEYED TO THE STATE IS EQUAL TO, OR GREATER THAN, THE VALUE OF THE STATE INTEREST IN THE LANDS TO BE CONVEYED BY THE STATE TO THE PHA (TRUST TERMINATION PARCEL, STATE EXCHANGE PARCEL – RIVERWALL, AND STATE EXCHANGE PARCEL - SEAWALL).
- D. THE AREA OF STATE LAND AND PROPERTY INTEREST CLAIMS BEING RELINQUISHED BY THE STATE (TOTAL 1.13± ACRES), INCLUDE SOVEREIGN PUBLIC TRUST INTEREST CLAIMS WHICH COLLECTIVELY ARE A RELATIVELY SMALL AREA (0.8± ACRES) OF PUBLIC TRUST LANDS HELD BY THE STATE IN THE VICINITY, HAVE BEEN EVALUATED AS TO THEIR CURRENT PHYSICAL CHARACTER AND TRUST UTILITY; THE PARCELS TO BE EXCHANGED, QUITCLAIMED AND PUBLIC TRUST TO BE TERMINATED ON ARE THE TRUST TERMINATION PARCEL, STATE EXCHANGE PARCEL – SEAWALL AND STATE EXCHANGE PARCEL – RIVERWALL , HAVE BEEN FILLED AND RECLAIMED, AS THE RESULT OF A PROGRAM OF FLOOD CONTROL, AND HAVE BEEN EXCLUDED FROM THE PUBLIC CHANNELS, AND ARE NO LONGER IN FACT TIDE OR SUBMERGED LANDS AND ARE NOT AVAILABLE OR SUSCEPTIBLE OF BEING USED FOR NAVIGATION OR FISHING.
- E. THE LANDS TO BE ACQUIRED FROM THE PELICAN HOMEOWNERS ASSOCIATION (PHA EXCHANGE PARCEL) ARE OF SUCH A CONFIGURATION AND LOCATION THAT THEY CAN BE USED MORE EFFICIENTLY BY THE STATE IN FURTHERANCE OF PUBLIC TRUST PURPOSES THAN THE LANDS AND INTERESTS TO BE QUITCLAIMED BY STATE (TRUST TERMINATION PARCEL, STATE EXCHANGE PARCEL-RIVERWALL, AND STATE EXCHANGE PARCEL-SEAWALL) AND UPON CLOSE OF ESCROW THE PHA EXCHANGE PARCEL WILL TAKE ON THE STATUS AS PUBLIC TRUST LANDS.
- F. ON THE DATE PROVIDED FOR IN THE EXCHANGE AGREEMENT AND CONSISTENT WITH ITS TERMS, THE TRUST TERMINATION PARCEL,

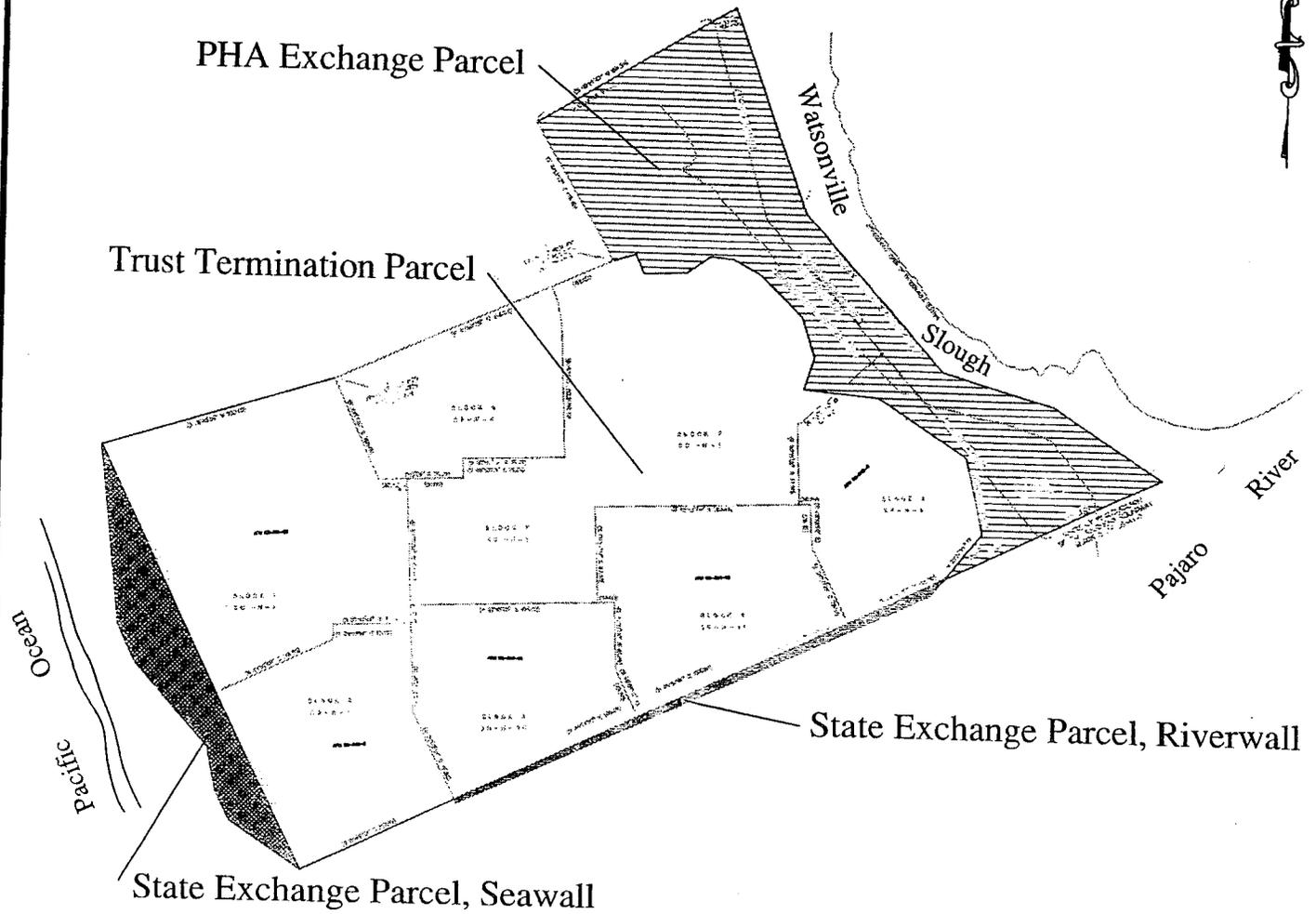
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THE STATE EXCHANGE PARCELL-SEAWALL AND THE STATE EXCHANGE PARCEL-RIVERWALL WILL BE FOUND TO NO LONGER BE NECESSARY OR USEFUL FOR THE PURPOSES OF THE PUBLIC TRUST AND ANY AND ALL PUBLIC TRUST INTEREST OR STATE SOVEREIGN TITLE THEREIN WILL BE TERMINATED.

- G. FIND THAT THE LANDS TO BE CONVEYED TO THE STATE ARE TO BE ACCEPTED AS PUBLIC TRUST LANDS FOR THE BENEFIT OF THE PEOPLE OF THE STATE OF CALIFORNIA, TO BE HELD BY THE STATE OF CALIFORNIA IN PERPETUITY FOR PUBLIC TRUST PURPOSES.
5. APPROVE AND AUTHORIZE THE EXECUTION, ACKNOWLEDGMENT, AND RECORDATION OF THE PELICAN TITLE SETTLEMENT AND EXCHANGE AGREEMENT AND ASSOCIATED DEEDS AND ACCEPTANCES ON BEHALF OF THE CALIFORNIA STATE LANDS COMMISSION, IN SUBSTANTIALLY THE FORM OF THE COPY OF SUCH AGREEMENT ON FILE WITH THE COMMISSION.

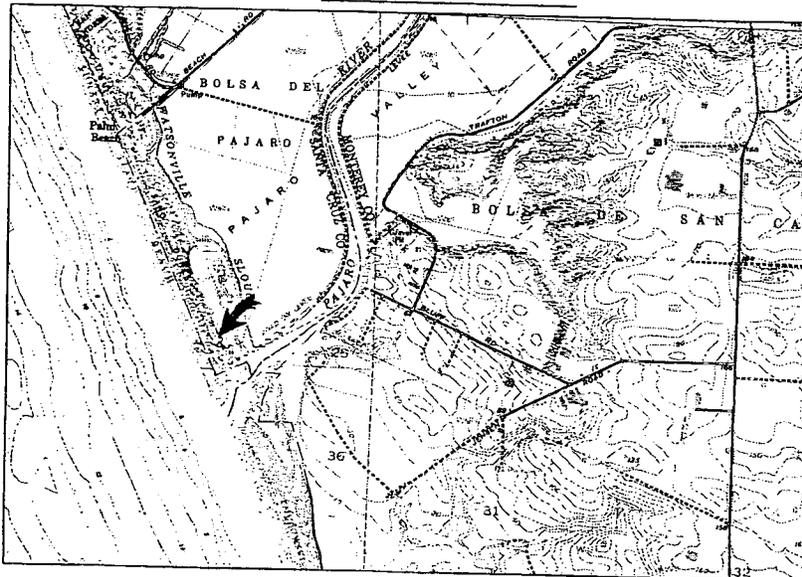
NO SCALE

SITE



NO SCALE

LOCATION



MAP SOURCE: USGS QUAD

This exhibit is solely for purposes of generally defining the settlement area and is not intended to be, nor shall it be construed as a waiver or limitation of any State interest in the subject property.

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Exhibit A

AD 488 WP 7196

Title Settlement and Exchange Agreement
Pelican Homeowners Association
and State of California
Pajaro River, Watsonville Slough
Santa Cruz County

