

MINUTE ITEM
This Calendar Item No. C73 was approved as
Minute Item No. 23 by the California State Lands
Commission by a vote of 3 to 0 at its
05/10/07 meeting.

CALENDAR ITEM

C73

A 3

05/10/07

S 1

503.1971

J. Frey

C. Sproul

CONSIDER APPROVAL OF PARTIAL SETTLEMENT OF
ZOLLDAN V. STATE OF CALIFORNIA EX REL. STATE LANDS COMMISSION,
AND

STATE OF CALIFORNIA EX REL. STATE LANDS COMMISSION V.
GARY ZOLLDAN AND LINDA ZOLLDAN, ERROL BURR AND SUZANNE BURR,
JOSEPH MARCANTONIO AND ANNA MARCANTONIO ET AL.,
SIERRA COUNTY SUPERIOR COURT CASE NO. 6566,
[consolidated with Sierra County Superior Court Case No. 6310]

PARTIES:

State of California
State Lands Commission
100 Howe Ave., Suite 100 South
Sacramento, CA 95818

Errol & Suzanne Burr
P O Box 192
Downieville, CA 95936-0192

Joseph & Anna Marcantonio
P O Box 236
Downieville, CA 95936-0236

Gary & Linda Zolldan
41380 Vargas Rd.
Fremont, CA 94539-5443

Mr. King G. McPherson
Attorney at Law
439 Coyote St.
Nevada City, CA 95959

CALENDAR ITEM NO. C73 (CONT'D)

Mr. Raymond Shine
Shine, Compton & Nelder, APC
The Old Post Office
131 South Auburn St., Suite 200
Grass Valley, CA 95945

AREA, LAND TYPE, AND LOCATION:

South Fork of the North Fork of the Yuba River in the vicinity of the Lure Resort, Downieville, California.

BACKGROUND:

Initially, attorney King G. McPherson on behalf of clients Gary R. Zolldan and Linda L. Zolldan (Zolldans) filed a complaint against neighboring property owners Errol and Suzanne Burr and Joseph and Anna Marcantonio seeking to resolve certain property disputes, Sierra County Superior Court Case No. 6310. The named parties claim certain parcels lying along and extending to the bed of the North Fork of the Yuba River. In December 2005, also on behalf of the Zolldans, attorney McPherson filed suit against the State and others (Zolldan v. State of California, ex rel. State Lands Commission, et al., Sierra County Superior Court Case No. 6310) claiming property title to the exclusion of all others, and requesting deed reformation to settle a boundary line dispute and declaratory relief. The Commission answered the complaint denying its allegations and, on February 17, 2006, filed a Cross-Complaint (State of California ex rel. State Lands Commission v. Gary Zolldan and Linda Zolldan, Errol Burr and Suzanne Burr, Joseph Marcantonio and Anna Marcantonio et al., Sierra County Superior Court Case No. 6566) seeking to quiet title and requesting declaratory and injunctive relief to recognize the state's public navigational easement in the waters and along the banks of the North Fork of the Yuba River. The cases have been consolidated for purposes of trial under Sierra County Superior Court Case No. 6310.

The Zolldans seek a declaration of their property rights to the exclusion of others in lands they claim and to the use of the waters, bed and banks of the Yuba River as it flows past properties claimed by Errol and Suzanne Burr near the Lure Resort, which is owned and operated by the Zolldans, and by Joseph and Anna Marcantonio outside of Downieville, CA. The affected properties are Sierra County Assessor's Parcel Numbers: 002-170-003, 002-170-004, 002-170-006. Specifically the Zolldans, Burrs and Marcantonios have denied the right of the public to navigate on and to use the Yuba River below the ordinary high water mark for navigation, fishing and other recreational uses (the public navigation

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easement). In addition to private recreational navigational use by the public in this area, during the past 15 years three commercial rafting companies have run rafting trips along this section of the river during portions of the year, accessing the river from public property upstream of the Lure Resort. The Commission has contended that the Zoldans, Burrs and Marcantonios own their property subject to the state's navigational easement that is held in trust for the people of California and subject to the use by the public of the waters of the river pursuant to this navigation easement, consistent with the provisions of Article X, section 4 of the California Constitution.

After extensive negotiations, the State, the Burrs and the Marcantonios have reached a settlement agreement entitled "Settlement Agreement and Mutual Release Regarding Pending Litigation Concerning Property Rights Along the North Yuba River." This Settlement Agreement, after Commission approval, will be submitted to the Sierra County Superior Court as part of a Stipulated Judgment. In the agreement the parties agree that the South Fork of the North Fork of the Yuba River is navigable in fact by small recreational craft and that it is subject to the state's navigational easement that is held in trust by the State for the People of California. The parties further agree that the River may be used by the People of California for navigation and navigation related activities such as fishing, swimming, sunbathing, breaks for rest and refreshment, portage, and for emergency egress. Finally, the parties agree that the navigation easement extends to the waters of the river wherever they may be and to the bed and banks of the river up to the ordinary high water mark as indicated by the Agreement.

The Zoldans have declined to join in this Settlement Agreement.

OTHER PERTINENT INFORMATION:

1. Pursuant to the Commission's delegation of authority and the State CEQA Guidelines [Title 14, California Code of Regulations, section 15060(c)(3)], the staff has determined that this activity is not subject to the provisions of the CEQA because it is not a "project" as defined by the CEQA and the State CEQA Guidelines.

Authority: Public Resources Code section 21065 and Title 14, California Code of Regulations, sections 15060 (c)(3) and 15378.

EXHIBITS:

- A. Location Map

CALENDAR ITEM NO. C73 (CONT'D)

RECOMMENDED ACTION:

IT IS RECOMMENDED THAT THE COMMISSION:

CEQA FINDING:

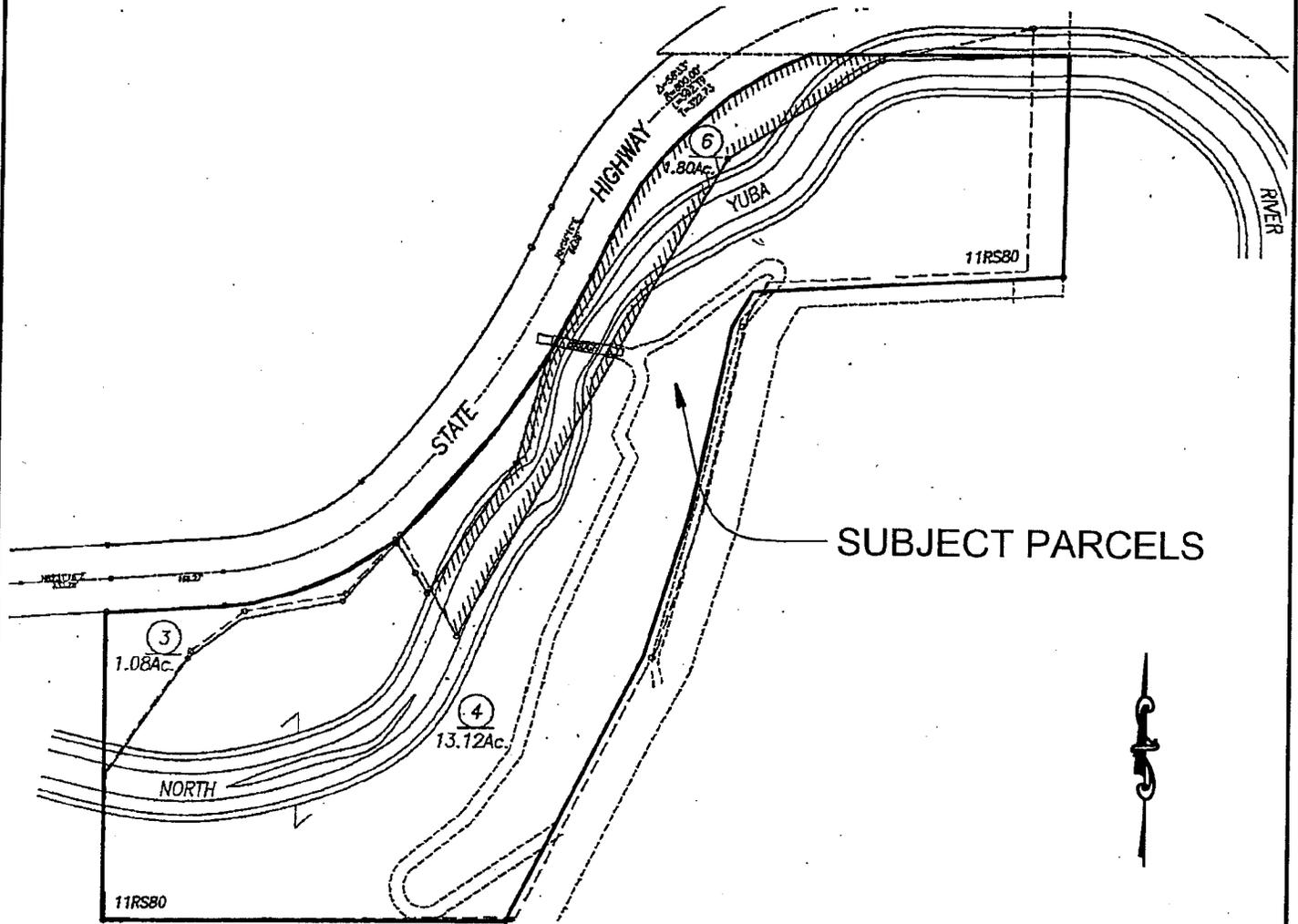
FIND THAT THE ACTIVITY IS NOT SUBJECT TO THE REQUIREMENTS OF THE CEQA PURSUANT TO TITLE 14, CALIFORNIA CODE OF REGULATIONS, SECTION 15060(c)(3) BECAUSE THE ACTIVITY IS NOT A PROJECT AS DEFINED BY PUBLIC RESOURCES CODE SECTION 21065 AND TITLE 14, CALIFORNIA CODE OF REGULATIONS, SECTION 15378.

AUTHORIZATION:

1. APPROVAL AND EXECUTION OF "SETTLEMENT AGREEMENT AND MUTUAL RELEASE REGARDING PENDING LITIGATION CONCERNING PROPERTY RIGHTS ALONG THE NORTH YUBA RIVER" AND ITS FILING ATTACHED TO A STIPULATED JUDGMENT WITH THE SUPERIOR COURT FOR SIERRA COUNTY IN THE COMBINED CASES OF ZOLLDANS V. BURRS, SIERRA COUNTY SUPERIOR COURT CASE NO. 6310 AND ZOLLDAN V. STATE OF CALIFORNIA EX REL. STATE LANDS COMMISSION, AND CROSS-COMPLAINT, STATE OF CALIFORNIA V. GARY ZOLLDAN AND LINDA ZOLLDAN, ERROL BURR AND SUZANNE BURR, JOSEPH MARCANTONIO AND ANNA MARCANTONIO ET AL., SIERRA COUNTY SUPERIOR COURT CASE NO. 6566.

NO SCALE

SITE



ASSESSORS MAP: APNs 002-170-003; 002-170-004; 002-170-006

NO SCALE

LOCATION

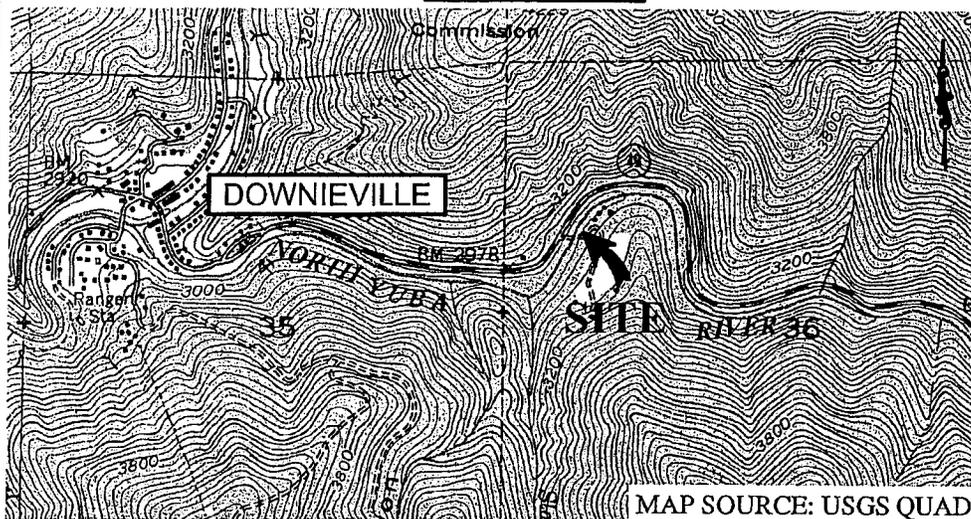


Exhibit A
 SUPERIOR COURT
 CASE NO. 6566
 CONSOLIDATED WITH
 CASE NO. 6310
 SIERRA COUNTY



This Exhibit is solely for purposes of generally identifying the location of the affected properties, is based on unverified information received from the parties and is not intended to be, nor shall it be construed as, a waiver or limitation of any State interest in the subject or any other property.