CALENDAR ITEM
C01

A 57, 58 03/04/08
503.1905/AD 396/G05-03.7
S 29 J. Lucchesi
C. Fossum

ACTION IN RESPONSE TO A PEREMPTORY WRIT OF MANDATE ORDERING THE CALIFORNIA STATE LANDS COMMISSION TO VACATE AND SET ASIDE THE QUEENSWAY EXCHANGE APPROVED BY THE COMMISSION ON SEPTEMBER 17, 2001

The City of Long Beach holds certain sovereign public trust tide and submerged lands, filled and unfilled, as trustee, pursuant to Chapter 676, Statutes of 1911, as amended. On September 17, 2001, the California State Lands Commission (Commission) approved Minute Item #89, the Queensway Bay Land Exchange Agreement (Queensway Bay exchange) with the City of Long Beach, pursuant to Public Resources Code (PRC) Section 6307. The Commission's action terminated the common law and statutory public trust on five parcels within the Queensway Bay Development Plan (since renamed "The Pike at Rainbow Harbor") and exchanged those parcels for certain other parcels along the Los Angeles River on which it imposed the public trust.

On October 31, 2001, the California Earth Corps (CEC) filed a petition for writ of mandate (*California Earth Corps. v. City of Long Beach, California State Lands Commission and the Developers Diversified Realty Corporation, as a Real Party in Interest*, Sacramento Superior Court No. 01SC01556) challenging the Commission's approval of the Queensway Bay exchange. The CEC contested, among other things, the validity of the exchange under PRC Section 6307. The Sacramento Superior Court ruled in favor of the Commission, holding, in part, that the land exchange was valid under PRC Section 6307. CEC appealed the Superior Court's decision, and on April 21, 2005, the Court of Appeal for the Third Appellate District held that the exchange violated PRC Section 6307 and granted the petition for writ of mandate. The California Supreme Court granted review on August 24, 2005. Following the Supreme Court's decision to grant review, the California Legislature, on October 6, 2005, clarified the intent of PRC 6307 by repealing PRC 6307 and replacing it with Chapter 585, Statutes of 2005 (SB 365), also designated PRC 6307. The Supreme Court subsequently dismissed review on January 4, 2006, because of the passage of SB 365. The Court of Appeal then issued its remittitur on January 17, 2006, sending the case back to the Sacramento Superior Court.

On June 9, 2006, the Sacramento Superior Court, as directed by the Court of Appeal, issued a peremptory writ of mandate ordering the Commission to "vacate and set aside the exchange approved by the Commission on September 17, 2001 and its termination of the public trust of the parcels that were part of the Exchange Agreement."

In July 2006, Developers Diversified Realty Corp. (DDR) filed an appeal. In September 2007, the Court of Appeal for the Third Appellate District affirmed the Superior Court's judgment granting the peremptory writ of mandate. On November 6, 2007 the remittitur was reissued. The Commission has until March 4, 2008 in which to comply with the Court's writ of mandate to vacate and set aside the exchange.

The consequence of setting aside the exchange and restoring the public trust status to the Queensway Bay parcels is that there will be uses not related to the public trust, such as the Cinemark Theatres, Gameworks and Borders Bookstore, located on public trust lands. CSLC staff and City staff have been in discussions regarding options available to resolve the conflict over the uses of the Queensway Bay parcels. Staff will report back to the Commission on the progress of those discussions.

EXHIBITS:

1. COPY OF THE WRIT OF MANDATE
2. MINUTE ITEM #89, CSLC MEETING OF SEPTEMBER 17, 2001

RECOMMENDATION:

IT IS RECOMMENDED THAT THE COMMISSION:

VACATE AND SET ASIDE THE QUEENSWAY EXCHANGE APPROVED ON SEPTEMBER 17, 2001 AND ITS TERMINATION OF THE PUBLIC TRUST ON THE PARCELS THAT ARE PART OF THE EXCHANGE AGREEMENT, IN COMPLIANCE WITH THE PEREMEPTORY WRIT OF MANDATE ISSUED BY THE SACRAMENTO COUNTY SUPERIOR COURT.

CALENDAR PAGE
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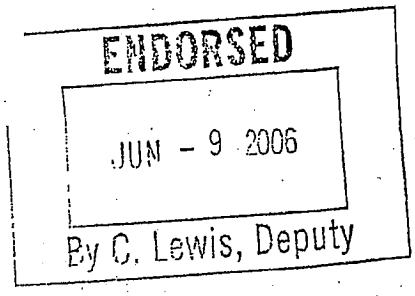
EXHIBIT 1



SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SACRAMENTO

CALIFORNIA EARTH CORPS, a Not-For Profit Corporation

Petitioner,

vs.

STATE LANDS COMMISSION and CITY OF LONG BEACH, and DOES 1 through 50, inclusive,

Respondents,

Developers Diversified Realty; DOES 51 through 99, inclusive,

Real Parties in Interest

Case No. 01CS01556

~~[Second Amended Proposed]~~ JUDGMENT GRANTING WRIT OF MANDATE

Department: 11

This matter came on for hearing in the Court of Appeal of the Third Appellate District, on February 18, 2005. Jan Chatten-Brown and Douglas P. Carstens appeared for Plaintiff and Appellant California Earth Corps. Alan V. Hager appeared for Defendant and Respondent California State Lands Commission. Robert S. Bower appeared for Defendant and Respondent City of Long Beach. Richard Dongell and John A. Lawrence appeared for Real Party in Interest and Respondent.

On April 21, 2005, the Court of Appeal issued its opinion, reversing the Superior Court's judgment denying the Petition for Writ of Mandate. The Supreme Court granted review on August 24, 2005, then dismissed review on January 4, 2006. The Court of Appeal issued a remittitur on January 17, 2006.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that:

1. A peremptory writ of mandate shall issue ordering the State Lands Commission to vacate and set aside the exchange approved by the Commission on September 17, 2001 and its termination of the public trust of the parcels that are part of the Exchange Agreement;

2. Petitioners, as prevailing parties, are entitled to costs in the amount of _[to be determined]_____ pursuant to Code of Civil Procedure Section 1033.5;

3. The Court retains jurisdiction over Petitioners' claim for an award of attorneys' fees and further costs pursuant to Code of Civil Procedure section 1021.5.

4. Nothing herein shall otherwise limit or control the discretion legally vested in Respondent.

5. A return shall be filed within 120 days of entry of judgment.

IT IS ORDERED THAT JUDGMENT BE ENTERED.

Dated: JUN - 9 2006

GAIL D. OHANESIAN

Judge of the Superior Court

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DECLARATION OF SERVICE VIA U.S. MAIL

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen and am not a party to the within action; My business address is 3250 Ocean Park Boulevard, Suite 300, Santa Monica, California 90405-3219.

On June 20, 2006, I served the foregoing document(s) described as:
NOTICE OF ENTRY OF JUDGMENT GRANTING WRIT OF MANDATE
to the interested parties in this action, listed as follows:

For Respondent, City of Long Beach:
Robert E. Shannon, City Attorney
James McCabe, Dep. City Attorney
City of Long Beach
333 W. Ocean Boulevard, 11th Floor
Long Beach, CA 90802

For Respondent, City of Long Beach:
Robert Bower
Rutan & Tucker
611 Anton Boulevard, 14th Floor
Costa Mesa, CA 92626-1998

For the State Lands Commission:
Lisa Trankley
Department of Justice
Office of the Attorney General
P.O. Box 944255
Sacramento, CA 94244-2550

For Developers Diversified:
Richard Dongell
Christopher T. Johnson
Dongell Lawrence Finney Claypool
707 Wilshire Boulevard, 45th Floor
Los Angeles, CA 90017-3609

For the State Lands Commission:
Alan Hager
Office of the AG, Lands Section
300 S. Spring Street, Suite 500
Los Angeles, CA 90013-0550

or Amici League for Coastal Protection, Save Our NTC, Inc., NRDC, and Surfrider Foundation:
Laurens H. Silver
CA Environmental Law Project
P.O. Box 667
Mill Valley, CA 94942

[X] **BY U.S. MAIL**
I am "readily familiar" with firm's practice of collection and processing correspondence for U.S. Mail. It is deposited with the U.S. Mail on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare under penalty of perjury that the foregoing is true and correct.
Executed on June 20, 2006, at Santa Monica, California.

JESSICA I. BOHORQUEZ

ORIGINAL

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SACRAMENTO

CALIFORNIA EARTH CORPS, a Not-For Profit Corporation

Petitioner,

vs.

STATE LANDS COMMISSION and CITY OF LONG BEACH, and DOES 1 through 50, inclusive,

Respondents,

Developers Diversified Realty; DOES 51 through 99, inclusive,

Real Parties in Interest

Case No. 01CS01556

~~[Second Amended Proposed]~~ WRIT OF MANDATE

Department: 11

TO RESPONDENT STATE LANDS COMMISSION:

Judgment having been entered in this action ordering that a Peremptory Writ of Mandamus issue from this Court:

1. RESPONDENT STATE LANDS COMMISSION IS HEREBY COMMANDED within 120 days of receipt of this Writ to vacate and set aside the exchange approved by the Commission on September 17, 2001 and its termination of the public trust of the parcels that are part of the Exchange Agreement;
2. Nothing herein shall otherwise limit or control the discretion legally vested in Respondent.

YOU ARE FURTHER COMMANDED to make and file a Return to this Court upon taking action, setting forth what you have done to comply with this Writ. A Return is to be filed within 120 days of entry of judgment.

JUN - 9 2006, Clerk

By: C. Lewis, Deputy Clerk

C. LEWIS

F:\CEC-SLC\Pleadings\drafts\proposed stip.doc

DECLARATION OF SERVICE VIA U.S. MAIL

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen and am not a party to the within action; My business address is 3250 Ocean Park Boulevard, Suite 300, Santa Monica, California 90405-3219.

On June 20, 2006, I served the foregoing document(s) described as:

NOTICE OF ISSUANCE OF WRIT OF MANDATE

to the interested parties in this action, listed as follows:

For Respondent, City of Long Beach:
Robert E. Shannon, City Attorney
James McCabe, Dep. City Attorney
City of Long Beach
333 W. Ocean Boulevard, 11th Floor
Long Beach, CA 90802

For Developers Diversified:
Richard Dongell
Christopher T. Johnson
Dongell Lawrence Finney Claypool
707 Wilshire Boulevard, 45th Floor
Los Angeles, CA 90017-3609

For Respondent, City of Long Beach:
Robert Bower
Rutan & Tucker
611 Anton Boulevard, 14th Floor
Costa Mesa, CA 92626-1998

For the State Lands Commission:
Alan Hager
Office of the AG, Lands Section
300 S. Spring Street, Suite 500
Los Angeles, CA 90013-0550

For the State Lands Commission:
Lisa Trankley
Department of Justice
Office of the Attorney General
P.O. Box 944255
Sacramento, CA 94244-2550

or Amici League for Coastal Protection, Save Our NTC, Inc., NRDC, and Surfrider Foundation:
Laurens H. Silver
CA Environmental Law Project
P.O. Box 667
Mill Valley, CA 94942

[X] **BY U.S. MAIL**

I am "readily familiar" with firm's practice of collection and processing correspondence for U.S. Mail. It is deposited with the U.S. Mail on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare under penalty of perjury that the foregoing is true and correct. Executed on June 20, 2006, at Santa Monica, California.

JESSICA I. BOHORQUEZ

EXHIBIT 2

RECORD OF ACTION TAKEN BY THE CALIFORNIA STATE LANDS COMMISSION MEETING OF SEPTEMBER 17, 2001

Calendar Items C17, C65, and Regular Items 90 and 91 were withdrawn from the agenda. Calendar Item 95 was deferred. Calendar Items C82 and C84 were moved from Consent to Regular.

The recommendation of staff, relative to Calendar Items C01-C16, C18-C64, C66-C87, and C96-99 were approved by unanimous vote of Commission Chair Lt. Governor Cruz M. Bustamante, State Controller Kathleen Connell, and Annette Porini, Commission alternate for Department of Finance.

Calendar Item 82: Presentation made on deferment request by Venoco. Public testimony received. Item approved as presented.

Calendar Item 84: Commission considered a request by Berry Petroleum for a deferment. Public testimony taken. Item approved as presented.

Regular Item 88: Commissioners listened to a staff presentation by Jan Stevens of the Attorney General's Office regarding consideration of new public trust policy. Commission listened to public testimony. Item was approved as presented.

Regular Item 89: Staff presentation was made by Executive Officer Thayer; Senior Staff Counsel Curtis Fossum; and Staff Appraiser Jim Porter and public testimony was heard.

Commissioner Connell expressed concerns about the ramifications of going forward with the proposed land exchange in the event the developer did not move forward with the project.

After much discussion, Commissioner Connell moved approval of staff's recommendations with the following additional conditions:

- The time factor is the end of May, May 31st of 2002 for having these necessary local agreements in place.
- Secondarily, the developer must be moving forward, without phasing, on the development of this project.
- Third, that the development activity must reflect existing plan as presented before this Commission and in the attachments that we have.
- And fourth, that should the deadline not be met, that our approval of the land swap would expire and we would have our property back as the state's.

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The motion was seconded by Commissioner Porini and the Commission voted unanimously to approve.

Regular Item 92: Staff and members of the public made presentations to Commissioners pertaining to Shoreline Protective Structures. The item was approved as presented.

Regular Item 93: Commissioners discussed a resolution to terminate 36 undeveloped federal leases. Public testimony was taken. The item was approved as presented.

Regular Item 94: Commissioners listened to a presentation on a proposed contract for environmental documentation for the abandonment of the 4H platforms. The Commission also listened to concerns from public. The item was approved as presented.

During the public comment section, comments were made by representatives of the Riverbank and Virgin Sturgeon marinas.

CALENDAR PAGE
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MINUTE ITEM
This Calendar Item **No. 89** was amended,
As denoted on the Record of Action Taken by
The California State Lands Commission, and then
approved by a vote of **3 to 0** at its **09/17/01** meeting.

CALENDAR ITEM
89

A 57, 58

S 29

09/17/01
AD 396
G 05.03.7
PRC 8325.9
W25773
Thayer
Fossum

CONSIDERATION OF A PROPOSED EXCHANGE AGREEMENT THAT WOULD TRANSFER APPROXIMATELY THREE ACRES OF LAND NORTH OF SHORELINE DRIVE (QUEENSWAY BAY PARCELS) FROM THE CITY OF LONG BEACH TO THE STATE, EXCHANGE THE QUEENSWAY BAY PARCELS BY THE STATE TO THE CITY FOR OTHER PROPERTY (LOS ANGELES RIVER PARCELS), THE LOS ANGELES RIVER PARCELS TO BE HELD BY THE STATE AS TRUST PROPERTY AND TERMINATE THE PUBLIC TRUST ON THE QUEENSWAY BAY PARCELS BY THE COMMISSION, ISSUE A 49-YEAR LEASE OF THE LOS ANGELES RIVER PARCELS TO THE CITY OF LONG BEACH, LOS ANGELES COUNTY

PARTIES:
City of Long Beach
333 West Ocean Blvd.
13th Floor - City Hall
Long Beach, CA 90802
c/o: Henry Taboada, City Manager

California State Lands Commission
100 Howe Avenue, Suite 100 South
Sacramento, CA 95825-8202
c/o: Paul Thayer, Executive Officer

PROPOSED EXCHANGE AGREEMENT
The proposed land exchange agreement involves several parcels of land within the City of Long Beach. One area lies north of Shoreline Drive and south of Seaside Way, referred to in this staff report as the Queensway Bay (QWB) Parcels, the other area lies east of the Los Angeles River and west of Golden Avenue, referred to herein as the Los Angeles (LA) River Parcels (all shown for reference purposes only on Exhibit A).
The City of Long Beach functions in two roles as part of the proposed transaction. It is a municipal government and also a trustee of tide and submerged lands granted to it by the California Legislature pursuant to, *inter alia;* Chapter 676 of the Statutes of 1911,

Chapter 102 of the Statutes of 1925, Chapter 158 of the Statutes of 1935, and Chapter 138 of the Statutes of 1964, First Extraordinary Session, as amended (granting statutes). These granting statutes transferred to the City of Long Beach, as Trustee, the State's right, title and interest in and to the State's tidelands and submerged lands, within the then existing boundaries of the City of Long Beach, including the Queensway Bay Development Plan area (see Exhibit B) and the QWB Parcels, in trust for the public, and subject to certain terms, conditions, exceptions, limitations and reservations.

In order to resolve a dispute involving title issues which restrict uses of the QWB Parcels and to consummate the termination of the trust and exchange of present City held trust property (QWB Parcels) for the LA River Parcels the staff of the Commission and City of Long Beach are proposing that the Commission exercise the authority delegated to it by the Legislature as found in Public Resources Code Section 6307. This section authorizes the Commission to exchange interests in trust lands no longer needed for public trust purposes for lands of equal or greater value and to extinguish the public trust interest in the former trust lands. Therefore, the Commission must take title to the property presently owned by the City as trustee and thereafter exchange the QWB Parcels for the LA River Parcels with the City. Finally, the Commission will enter into a 49-year lease with the City to manage the newly acquired trust lands (LA River Parcels). The lease will allow the City to operate these lands for all purposes consistent with its granting statutes. It is the intent of the Trustee and CSLC staff to seek legislation that would include these lands in the trust grant in the future.

The proposed Exchange Agreement provides that:

(1) The City of Long Beach, as trustee, will convey to the State of California its interests in approximately 3.05 ± acres of land (as shown on Exhibit A as the Queensway Bay Parcels A1 (0.31± acre), C1 (0.07± acre), C/D (1.85± acres), D1(0.37± acre), and E (0.45± acre)).

(2) The City of Long Beach, as a municipality, will then exchange its interests in approximately 10± acres of land (as shown on Exhibit A as the LA River Parcels 1 (2.21 ± acres), 2 (3.11 ± acres), and 3 (4.94 ± acres)) with the Commission for the 3.05± acres described in the preceding paragraph.

(3) The Commission will make the requisite findings to terminate the Public Trust interest from the 3 acres QWB Parcels, as described above.

(4) The City, in its municipal capacity, agrees to defend, indemnify and hold the State and City, as trustee, harmless from any and all claims and liability that

might arise from the transaction or the lands involved in the transaction, including but not limited to toxic or hazardous material contamination.

(5) The Commission will upon close of escrow enter into a 49-year lease with the City for the LA River Parcels to be used for public trust purposes consistent with the provisions of the granting statutes.

LEGAL REQUIREMENTS

Because the City does not have the legal authority to terminate the state's Public Trust interest on trust property, the Commission must take title to the QWB Parcels to be exchanged for the LA River Parcels and as part of that exchange terminate the Public Trust interest on those filled tide and submerged lands. The Commission in order to approve the proposed exchange will have to make the following requisite findings of Public Resources Code Section 6307:

(1) It appears to the to be in the best interest of the state for:
   (a) improvement of navigation,
   (b) aid in reclamation, or
   (c) for flood control protection, or
   (d) to enhance the configuration of the shoreline for the improvement of the water and upland, and

(2) It will not substantially interfere with the right of navigation and fishing in the waters involved

(3) The lands to be acquired are of equal or greater value than the lands to be conveyed

(4) The lands acquired by the state in the exchange will take on the same status (Public Trust lands) as those exchanged away

(5) The lands have been improved, filled, and reclaimed and have thereby been excluded from the public channels and are no longer available or useful or susceptible of being used for navigation and fishing, and are no longer in fact tide and submerged lands and such lands are to be freed from the Public Trust

In addition to the above statutory required findings, the California courts have identified several other legal requirements necessary for a conveyance of trust lands and a termination of the Public Trust interest in order to comply with California Constitution Article X, Section 3.

The lands must be:

(1) reclaimed as the result of a highly beneficial program of harbor development
(2) relatively small in area
(3) no longer useful for purposes of navigation, commerce and fisheries and the acquired lands are of such configuration that they can be used more effectively by the trustee in furtherance of public trust purposes than the filled tidelands to be conveyed

BACKGROUND

The Long Beach waterfront has a long history as a visitor serving resort area. The Pine Avenue Pier was constructed in 1892. The area located north of Shoreline Drive today was, beginning in 1902, a public resort area involving the water, public beach and a large privately operated commercial attraction known originally as the Long Beach Bath House and Amusement area and later as the Pike amusement park. The amusement park attracted millions of people to Long Beach before its demolition in 1979.

The City has been expanding, developing and redeveloping its waterfront, at least since the 1920s when it first constructed the Long Beach Municipal Auditorium on the beach and twenty acres of fill. During the mid 1950s the City filled additional waterfront areas in conjunction with the construction of Rainbow Pier. In the early 1960s, the City, as part of harbor development and the channelization of the Los Angeles River, and with the California State Lands Commission's (CSLC) approval of the expenditure of tidelands oil revenues, filled approximately 113-acres of the waterfront. This fill moved the shoreline south and further separated the downtown from the waterfront. A significant portion of the filled land has remained vacant for over 20 years.

The QWB Parcels are part of the current and final Phase II of the 319 acre Queensway Bay Development Plan area. Phase II occupies an 18± acre portion of the of the lands filled in the 1950s and 1960s. The land area of the QWB parcels totals 3.05 acres within a 14± acre area west of South Pine Avenue, east of Cedar Avenue, south of Seaside Way and north of Shoreline Drive.

In 1980, the City of Long Beach adopted and the California Coastal Commission certified the Local Coastal Program (LCP) for the Long Beach waterfront. The LCP required that all public parks and beaches within the City's granted tidelands be "designated by the City as permanent public parks or beaches." It further required that "no parkland which has been dedicated or designated within the Coastal Zone shall be

committed to another use unless the City replaces such parkland on an acre-for-acre basis within or adjacent to the Coastal Zone with the approval of the California Coastal Commission." Shoreline Park, within the Queensway Bay Development Plan was designated by the City Council as a permanent park. Within the Queensway Bay Development Plan area, the LCP called for a new downtown marina and marina green, hotels and shops, and a new elevated pedestrian promenade to link downtown to the waterfront.

The City implemented provisions of the LCP, but as of 1992 there were still significant areas of vacant land and an undeveloped connection between downtown and the waterfront. During that year the City started a major citizen planning process to create the Queensway Bay Development Plan. The Mayor and the City Council appointed 23 citizens as representatives from all areas of the City. These citizens worked with a consulting firm to prepare the Queensway Bay Development Plan. The Queensway Bay Citizens Advisory Committee met 25 times over a two-year period. Public testimony was received at each meeting. The Queensway Bay Development Plan was reviewed by both the City Planning Commission and the City Council. An Environmental Impact Report E-13-94, SCH #94081033 was prepared and adopted for this project by the City of Long Beach on December 19, 1994. In May of 1995, the California Coastal Commission unanimously certified the Queensway Bay Development Plan as an amendment to the LCP of 1980. In 1998 the Coastal Commission again amended the LCP and expanded the commercial floor space in the Queensway Bay Development Plan Phase II from 535,000 square feet to 627,000 square feet. The Coastal Commission approved a permit (5-98-156) for the project on February 3, 1999 and has subsequently amended the permit on five occasions: November 2, 1999; December 9, 1999; February 15, 2000; March 14, 2000; January 11, 2001.

The Queensway Bay Development Plan currently includes:

- Phase I (largely publicly funded with emphasis on infrastructure and public facilities; completed in June 1998):
  - The construction of a new commercial harbor is designed to be the home to historic ships, dinner cruises, whale watching excursions, fishing boats, diving boats among other vessels
  - The south shore, where the Queen Mary and the old Spruce Goose dome are located, linked to the heart of the plan via a water taxi system
  - Retention of the Queen Mary in place
  - The construction of an events park and the construction of a boat launch ramp
  - An aquarium and parking structure on the west-end of the harbor

- Phase II (a privately funded tourist orientated commercial development):

- Restaurants, retail and entertainment uses, on an 18 ± acre site, between downtown Long Beach and the waterfront.

The proposed 18± acre Phase II development involves the construction of approximately 627,000 square feet of restaurant, entertainment and retail uses on the 14 acres located northerly of Shoreline Drive and the four acres along the waterfront. Phase II calls for constructing a public street (an extension of Pacific Avenue/ Aquarium Way from Seaside Way through the 14 acre site to Shoreline Drive) to provide a connection from downtown to the waterfront.

In an exchange similar to that proposed by this item, a portion of the Phase II area was acquired in 1992 by the Commission. That transaction, approved by the Commission on June 5, 1991 as Minute Item # 8, provided for the CSLC to accept title to two parcels of filled trust property, totaling 0.42 acre from the City and terminate the trust status on that property as part of the exchange of that property for other nearby lands (0.24 acre), owned by Pike Properties Associates, to which the trust was then attached (see Exhibit A). The CSLC leased the acquired 0.24 acre of land to the City. Because equal value could not be found the CSLC accepted $605,000 into the Kapiloff Land Bank Fund from Pike Properties to be used by the CSLC as trustees of the Land Bank Fund to acquire additional trust property. The trust termination parcels are shown on Exhibit A as Pike Parcels and the acquired parcel as State Parcel.

Phase II as proposed is a public area with public streets, public metered parking on the streets, wide sidewalks, and open plazas. The proposed Phase II land uses include movie theaters, a large-format motion picture theater, a day spa, a bookstore, a large scale retail store, restaurants, entertainment venues and parking areas. The leasing for the area is proposed to be approximately one-third restaurant, one-third entertainment venues and one-third specialty retail.

The City expects about 7.5 to 10 million visitors each year to come to Queensway Bay to enjoy this urban waterfront. A market study by J.B. Research Company concludes that the Queensway Bay Development Plan will serve as a regional visitor destination and that 44% will be overnight visitors (tourists) and that more than half of the day-use visitors will travel more than ten miles to reach the attraction.

PUBLIC TRUST LAND USE ISSUES

At the February 8, 2000, CSLC meeting, Lester Denevan, a resident of the City of Long Beach, raised concerns about the Queensway Bay Development Plan and brought to the Commission's attention the various land uses proposed, including commercial/retail

development.

At the April 20, 2000, CSLC meeting, approximately seven Long Beach residents raised concerns about the Queensway Bay Development Plan, including requests for an audit of the management of the tide and submerged lands granted in trust to the City. The Commission directed staff to hold a public workshop in Long Beach to gather more information about the issues being raised. The Commission also directed staff to prepare a report containing the analysis of these issues and recommendations for Commission consideration.

On July 20, 2000, CSLC staff held the public workshop in Long Beach to hear questions, concerns, and comments on the Queensway Bay Development Plan. At the workshop, the CSLC staff heard from approximately 45 participants, both for and against the project, with comments, concerns and questions ranging from the history of the Long Beach tide and submerged lands and their development by the City to their present state. Staff also accepted written testimony for two weeks following the workshop.

At the February 5, 2001, CSLC meeting, a potential staff audit of the City's management of granted tide and submerged lands was discussed. The Commission delayed action of this item until the staff report on the Queensway Bay Development Plan was completed.

The staff report was completed and submitted to the Commissioners in April 2001. Staff analyzed the Queensway Bay Development Plan within the scope of the Public Trust Doctrine, the legislative statutes that affect the Long Beach tidelands grant, the authority/jurisdiction/responsibility of the CSLC, the jurisdiction/responsibility of the City in managing their legislatively granted tide and submerged lands, and addressed specific issues such as alleged mismanagement of the City operated marinas. The primary issue raised by the project opponents and addressed by the staff report was whether the Long Beach granting statutes and the Public Trust Doctrine allow for certain uses proposed for in the Phase II land use plans.

At the April 24, 2001, Commission meeting the staff report was presented to the Commission as Calendar Item #117. Commission members discussed the report, but did not accept the conclusions reached in the report. Those conclusions were that certain non-trust related uses when taken in the specific factual context of the Queensway Bay Development Plan were not barred by the granting statutes or the Public Trust Doctrine, but could be considered incidental to the enjoyment of public tidelands. The staff report characterized the Queensway Bay Development Plan as a

multi-use public recreation and commercial recreation development that provided for a variety of uses, including some which are clearly consistent with accepted Public Trust uses. The Queensway Bay Development Plan also provides for hotels, restaurants, parking and other uses which are visitor serving and provide necessary and ancillary support services to facilitate the public's Constitutional right of access to public trust property. Staff acknowledged that the movie theaters, bookstore, and large scale retail uses were not traditional Public Trust uses, but would occupy a relatively small (3+ acre) area and could be considered necessary to draw crowds to support the nearby trust uses. Staff also recommended that the Commission take no further action on this matter.

The Commission instead expressed concerns with the staff's approach to dealing with the issue of appropriate trust uses and directed the staff to work with the City and the Attorney General's office in an endeavor to explore alternatives for resolution of the matter. CSLC staff and Attorney General staff have identified four alternatives available to the City. Three of these alternatives would allow the project to proceed as designed and the fourth would be to redesign the project to include only traditional Public Trust uses. The three alternatives available to the City that would allow Phase II to proceed were 1) use the existing authority to develop the property authorized by the Legislature pursuant to Chapter 1560, Statutes of 1959; 2) obtain new legislation authorizing the proposed uses; or 3) enter into a land exchange agreement with the CSLC pursuant to Public Resources Code Sections 6307 and/or 8600, *et seq.* that would free the QWB parcels from the statutory and common law trusts, to allow them to be used for non-trust purposes, and substitute the QWB parcels with lands that have equal or greater value and greater utility to the trust.

The City, while disputing that the land use limitations on its title to the QWB Parcels prohibit the proposed uses, chose the last alternative and has identified certain parcels along the Los Angeles River (LA River Parcels) that are either owned by the City, in its municipal capacity, or are in the process of being acquired as such, to resolve the title dispute by exchange for the QWB Parcels located north of Shoreline Drive that are proposed for non-trust uses.

PUBLIC BENEFITS

Queensway Bay

The City of Long Beach's expressed intent for this transaction is its desire to accomplish several important public benefits. According to the City of Long Beach the public benefits of the Queensway Bay Development Plan are as follows:

1. To create the premier world-class urban waterfront attraction for Southern California.
2. To strengthen the position of downtown Long Beach as a major center of commerce, entertainment and recreation within the greater Los Angeles region.
3. To increase convention and tourist visitations, promoting Long Beach as a visitor destination from which all other regional attractions can be easily accessed.
4. To create an environment and mix of private and public attractions which has a strong Southern California ambiance and a specific identity, which is unique to Long Beach.
5. To create a family destination attraction which appeals to a broad range of age groups, income levels and ethnic backgrounds and which engages the visitor in a variety of wholesome and uplifting recreational and educational activities.
6. To achieve a level of quality and design, construction and operation which evokes a sense of permanence of value and which creates an environment in which the visitor feels welcome, comfortable and safe.

The Queensway Bay project is expected to create approximately 500 full time equivalent jobs and 3500 construction jobs during the development phase.

In order to facilitate the completion of Phase II of the Queensway Bay Development Plan, which will result in improved public access to shoreline public trust property through the 14 acre area lying landward of Shoreline Drive that has been undeveloped for over twenty years, it is deemed necessary and expedient to consummate the proposed exchange agreement. The results of the exchange will also provide the further pubic benefit of obtaining additional property for the trust along the Los Angeles River, as described below.

Los Angeles River
Staff believes the LA River Parcels hold the potential for providing several public benefits which are regional or statewide in character:

1. Acquisition of 10± acres of land and 2000± linear feet of property adjacent to the Los Angeles River, thereby expanding potential public trust uses of the property for public access, public recreation, education, open space and wetlands restoration.
2. Improvement of the to be acquired land between the Los Angeles River and downtown Long Beach thereby enhancing the public utility of the property, which has heretofore been isolated and underutilized.

Wetlands/Open Space
LA River Parcel 3 is located in what 100+ years ago was marsh adjacent to what was then referred to as the San Gabriel River and Cerritos Slough (see Exhibits C and D).

The Coastal Conservancy on February 2, 2000, received authorization to disburse approximately $300,000 from the 1996 Safe, Clean, Reliable Water Supply Fund to the City of Long Beach for the Lower Los Angeles River Wetland Restoration Feasibility Study. The study will focus on the potential for restoring two historic wetland areas along the east bank of the lower Los Angeles River, one being the DeForest Park Expansion Site and the other the Sixth Street Site (which is identified herein as LA River Parcel 3. The study is in response to a year 2000 report by the Coastal Conservancy entitled "Wetlands of the Los Angeles River Watershed: Profiles and Restoration Opportunities". The Sixth Street Bridge Site is identified in the report as a 6 acre area west of southbound Shoreline Drive from Fourth Street to and around the Shoemaker Bridge. The feasibility study will investigate both saltwater and freshwater wetlands restoration, as well as the potential for establishing either seasonal or muted tidal wetlands. The feasibility study will most likely be extended to include the undeveloped City property under and north of the Shoemaker Bridge. The primary goal of the wetlands will be to provide habitat that is scarce for wildlife communities or individual species using the Los Angeles River Basin. The study will identify the communities and species and their habitat needs and recommend opportunities for restoration to meet those needs on the sites. The City of Long Beach is currently in the process of entering into a contract with CH2MHill to perform the feasibility study. The date set for completion of this study is March of 2002. In the long run, the City of Long Beach is interested in extending the open space and possibly wetlands corridor along the Los Angeles River to Drake Park. The City is already pursuing the acquisition of an approximately 11-acre vacant parcel belonging to the Southern Pacific Transportation Company. That property, below Drake Park, is just north and east of the end of LA River Parcel 3 and separated from it by Fairbanks Avenue. Fairbanks Avenue is a partially improved roadway that currently serves only an MTA bus yard and a small ceramics factory and bike and pedestrian access to the LARIO (Los Angeles River) trail.

Public Access, Recreation & Education

The Los Angeles River Parcels 1, 2, and 3 also have potential for public recreational activities and educational opportunities. The goal would be to serve not only local residents but the public from throughout the region.

- **Regional Biking/Hiking Trails**
  - There are presently numerous shoreline bike and pedestrian trails in the city of Long Beach. They all start near Shoreline Park and head in various directions. One trail heads south toward Belmont Shore and Naples. A second trail passes near Rainbow Harbor. A third trail heads across the channel and passes near the Queen Mary. A fourth route connects to the Los

Angeles River Bike Path (LARIO Trail) that runs north toward downtown Los Angeles approximately 21 miles.

- Funding, from the Metropolitan Transportation Association (MTA), has been authorized to connect Cesar Chavez Park (just east of Shoreline Drive between Broadway and 6th Street) with the proposed wetland restoration site involving LA River Parcel 3. Currently there is an unused underground tunnel, beneath the on-ramps to and off-ramps from the Sixth Street Bridge, that will be used to connect the park to the proposed wetlands site. A ramp from the proposed wetlands site will then lead up to the LARIO Trail, which would then allow access to the upper reaches of the Los Angeles River (currently only 21 miles) or up the Rio Hondo trail and southerly to Shoreline Park.
- Ultimately it is expected that a network of bicycle/hiking paths throughout Los Angeles and Orange counties will allow the public non-vehicular access from throughout the region to the shore of the Pacific Ocean in Long Beach.

- **Educational Opportunities**
  - Members of the public as well as schools throughout the region could benefit from a nature study made available at a restored wetlands site.

There are numerous agencies and citizens groups that are supporting a multiple-use concept for the river including: Los Angeles County Department of Public Works; the Mountains Recreation and Conservation Authority; the Santa Monica Mountains Conservancy; the Los Angeles Regional Water Quality Control Board; Eco-Link; the Los Angeles/ San Gabriel Rivers Watershed Council; Friends of the Los Angeles River; North East Trees; the Trust for Public Land; and the Lower Los Angeles River and San Gabriel River and Mountains Conservancy. On July 17, 2001 Congresswoman Hilda Solis, D- El Monte, author of the 1999 state law creating the Lower Los Angeles River and San Gabriel River and Mountains Conservancy, introduced HR 2534 which, if enacted, would direct the Department of the Interior to conduct a study to determine the feasibility of establishing a National Park encompassing the Lower Los Angeles River, San Gabriel River and San Gabriel Mountains.

The Commission staff has reviewed the information submitted for the proposed exchange agreement. The Commission staff has reviewed appraisals, surveys, title reports, toxics reports and other studies conducted for the exchange. As described in the preceding paragraphs the facts support each of the necessary findings the Commission must make. The QWB Parcels were filled and reclaimed and excluded from the public channels in the 1960s and before as part of a highly beneficial program of harbor development (which included elements of improving navigation, reclamation,

flood control and reconfiguration of the shoreline); the QWB Parcels have been rendered useless for commerce; navigation and fisheries; and the LA River parcels may be used more effectively for Public Trust purposes than the QWB Parcels. The three acres of QWB Parcels are relatively small in area when compared to the thousands of acres of filled and unfilled trust land held by the City and the LA River Parcels have greater public trust value and land value than the QWB Parcels.

The staff believes and the facts support that the proposed exchange is consistent with the Public Trust needs in the area. The lands, to be acquired by the CSLC as trust lands (LA River Parcels), will be managed by the City under lease from the CSLC for purposes consistent with the Long Beach granting statutes' trust and any revenues generated therefrom will be deposited in appropriate trust accounts. There will be no exchange of mineral rights to any of the parcels involved. Mineral rights owners of the LA River parcels have no right of entry over the first 200 feet from the surface. The mineral rights in the QWB Parcels will remain assets of the trust subject to the granting statutes.

Commission staff has reviewed the proposed exchange and believes all necessary legal elements have been met for the exchange of the Queensway Bay Parcels A1, C1, C/D, D1, and E for the LA River Parcels 1, 2 and 3. Staff believes the indemnity provisions incorporated in the exchange agreement sufficiently protect the Commission from any potential liability associated with the transaction and the lands involved. 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.

EXHIBITS:

A. Site Plat showing location of QWB, LA River and Pike parcels
B. Queensway Bay Master Plan Development Area
C. Historic Cerritos Slough/San Gabriel River (1905)
D. Historic wetlands (1872) in relation to present day LA River Parcels

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 DISPUTES.

2. FIND THAT, WITH RESPECT TO THE PROPOSED EXCHANGE

AGREEMENT, WHICH FINDINGS SHALL BE EFFECTIVE ON CLOSE OF ESCROW AS PROVIDED IN THE AGREEMENT INCLUDING:
1) TRANSFER OF THE TITLE TO THE QUEENSWAY BAY PARCELS (QWB PARCELS A1, C1, C/D, D1, AND E), AS MORE PARTICULARLY DESCRIBED IN THE QUEENSWAY BAY/LOS ANGELES RIVER EXCHANGE AGREEMENT AND SHOWN FOR REFERENCE PURPOSES ONLY ON EXHIBIT A, FROM THE CITY OF LONG BEACH, AS TRUSTEE, TO THE CALIFORNIA STATE LANDS COMMISSION, AND
2) THEREAFTER, THE EXCHANGE OF THE STATE'S INTEREST IN THE QUEENSWAY BAY PARCELS BY THE STATE, ACTING BY AND THROUGH THE CALIFORNIA STATE LANDS COMMISSION, TO THE CITY OF LONG BEACH, AS A MUNICIPAL CORPORATION, FOR THE LOS ANGELES RIVER PARCELS (LA RIVER PARCELS 1-3) AS MORE PARTICULARLY DESCRIBED IN THE QUEENSWAY BAY/LOS ANGELES RIVER EXCHANGE AGREEMENT AND SHOWN FOR REFERENCE PURPOSES ONLY ON EXHIBIT A, TO BE CONVEYED TO THE STATE):

A. THE EXCHANGE AGREEMENT IS IN THE BEST INTERESTS OF THE STATE AND CONSISTENT WITH PUBLIC TRUST NEEDS TO ENHANCE THE CONFIGURATION AND UTILITY OF THE PROPERTY ADJACENT TO THE SHORELINE FOR IMPROVEMENT OF PUBLIC ACCESS TO THE WATER AND DEVELOPMENT OF THE UPLAND.

B. THE CONVEYANCES PROPOSED BY THE AGREEMENT WILL NOT INTERFERE WITH BUT RATHER ENHANCE THE PUBLIC'S RIGHTS OF NAVIGATION, FISHING AND ACCESS TO THE PACIFIC OCEAN AND LOS ANGELES RIVER.

C. THE LANDS (LOS ANGELES RIVER PARCELS) TO BE CONVEYED TO THE STATE AND LEASED TO THE CITY OF LONG BEACH, AS TRUSTEE OF THE STATE, AS DESCRIBED ABOVE, ARE EQUAL TO, OR GREATER THAN, THE VALUE OF THE STATE INTEREST IN THE LANDS TO BE CONVEYED BY THE STATE TO THE CITY OF LONG BEACH, AS A MUNICIPALITY (QUEENSWAY BAY PARCELS).

D. THE AREA OF LANDS BEING RELINQUISHED BY THE STATE, WHICH COLLECTIVELY ARE A RELATIVELY SMALL AREA (3.05 ACRES) OF THE HUNDREDS OF ACRES OF FILLED AND THOUSANDS OF ACRES OF UNFILLED PUBLIC TRUST LANDS HELD BY THE TRUSTEE, HAVE BEEN EVALUATED AS TO THEIR CURRENT

PHYSICAL CHARACTER AND TRUST UTILITY; THE TRUST TERMINATION PARCELS (QUEENSWAY BAY PARCELS A1, C1, C/D, D1 AND E) HAVE BEEN FILLED AND RECLAIMED, AS THE RESULT OF A HIGHLY BENEFICIAL PROGRAM OF HARBOR DEVELOPMENT, AND FOR OVER 30 YEARS 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 CITY OF LONG BEACH (LOS ANGELES RIVER PARCELS 1-3) ARE OF SUCH A CONFIGURATION AND LOCATION THAT THEY CAN BE USED MORE EFFICIENTLY BY THE TRUSTEE IN FURTHERANCE OF PUBLIC TRUST PURPOSES THAN THE FILLED TIDE AND SUBMERGED LANDS (QUEENSWAY BAY PARCELS) AND UPON CLOSE OF ESCROW THE LOS ANGELES RIVER PARCELS 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 PARCELS (QWB PARCELS A1, C1, C/D, D1 AND E) 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.

4. 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 QUEENSWAY BAY/LOS ANGELES RIVER 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.

6. APPROVE AND AUTHORIZE THE ISSUANCE OF A 49-YEAR LEASE OF THE LOS ANGELES RIVER PARCELS, ACQUIRED BY THE STATE PURSUANT

TO THE QUEENSWAY BAY/LOS ANGELES RIVER EXCHANGE AGREEMENT, TO THE CITY OF LONG BEACH, AS TRUSTEE, AS PROVIDED IN THE EXCHANGE AGREEMENT.

7. AUTHORIZE AND DIRECT THE STAFF OF THE CALIFORNIA STATE LANDS COMMISSION AND/OR THE CALIFORNIA ATTORNEY GENERAL TO TAKE ALL NECESSARY OR APPROPRIATE ACTION ON BEHALF OF THE CALIFORNIA STATE LANDS COMMISSION, INCLUDING THE EXECUTION, ACKNOWLEDGMENT, ACCEPTANCE, AND RECORDATION OF ALL DOCUMENTS AS MAY BE NECESSARY OR CONVENIENT TO CARRY OUT THE EXCHANGE AGREEMENT; AND TO APPEAR ON BEHALF OF THE COMMISSION IN ANY LEGAL PROCEEDINGS RELATING TO THE SUBJECT MATTER OF THE AGREEMENT.

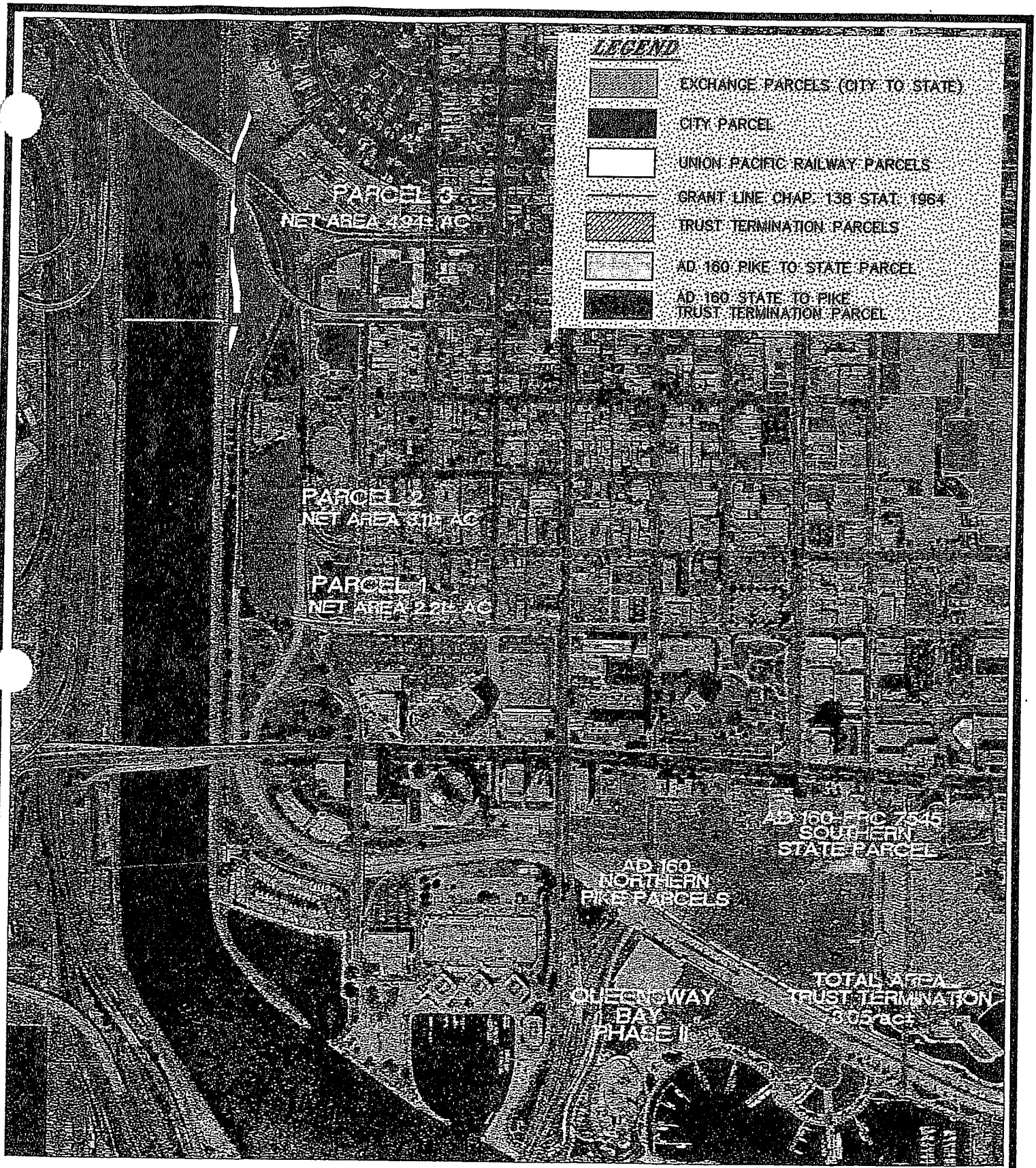
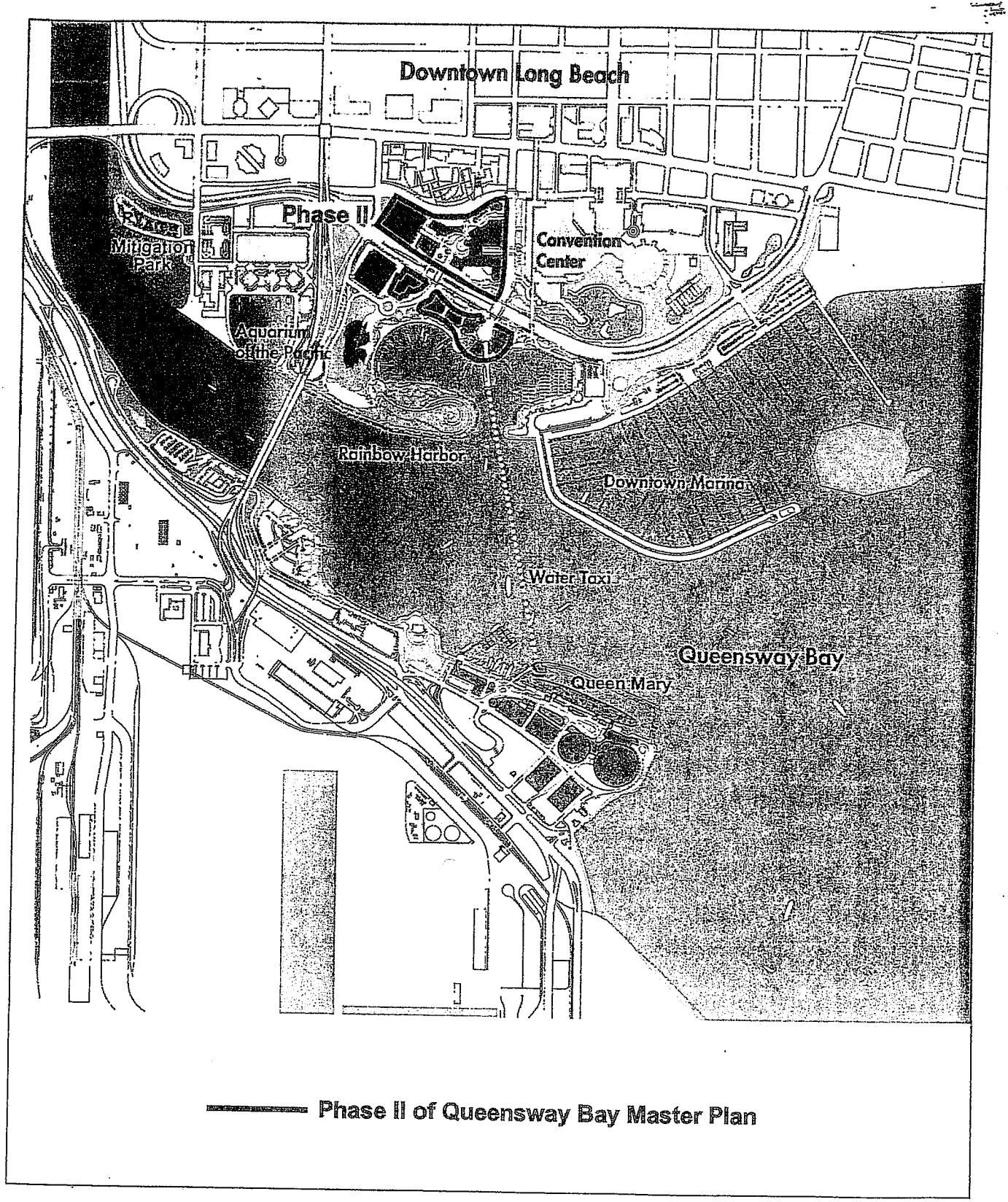


EXHIBIT A

City of Long Beach
&
State of California
Exchange Parcels and
Trust Termination Parcels
Long Beach, Los Angeles County

CALIFORNIA STATE LANDS COMMISSION

Exhibit B



Queensway Bay Master Plan
Long Beach, CA

Ehrenkrantz Eckstut & Kuhn Architects

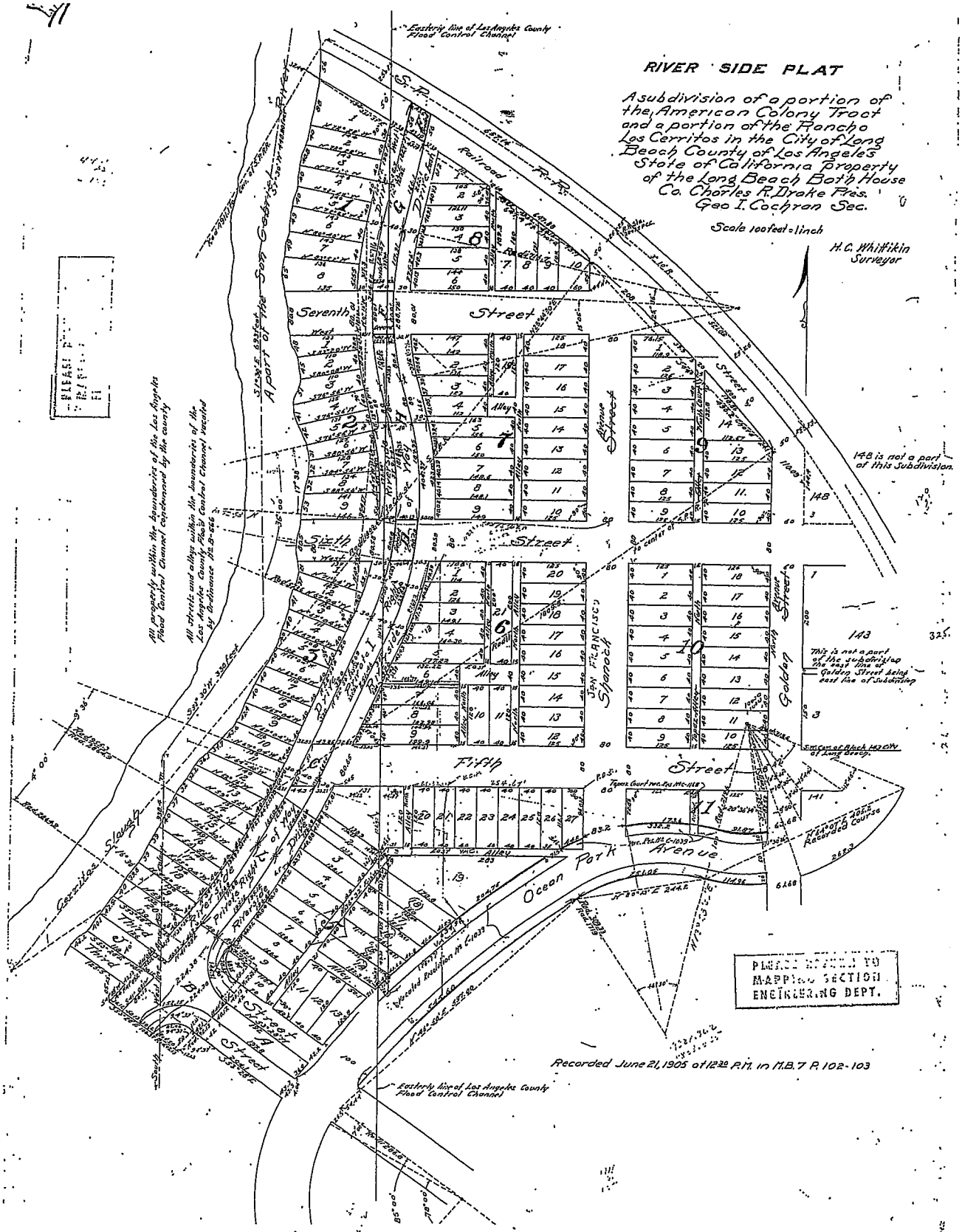


EXHIBIT C

DATE: 08/09/01

River Side Plat
Recorded June 21, 1905
Book 7 MB Page 102
Long Beach, Los Angeles County

CALIFORNIA STATE LANDS COMMISSION

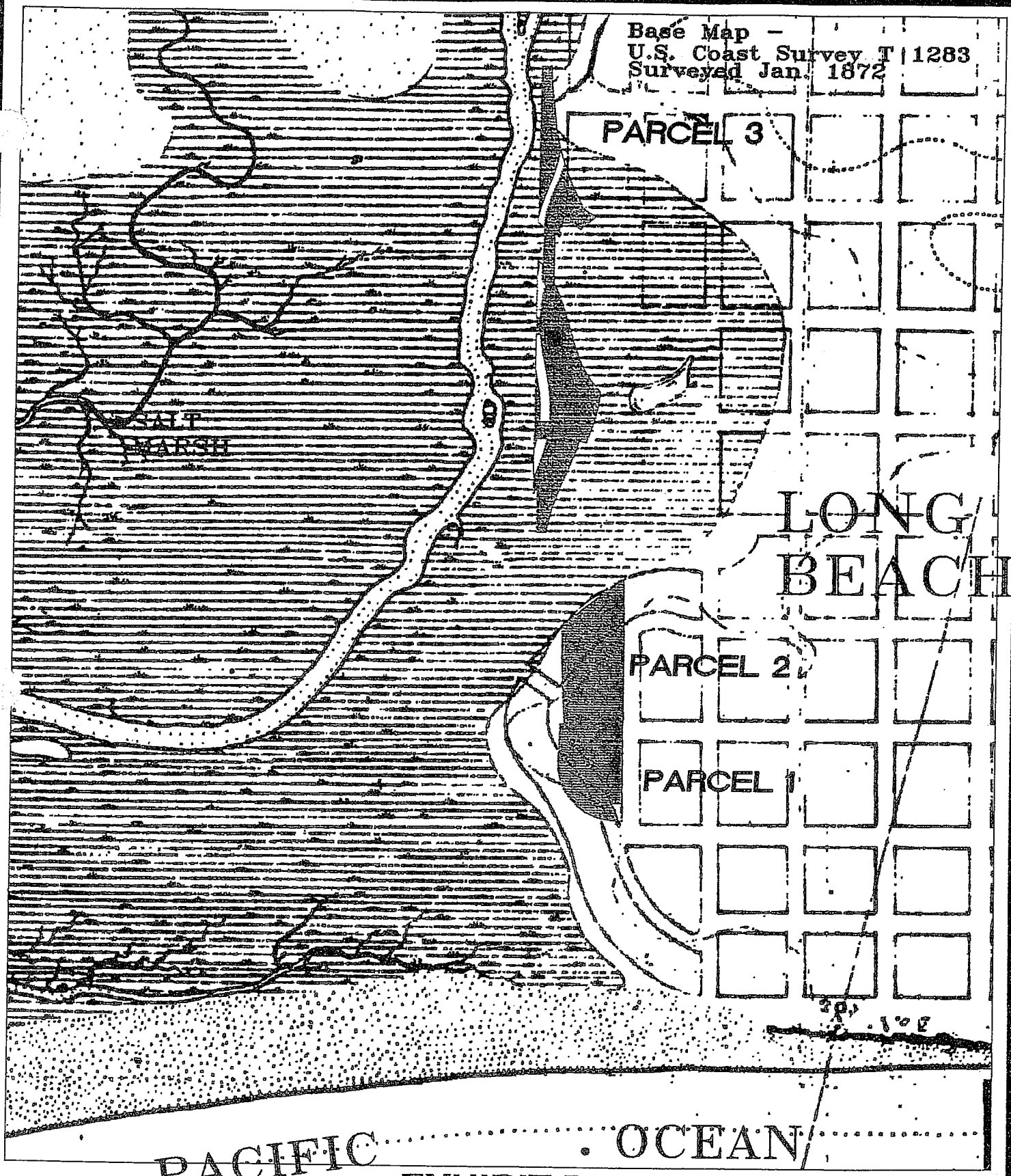


EXHIBIT D

DATE: 08/15/01

City of Long Beach
&
State of California
Exchange Parcels 1,2 & 3
Long Beach, Los Angeles County

CALIFORNIA STATE
LANDS COMMISSION