

MINUTE ITEM
This Calendar Item No. 45
was approved as Minute Item
No. 45 by the State Lands
Commission by a vote of 3
to 0 of its 12-12-90
meeting.

CALENDAR ITEM

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TITLE SETTLEMENT AND EXCHANGE AGREEMENT REGARDING LANDS IN AND ALONG MOSHER SLOUGH AND BEAR CREEK, CITY OF STOCKTON, SAN JOAQUIN COUNTY

PARTY: BASELL LAND COMPANY, A California Limited
Partnership
87 W. March Lane
Stockton, California 95207

BACKGROUND

This calendar item recommends settlement, among the above-named parties, of title claims of the State regarding the existence of historical tide and submerged lands within the subject property. The subject property (as shown on Exhibits "A" and "B" and described on Exhibit "C") is located in the northwesterly area of the City of Stockton, in Section 12, Township 2 North, Range 5 East, Mount Diablo Base & Meridian and lies generally south of Bear Creek, northeasterly of Mosher Slough and westerly of Interstate Highway 5. The area was historically referred to as Heartland or Atlas Tract and was within Reclamation District 61 and later 2126. The proposed development of the area, commonly referred to as Harbor Cove, involves approximately 359.52 acres of farm land which is ultimately planned to include a 640 residential unit development and marina, preservation of wetlands on site and creation of additional wetlands and riparian habitat off site.

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The proposed settlement provides that the waterways and wetlands lying within the existing beds of Mosher Slough and Bear Creek, below mean high water (3.4 feet N.G.V.D.) as depicted on city of Stockton tentative map TM 19-90, together with the riparian habitat area lying north of Bear Creek (collectively depicted on Exhibit "B" as Waterways/Wetlands Parcel) will be protected by the Public Trust Easement which is to be conveyed and confirmed by Basell Land Company to the State of California acting by and through the State Lands Commission. This includes not only the existing waterways in Bear Creek and Mosher Slough, but a riparian wetlands strip north of Bear Creek west of I-5, which will come to the State. This will be an addition to the lands acquired under the recent settlement with A. G. Spanos Construction Co. to be preserved and enhanced as wetlands.

Basell Land Company's obligations, including any wetlands mitigation or any other conditions of their Corps permit (PN CE SAC 90 - 5011) or any subsequent permit and any flood control responsibilities, are not affected by the proposed settlement agreement.

Portions of the Harbor Cove area were the subject of swamp and overflowed land surveys and were subsequently patented by the State as described below.

S&O Survey 455 (San Joaquin), involving 80 acres in the E/2 of the NW/4 of Section 12, T2N, R5E, MDM, was applied for by E. R. Daggett pursuant to Chapter 235, Statutes of 1858, and the application was approved June 8, 1858 and paid for by virtue of Reclamation District 61. An S&O patent was issued on April 7, 1874 to Edward J. McDade.

S&O Survey 456 (San Joaquin), involving 80 acres in the E/2 of the SE/4 of Section 12, T2N, R5E, MDM, was applied for by G. Mitchell pursuant to Chapter 235, Statutes of 1858, and the application was approved June 29, 1858 and paid for by virtue of Reclamation District 61. An S&O patent was issued on October 4, 1870 to William McK. Carson.

S&O Survey 472 (San Joaquin), involving 80 acres in the SW/4 of the NE/4 and the NW/4 of the SE/4 of Section 12, T2N, R5E, MDM, was applied for by Consider Mitchell pursuant to Chapter 235,

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Statutes of 1858 and paid for by virtue of Reclamation District 61. An S&O patent was issued on October 4, 1870 to William McK. Carson.

S&O Survey 473 (San Joaquin), involving 80 acres in the NW/4 of the NE/4 and the NE/4 of the NW/4 of Section 12, T2N, R5E, MDM, was applied for by E. R. Daggett pursuant to Chapter 235, Statutes of 1858 and paid for by virtue of Reclamation District 61. An S&O patent was issued on April 7, 1874 to Edward J. McDade.

S&O Survey 929 (San Joaquin), involving 78.80 acres in the SE/4 of the NW/4 and the fractional W/2 of the NW/4 of Section 12, T2N, R5E, MDM, was applied for by E. R. Daggett pursuant to Chapter 397, Statutes of 1863 and paid for by virtue of Reclamation District 61. An S&O patent was issued on April 7, 1874 to Edw. J. McDade.

The area encompassed by these patents was included within the "Plat showing the subdivision of Two Bodies of Land 'NOTORIOUSLY SWAMP & OVERFLOWED (sic)' East of the Mount Diablo Meridian in Township 1, 2, 3, 4, & 5 North and Township 1 South of Mount Diablo Base Line." This 1872 plat was a perimeter segregation survey of federal public lands and private grants (ranches) from the federally granted swamp and overflowed lands of the Sacramento/San Joaquin Delta. The plat made no attempt to segregate by survey the sovereign tidally navigable waterways from the swamp and overflowed lands.

Neither the S&O county surveys nor the US segregation plat indicated the existence of any waterways within the subject area. However, certain subsequent maps indicate the existence of waterways within the subject property. The present physical condition of the Harbor Cove property indicates that most of the lands are under agricultural use and range from an elevation of just below sea level to just above ten feet.

The State contends that portions of the subject property were, at the time of the admission of the State of California into the Union, and in its natural condition thereafter, traversed by tidal sloughs in the vicinity of today's Mosher Slough and Bear Creek. The State further contends that, as lands of the factual and/or legal character of tidelands and submerged lands, portions

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of the subject property are subject to a public trust ownership, consisting of a fee or an easement, or both, for water-related commerce, navigation, fisheries, recreation, and other public trust purposes. The State further contends that portions of the subject property, due to previous reclamation and flood control activities, are navigable or subject to tidal action and have taken on the characteristics of navigable waters and have been used by fish and waterfowl and as waterways for navigation and fishery by the public for a period in excess of the five-year period for vesting of prescriptive rights (State of California v. Superior Court of Placer County (Fogerty), 29 Cal. 3d 240 (1981)).

Portions of the subject property consist of lands, which in the past were covered by tidal waters tributary to Disappointment Slough, which have been filled or reclaimed as part of a program of flood control and reclamation. Said reclaimed lands are a relatively small portion of the public trust lands and waters remaining in the area. This small area (less than one acre) is no longer subject to tidal action or useable for public purposes of commerce, navigation or fishing or other trust needs. Other portions of the subject property are to be filled and reclaimed as part of a program of flood control. Still other portions of the subject property are to be part of a wetlands preservation, creation, and mitigation project to create improved wetland habitat, which are conditions of US Army Corps Permit No. 9995 (Spanos Park), dated November 20, 1989 as well as conditions of tentative map TM-19-90 approved by the City of Stockton.

The State has independently evaluated its claims of sovereign interest in the subject property both to economic value of such claims and value to the public's trust needs in the area claimed to be owned by the State. The historical location of the State's public trust interest claim is no longer practical for public trust needs and constitutes a relatively small portion of the historic natural bed of Disappointment Slough and its tributaries. In compromise and settlement of their respective claims and in recognition of the present condition of and plans for the subject property, the State and Basell Land Company have agreed to relocate the State's trust interest to a location which is compatible with the condition of the property and enhances the environmental values of the trust property. By locating the State's trust interest in and adjacent to the present bed of Bear

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Creek and in Mosher Slough this exchange will assure appropriate public access and add to and confirm the program being carried out by State and federal agencies to maintain and improve the lands as ecologically valuable wetlands. The State has determined that the value of the economic and public trust interest it is receiving in the "Waterways/Wetlands Parcel" as depicted on Exhibit "B" and in a 60-acre area within the "Empire Tract Parcel", as shown on Exhibit "D" or the payment into the Kapiloff Land Bank Fund of \$27,000 is equal to or greater than the value of the State's interest being given up in the "Upland Parcel" in which the State is to terminate its claimed sovereign public trust interest, as depicted on Exhibit "B".

There is a bona fide dispute between the State and Basell Land Company as to the existence, extent, nature and location of their respective rights, titles, and interests in the subject property. 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 settlement. The parties hereto consider it expedient and necessary and in the best interests of the State, the public, and Basell Land Company to resolve this title dispute by compromise settlement, thereby avoiding the anticipated substantial costs, time requirements, and uncertainties of litigation. In the interest of settlement, the State and Basell Land Company have conducted independent studies and evaluations of the title evidence, the principles of law and the merits of the State's and Basell Land Company's legal positions.

AGREEMENT

The representatives of the parties after many months of discussions have reached an agreement to settle the title issues involving State claims within the subject property. The State is authorized by Division 6 of the P.R.C., including Section 6307, to enter into exchanges of interest in real property held by the State by reason of its sovereignty. The elements of the proposed agreement may be summarized as follows:

- (1) Basell Land Company will quitclaim to the STATE an Easement for Public Trust purposes in that portion of the Subject Property designated as the "Waterways/Wetlands Parcel" as shown on Exhibit "B".

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- (2) The STATE will quitclaim to Basell Land Company all right, title and interest of the STATE in the Subject Property, excluding the interests described in Subparagraph 1, above.
- (3) The quitclaim described in Subparagraph 2, above, is intended to terminate any STATE sovereign interest, including, the public trust for commerce, navigation, and fisheries, in that portion of the Subject Property designated as the "Upland Parcel" as shown on Exhibit "B".
- (4) This Agreement shall in no way operate to relieve Harbor Cove of its obligations under any United States Army Corps of Engineers Permit or other condition imposed by a federal State, or local regulatory agency.

AB 884: N/A.

OTHER PERTINENT INFORMATION:

This title settlement agreement proposal has been reviewed and approved by the Commission staff as to compliance with applicable laws, rules, and regulations of the State Lands Commission.

The Commission approved the boundaries and consented to the annexation of its interests within the subject property to the city of Stockton by Minute Item 34 at the Commission's March 23, 1989 meeting.

An EIR (State Clearinghouse #87072124) involving the Harbor Cove Development was certified by the city of Stockton and tentative map [TM 19-89] approved with related CEQA findings by the city on July 13, 1989.

California Department of Fish and Game has issued streambed alteration agreement, notification # II 282-90.

The proposed title settlement agreement is exempt from the provisions of the Subdivision Map Act (Gov. Code § 66412(e) and the California Environmental Quality Act (P.R.C. § 21080.11).

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EXHIBIT:

- A. Location Map
- B. Site Map
- C. Subject Property Land Description
- D. Empire Tract Parcel

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 UNDER THE STATUTORY EXEMPTION FOR SETTLEMENT OF TITLE AND BOUNDARY PROBLEMS, PURSUANT TO P.R.C. 21080.11.
2. FIND THAT WITH RESPECT TO THE PROPOSED TITLE SETTLEMENT AGREEMENT, INCLUDING THE EXCHANGE (PURSUANT TO P.R.C. 6307) OF THE STATE'S SOVEREIGN AND PUBLIC TRUST INTERESTS WITHIN THE HARBOR COVE DEVELOPMENT SHOWN ON EXHIBIT "B" AS THE "UPLANDS PARCEL" FOR THOSE INTERESTS IN LANDS TO BE CONVEYED TO THE STATE AS DESIGNATED AS "WATERWAYS/WETLANDS PARCEL" ON EXHIBIT "B" AND EITHER CONVEYANCE OF THE LAND DEPICTED ON EXHIBIT "D" OR PAYMENT OF \$27,000 INTO THE KAPILOFF LAND BANK FUND:
 - A. THE AGREEMENT IS IN THE BEST INTERESTS OF THE STATE FOR THE BENEFIT OF PUBLIC TRUST USES AND PURPOSES WHICH INCLUDE NAVIGATION, FLOOD CONTROL PROTECTION, AND THE IMPROVEMENT AND PROTECTION OF THE ENVIRONMENT FOR FISHERIES, RECREATION, SCIENTIFIC STUDY, OPEN SPACE, AND ECOLOGICAL PRESERVATION OF THE TIDELANDS AND SUBMERGED LANDS AND PUBLIC ACCESS THERETO, PURSUANT TO THE PUBLIC TRUST.
 - B. THAT THE INTERESTS IN LAND OR LAND AND MONEY RECEIVED BY THE STATE ARE OF A VALUE EQUAL TO OR GREATER THAN THE VALUE OF THE PROPERTY INTERESTS TO BE RELINQUISHED BY THE STATE.
 - C. THAT UPON FULFILLMENT OF THIS AGREEMENT THE LANDS DESCRIBED IN EXHIBIT D SHALL HAVE BEEN FILLED OR RECLAIMED, AND ARE NO LONGER AVAILABLE OR USEFUL OR SUSCEPTIBLE OF BEING USED FOR NAVIGATION OR FISHERIES AND ARE NO LONGER IN FACT TIDELANDS OR SUBMERGED LANDS.

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- D. THAT UPON THE EFFECTIVE DATE OF THIS AGREEMENT AND CONSISTENT WITH ITS TERMS, THE STATE LANDS COMMISSION FINDS THE PROPERTY TO BE CONVEYED BY THE STATE WILL NO LONGER BE NECESSARY OR USEFUL FOR PURPOSES OF THE PUBLIC TRUST AND, THEREFORE, IN FURTHERANCE OF A REASONABLE SETTLEMENT OF A DISPUTED SOVEREIGN RIGHTS CLAIM, THE PUBLIC TRUST RIGHTS AND INTERESTS MAY BE TERMINATED.
3. APPROVE AND AUTHORIZE THE EXECUTION, ACKNOWLEDGEMENT, AND RECORDATION OF THE SETTLEMENT AGREEMENT AS DESCRIBED HEREIN, SUBSTANTIALLY IN THE FORM AS PROVIDED IN THE "HARBOR COVE TITLE SETTLEMENT AND EXCHANGE AGREEMENT" A COPY OF WHICH IS ON FILE IN THE SACRAMENTO OFFICE OF THE COMMISSION.
4. AUTHORIZE THE STAFF OF THE COMMISSION AND THE OFFICE OF THE ATTORNEY GENERAL TO TAKE ANY AND ALL FURTHER STEPS NECESSARY TO IMPLEMENT THE FOREGOING TRANSACTION, INCLUDING, BUT NOT LIMITED TO THE EXECUTION OF DOCUMENTS AND APPEARANCE IN ANY LEGAL PROCEEDINGS CONCERNING THE SETTLEMENT.

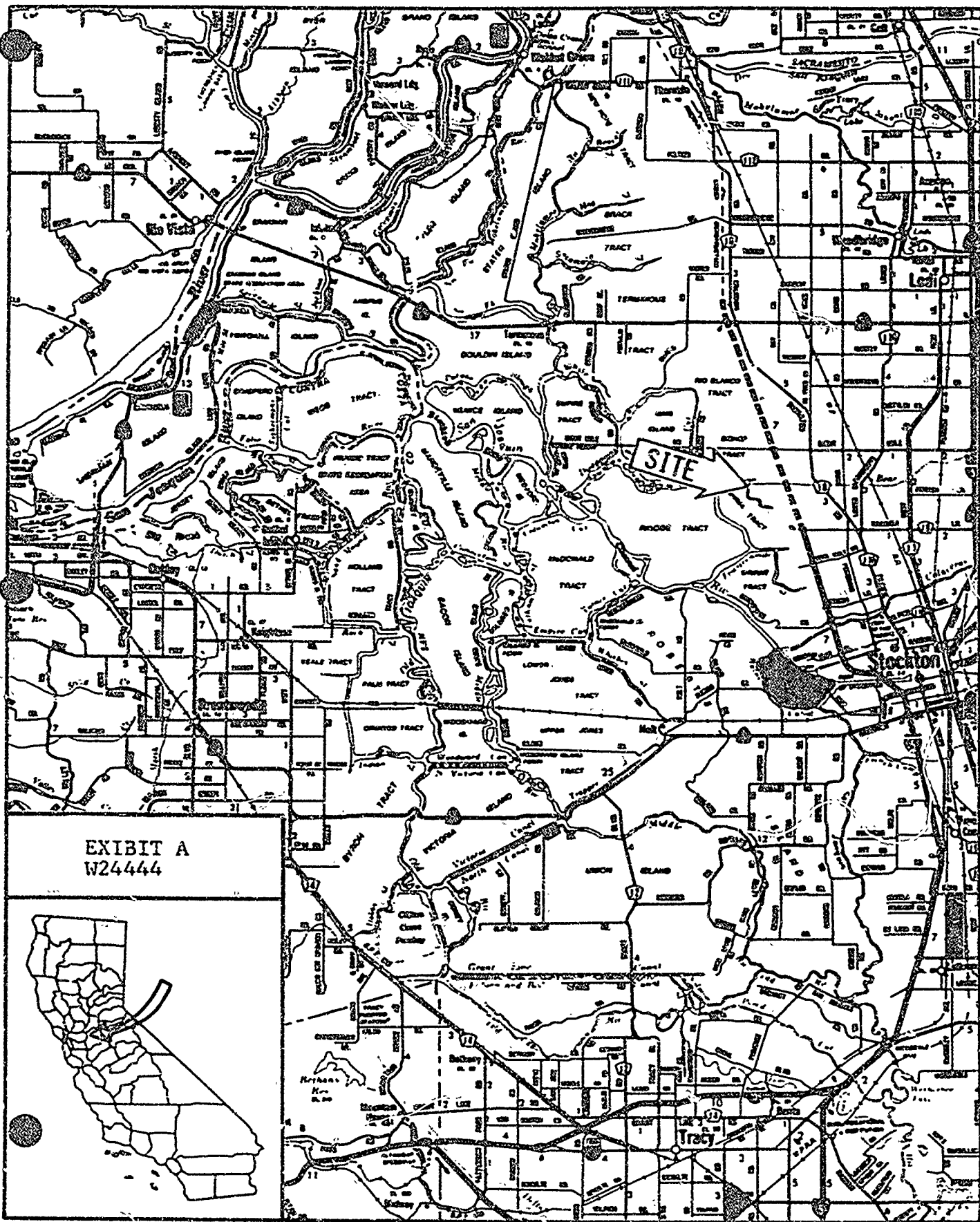
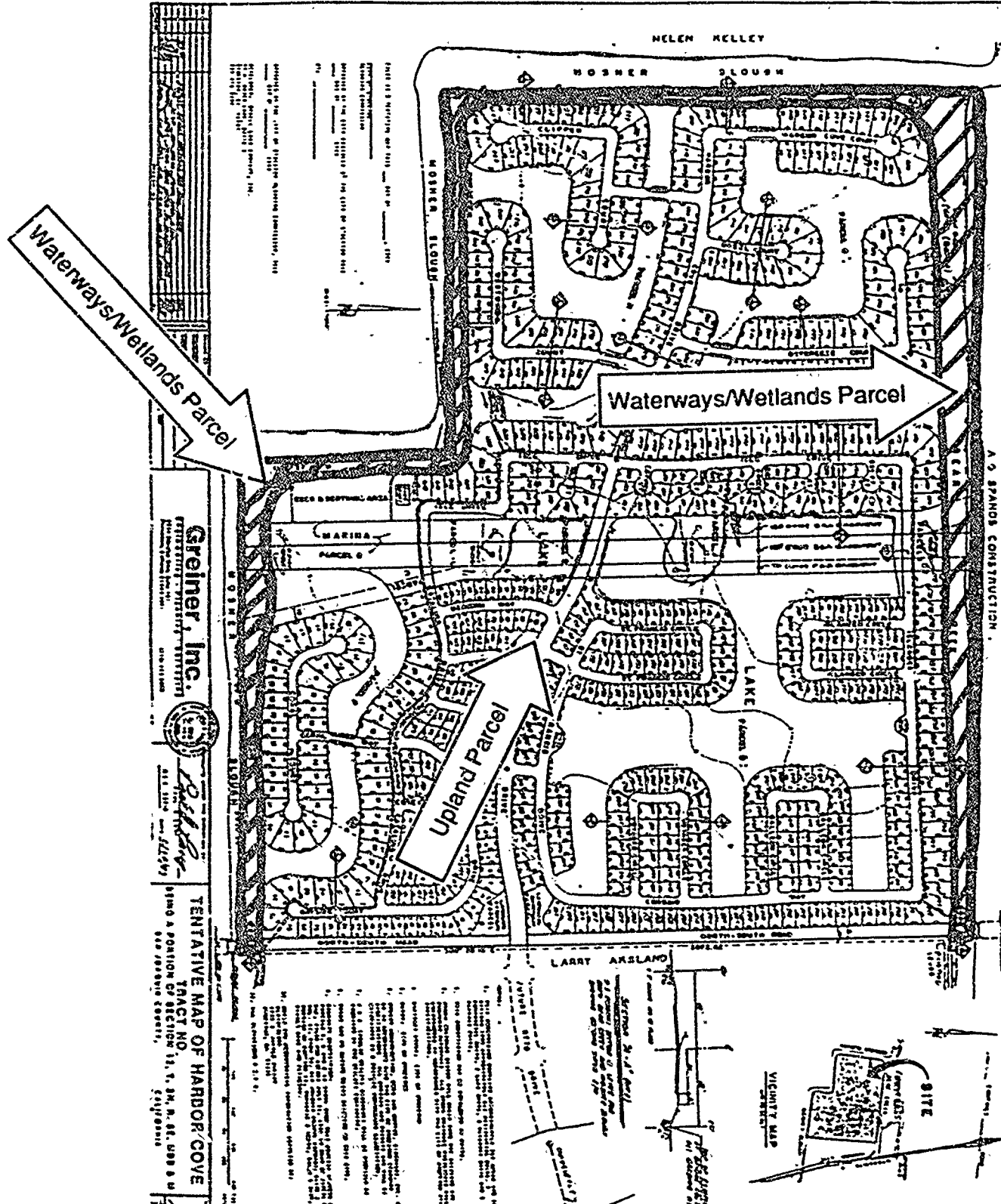


EXHIBIT A
W24444



EXHIBIT B
W24444



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EXHIBIT "C"
SUBJECT PROPERTY

W24444

D E S C R I P T I O N

THAT CERTAIN REAL PROPERTY SITUATED IN THE STATE OF CALIFORNIA,
COUNTY OF SAN JOAQUIN, DESCRIBED AS FOLLOWS:

PARCELS A, B AND C AS SHOWN UPON THAT CERTAIN AMENDED PARCEL
MAP, FILED FOR RECORD JULY 21, 1986 IN BOOK OF PARCEL MAPS,
VOL. 14, PAGE 94, SAN JOAQUIN COUNTY RECORDS; BEING A PORTION
OF SECTION 12, TOWNSHIP 2 NORTH, RANGE 5 EAST, MOUNT DIABLO
BASE AND MERIDIAN.

EXCEPT THEREFROM ALL OIL, GAS, MINERALS AND OTHER HYDROCARBON
SUBSTANCES LYING BELOW A DEPTH OF 500 FEET BENEATH THE SURFACE
OF SAID LAND, WITHOUT THE RIGHT OF SURFACE ENTRY.

CALENDAR PAGE	22310
MINUTE PAGE	3621

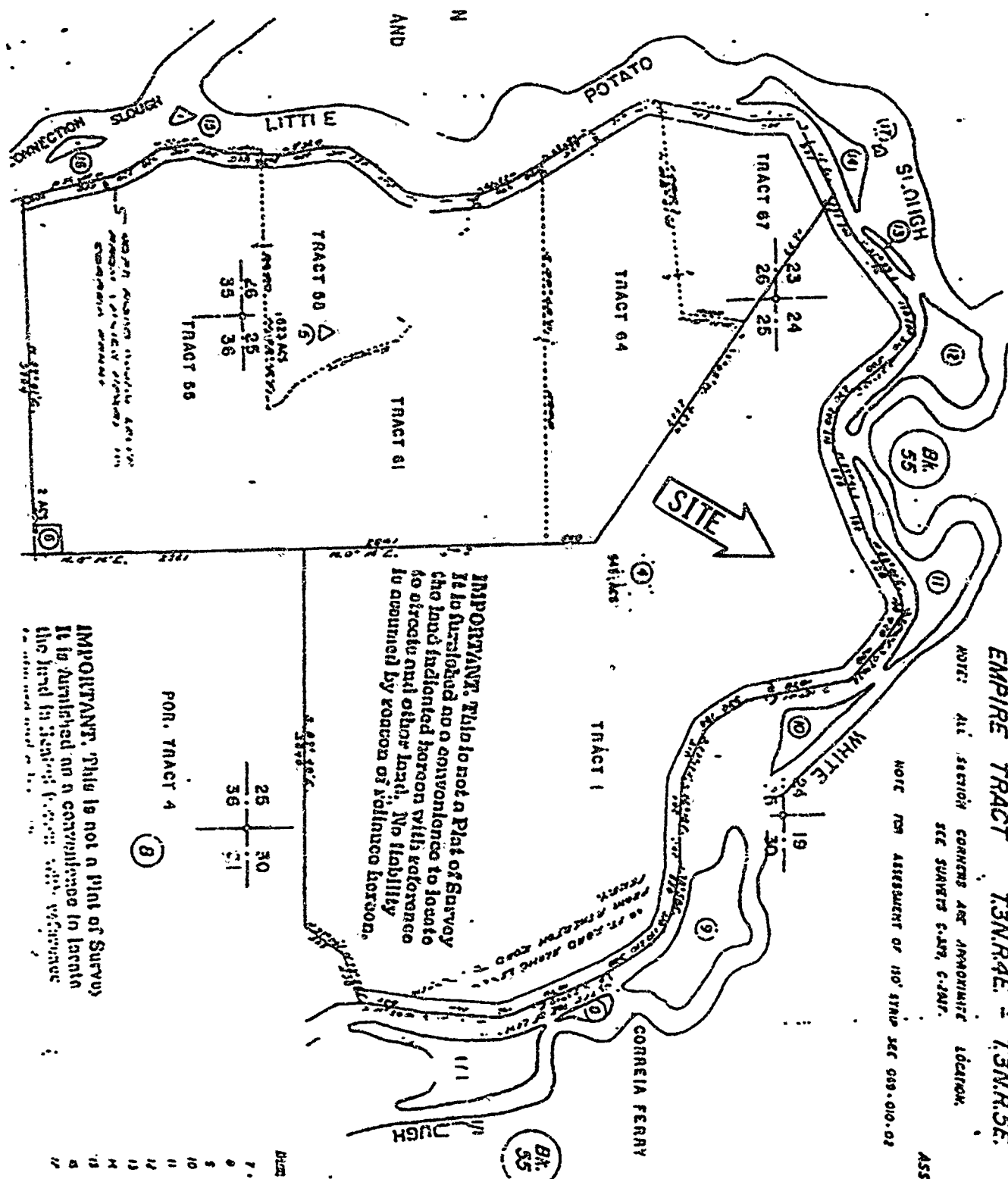


EXHIBIT "D"
EMPIRE TRACT PARCEL

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