

CALENDAR ITEM
C11

MINUTE ITEM
This Calendar Item No. C11
was approved as Minute Item
No. 11 by the State Lands
Commission by a vote of 3
to 0 at its 2-5-01
meeting.

A 8

02/05/01

W 25707

S 4

PRC 8229.1

L. Burks

**CONSIDER TERMINATION OF GENERAL LEASE - COMMERCIAL
USE NOS. PRC 7784.1 AND PRC 4306.1; CONSIDER APPLICATION
FOR A NEW GENERAL LEASE - COMMERCIAL USE;
AND CONSIDER ASSIGNMENT OF NEW LEASE**

**1) TERMINATION OF GENERAL LEASE - COMMERCIAL USE NOS. PRC 7784.1
AND PRC 4306.1:**

(LESSEE - PRC 7784.1)

Willow Berm Phase II Ltd., a California
Limited Partnership

834 Francisco Boulevard West
San Rafael, California 94901

(LESSEE - PRC 4306.1)

Willow Berm Ltd., a California Limited
Partnership

834 Francisco Boulevard West
San Rafael, California 94901

LEASE NO. PRC 7784.1 (Parcel 1)

AREA, LAND TYPE, AND LOCATION:

11.65 acres, more or less, of sovereign lands in the Mokelumne River, adjacent
to Andrus Island, Sacramento County.

AUTHORIZED USE:

Continued use and maintenance of an existing commercial marina and ancillary
facilities.

LEASE TERM:

25 years, beginning November 1, 1994.

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CALENDAR ITEM NO. C11 (CONT'D)

CONSIDERATION:

\$19,759 Minimum Annual Rent against a percentage of gross income derived from berthing plus one and one-half cents per gallon of fuel sales up to 100,000 gallons, and two cents per gallon of fuel sales over 100,000 gallons, and ten percent (10%) of all other income.

SPECIFIC LEASE PROVISIONS:

Liability insurance with a combined single limit of \$1,000,000.

Bond:

\$20,000.

LEASE NO. PRC 4306.1 (Parcel 2)

AREA, LAND TYPE, AND LOCATION:

9.32 acres, more or less, of sovereign lands in the Mokelumne River, adjacent to Andrus Island, Sacramento County.

AUTHORIZED USE:

Continued use and maintenance of existing floating docks, covered berths, walkways, fuel pumps, breakwater and appurtenant facilities.

LEASE TERM:

25 years, beginning January 1, 1978, with two successive periods of ten (10) years each.

CONSIDERATION:

\$5,000 Minimum Annual Rent against a percentage of gross income derived from berthing plus one cent per gallon of fuel sales up to 100,000 gallons, and one and one-half cents per gallon of fuel sales over 100,000 gallons. Seventy-six percent (76%) of the gross income derived from the rental of all berths shall be subject to the five percent (5%) rental set forth above.

SPECIFIC LEASE PROVISIONS:

Liability insurance with a combined single limit of \$1,000,000.

Bond:

\$5,000.

ISSUANCE OF A NEW

**GENERAL LEASE - COMMERCIAL USE NO. PRC 8229.1 (Parcels 1 and 2)
(LESSEE)**

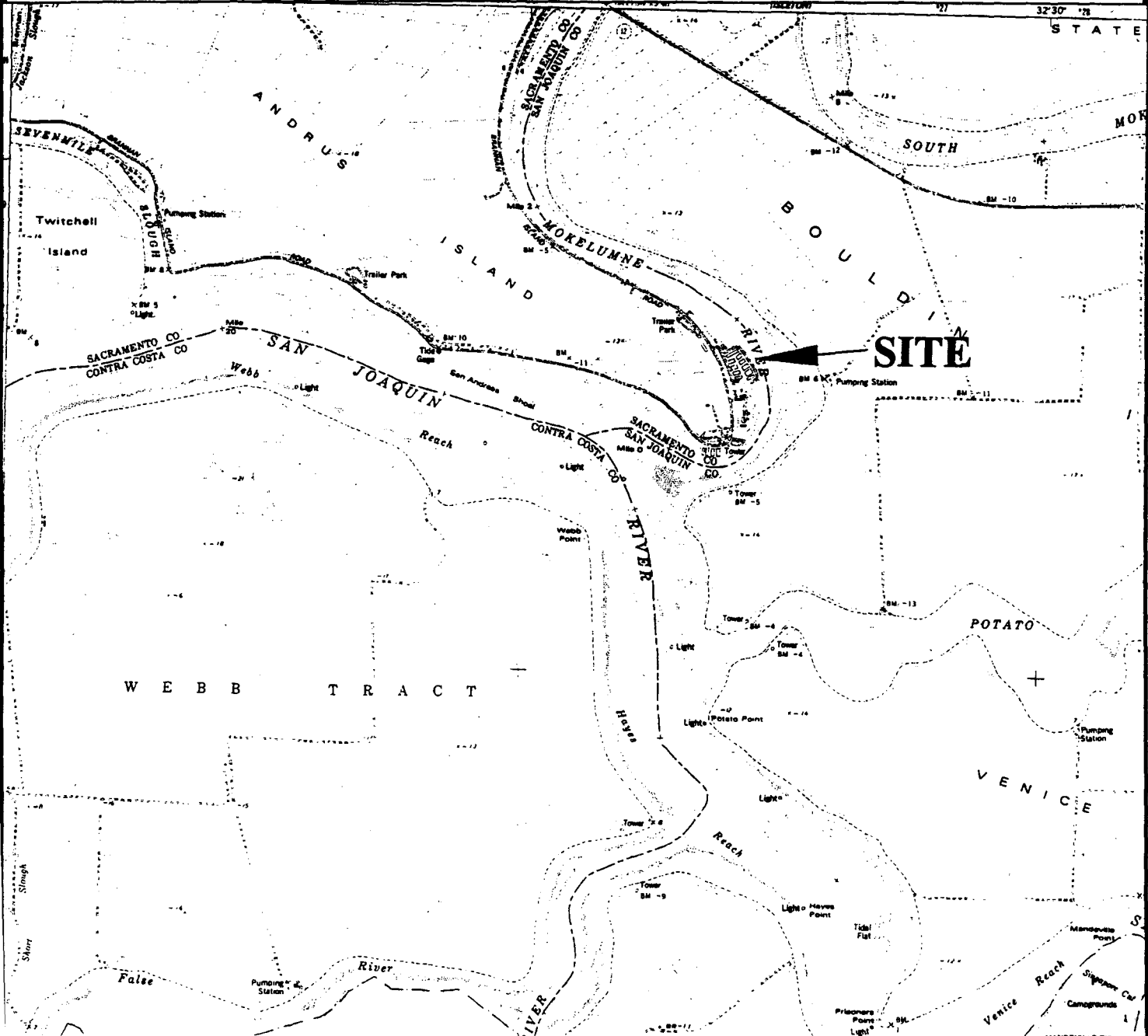
Willow Berm Ltd., a California Limited
Partnership

834 Francisco Boulevard West
San Rafael, California 94901

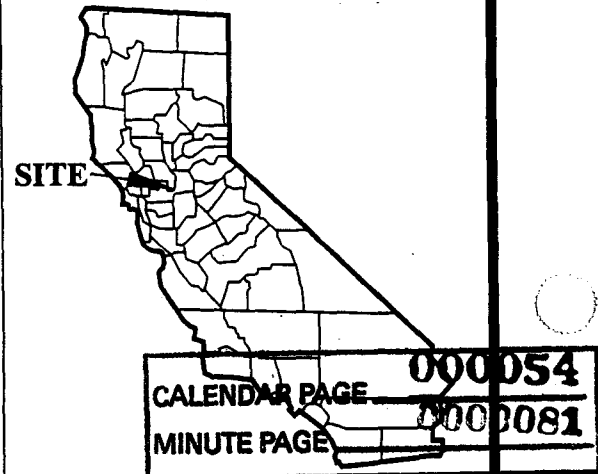
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EXHIBIT C LOCATION MAP

NO SCALE



PRC 8229.1
Willow Berm Ltd.
Mokelumne River
Andrus Island
SACRAMENTO COUNTY



This Exhibit is solely for purposes of generally defining the lease premises, 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.

CALENDAR ITEM NO. C11 (CONT'D)

AREA, LAND TYPE, AND LOCATION:

Two parcels comprising 20.97 acres, more or less, of sovereign lands in the Mokelumne River, adjacent to Andrus Island, Sacramento County.

AUTHORIZED USE:

Continued use and maintenance of 265 covered berths, including 5 metal berths measuring 36 feet in length, 108 wooden berths measuring 36 feet in length, 11 wooden berths measuring 40 feet in length, 12 wooden berths measuring 46 feet in length, 69 metal berths measuring 50 feet in length, 44 wooden berths measuring 50 feet in length, 12 metal berths measuring 60 feet in length, and 4 metal berths measuring 80 feet in length; 12 uncovered berths, including 10 metal berths measuring 50 feet in length and 2 metal berths measuring 60 feet in length, each berth containing a sewage pump-out valve; an "L" shape floating concrete breakwater measuring 12 feet wide by 796 feet long and 12 feet by 405 feet long containing: 1) a fuel dock with five double-pump dispensers, 2) "5 mile per hour" speed signs, 3) "No Wake" signs, and 4) two sewage pump-out stations; retention of 5,000 cubic yards of materials for parking; approximately 700 cubic yards of clean quarry stone and 800 yards of clean stone fill for dike at outer bank of the berm area; filter/drain areas along the berm; and two above-ground fuel tanks located on the berm.

LEASE TERM:

30 years, effective upon close of escrow date.

CONSIDERATION:

\$50,400 Minimum Annual Rent to be paid in twelve equal monthly installments, against five percent (5%) of gross income derived from berthing plus one and one-half cents per gallon of fuel sales up to 100,000 gallons, and two cents per gallon of fuel sales over 100,000 gallons, and ten percent (10%) of all other income.

SPECIFIC LEASE PROVISIONS:

Liability insurance with a combined single limit of \$1,000,000.

Bond:

\$25,000.

2) ASSIGNMENT OF GENERAL LEASE - COMMERCIAL USE NO. PRC 8229.1 (LESSEE/ASSIGNOR)

Willow Berm Ltd., a California Limited Partnership
834 Francisco Boulevard West
San Rafael, California 94901

CALENDAR ITEM NO. C11 (CONT'D)

(ASSIGNEE)

Willow Berm Nexgen, LLC, a Limited
Liability Company
169 W. Brannan Island Road
Isleton, California 95641

AREA, LAND TYPE, AND LOCATION:

20.97 acres, more or less, of sovereign lands in the Mokelumne River, adjacent to Andrus Island, Sacramento County.

AUTHORIZED USE:

Continued use and maintenance of all authorized improvements described in General Lease - Commercial Use Lease No. PRC 8229.1.

LEASE TERM:

30 years, effective upon close of escrow date.

CONSIDERATION:

\$50,400 Minimum Annual Rent to be paid in twelve equal monthly installments, against five percent (5%) of gross income derived from berthing plus one and one-half cents per gallon of fuel sales up to 100,000 gallons, and two cents per gallon of fuel sales over 100,000 gallons, and ten percent (10%) of all other income.

SPECIFIC LEASE PROVISIONS:

Liability insurance with a combined single limit of \$1,000,000.

Bond:

\$25,000.

OTHER PERTINENT INFORMATION:

1. Applicant owns the uplands adjoining the lease premises.
2. In August, 1969, the Commission authorized issuance to Willow Berm (a California Corporation) of an 11 year General Lease - Commercial Use Lease No. PRC 4306.1 (Parcel 2) for operation of an existing marina. On March 30, 1978, the Commission authorized issuance to Willow Berm Corporation of a 25 year General Lease - Commercial Use Lease No. PRC 4306.1 (Parcel 2) with two successive periods of ten years each for continued use of an existing commercial marina. On November 11, 1986, the Commission authorized assignment of the Lease from Willow Berm Corporation to Horst Hanf.
3. On November 15, 1994, the Commission authorized issuance to Willow Berm Phase II Ltd., a California Limited Partnership of a 25 year General

CALENDAR ITEM NO. C11 (CONT'D)

Lease - Commercial Use Lease No. PRC 7784.1 (Parcel 1) for operation of a commercial marina, and Lease No. PRC 4306.1 was amended to delete from the lease description that portion of the lease premises which encroached onto the subject new lease premises and to assign the lease to Willow Berm Ltd., a California Limited Partnership.

4. Willow Berm Ltd. is selling both marinas and has asked that both Leases No. PRC 4306.1 and PRC 7784.1 be consolidated and that a single new lease be issued to it for a 30 year term so that it can be assigned. Staff is recommending that the Commission authorize issuance to Willow Berm Ltd. of a new 30 year General Lease - Commercial Use Lease No. PRC 8229.1
5. Willow Berm Ltd. has agreed to pay, at the close of escrow, all outstanding back rents, including interest, in the amount of \$173,780.66. In addition, it has agreed to pay, at the close of escrow, those fees required in the processing of its application. At the close of escrow, any additional percentages of gross income owing on Lease Nos. PRC 4306.1 and PRC 7784.1 will be due and payable.
6. The termination of Lease Nos. PRC 4306.1 and PRC 7784.1, the issuance of the new General Lease - Commercial Use No. PRC 8229.1 and the assignment from Willow Berm Ltd. to Willow Berm Nexgen, LLC are all contingent upon the sale between Willow Berm Ltd. and Willow Berm Nexgen, LLC, and upon escrow closing within 120 days of Commission approval. All the terms and conditions of the old leases will stay in effect until the close of escrow.
7. Termination and Assignment:
Pursuant to the Commission's delegation of authority and the State CEQA Guidelines (Title 14, California Code of Regulations, section 15061), the staff has determined that this activity is exempt from the requirements of the CEQA because the activity 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, section 15378.
8. Issuance of New Lease:
Pursuant to the Commission's delegation of authority and the State CEQA Guidelines (Title 14, California Code of Regulations, section 15061), the staff has determined that this activity is exempt from the requirements of the CEQA as a categorically exempt project. The project is exempt under

CALENDAR ITEM NO. C11 (CONT'D)

Class 1, Existing Facilities; Title 2, California Code of Regulations, section 2905 (a)(2).

Authority: Public Resources Code section 21084 and Title 14, California Code of Regulations, section 15300 and Title 2, California Code of Regulations, section 2905.

9. This activity involves lands identified as possessing significant environmental values pursuant to Public Resources Code sections 6370, et seq. Based upon the staff's consultation with the persons nominating such lands and through the CEQA review process, it is the staff's opinion that the project, as proposed, is consistent with its use classification.

EXHIBITS:

- A. Land Description
- B. Site Plan
- C. Location Map

PERMIT STREAMLINING ACT DEADLINE:

N/A

RECOMMENDED ACTION:

IT IS RECOMMENDED THAT THE COMMISSION:

CEQA FINDING:

TERMINATION AND ASSIGNMENT:

FIND THAT THE ACTIVITY IS EXEMPT FROM THE REQUIREMENTS OF THE CEQA PURSUANT TO TITLE 14, CALIFORNIA CODE OF REGULATIONS, SECTION 15061 BECAUSE THE ACTIVITY IS NOT A PROJECT AS DEFINED BY PUBLIC RESOURCES CODE SECTION 21065 AND TITLE 14, CALIFORNIA CODE OF REGULATIONS, SECTION 15378.

ISSUANCE OF NEW LEASE:

FIND THAT THE ACTIVITY IS EXEMPT FROM THE REQUIREMENTS OF THE CEQA PURSUANT TO TITLE 14, CALIFORNIA CODE OF REGULATIONS, SECTION 15061 AS A CATEGORICALLY EXEMPT PROJECT, CLASS 1, EXISTING FACILITIES; TITLE 2, CALIFORNIA CODE OF REGULATIONS, SECTION 2905 (a)(2).

CALENDAR ITEM NO. C11 (CONT'D)

SIGNIFICANT LANDS INVENTORY FINDING:

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

AUTHORIZATION:

1. AUTHORIZE TERMINATION OF GENERAL LEASE - COMMERCIAL USE NOS. PRC 7784.1 AND PRC 4306.1 AND ACCEPT QUITCLAIM AND EXECUTION OF ALL DOCUMENTS NECESSARY TO EFFECT THE TERMINATION.
2. AUTHORIZE ISSUANCE TO WILLOW BERM LTD., A CALIFORNIA LIMITED PARTNERSHIP, OF A NEW GENERAL LEASE - COMMERCIAL USE, EFFECTIVE UPON CLOSE OF ESCROW DATE, FOR A TERM OF 30 YEARS, FOR CONTINUED USE AND MAINTENANCE OF AN EXISTING COMMERCIAL MARINA AND ANCILLARY FACILITIES ON THE LAND SHOWN ON EXHIBIT A ATTACHED AND BY THIS REFERENCE MADE A PART HEREOF; IN CONSIDERATION OF A MINIMUM ANNUAL RENT OF \$50,400 TO BE PAID IN TWELVE EQUAL MONTHLY INSTALLMENTS, AGAINST FIVE PERCENT (5%) OF GROSS INCOME DERIVED FROM BERTHING PLUS ONE AND ONE-HALF CENTS PER GALLON OF FUEL SALES UP TO 100,000 GALLONS AND TWO CENTS PER GALLON OF FUEL SALES OVER 100,000, AND TEN PERCENT (10%) OF GROSS INCOME DERIVED FROM ALL OTHER INCOME; LIABILITY INSURANCE FOR COMBINED SINGLE LIMITED COVERAGE OF \$1,000,000; SURETY BOND IN THE AMOUNT OF \$25,000.
3. AUTHORIZE THE ASSIGNMENT OF LEASE NO. PRC 8229.1, A GENERAL LEASE - COMMERCIAL USE, OF SOVEREIGN LANDS DESCRIBED ON EXHIBIT A ATTACHED AND BY THIS REFERENCE MADE A PART HEREOF, FROM WILLOW BERM LTD., A CALIFORNIA LIMITED PARTNERSHIP, TO WILLOW BERM NEXGEN, LLC, A LIMITED LIABILITY COMPANY, EFFECTIVE UPON THE CLOSE OF ESCROW DATE.
4. PROVIDE THAT THE AUTHORIZATION CONTAINED IN PARAGRAPHS 1, 2, AND 3 ABOVE SHALL BE CONTINGENT UPON AND SUBJECT TO THE CONDITION PRECEDENT THAT THE SALE BETWEEN WILLOW BERM LTD. AND WILLOW BERM

CALENDAR ITEM NO. C11 (CONT'D)

NEXGEN, LLC BE CONSUMMATED AND THAT ESCROW
CLOSE WITHIN 120 DAYS FOLLOWING COMMISSION
APPROVAL.

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EXHIBIT "A"

Oct. 20, 1994

PRC 8229.1

LEASE PARCEL ONE

A parcel of land located in the County of Sacramento, State of California, lying approximately three-quarters of a mile upstream from the confluence of the Mokelumne and San Joaquin Rivers, more particularly described as follows:

Commencing at a point on the boundary of that tract of land described in Amended Judgement No. 81526, recorded in Book 2279 at Page 98, Sacramento County Records, which bears North 31°35' East 210.00 feet from an iron pipe marked "LS 1818" as described in said Amended Judgement; thence along the boundary of said Amended Judgement North 35°21'10" West 362.94 feet to the TRUE POINT OF BEGINNING of the herein described parcel; thence leaving the boundary of said Amended Judgement and continuing along the following fourteen (14) courses:

- (1) North 46°36'14" West 125.00 feet;
- (2) thence North 43°23'46" East 105.00 feet;
- (3) thence North 43°23'46" East 426.81 feet;
- (4) thence South 43°05'00" East 941.21 feet;
- (5) thence South 03°06'00" West 114.16 feet;
- (6) thence South 35°03'14" East 934.67 feet;
- (7) thence South 60°56'46" West 92.51 feet;
- (8) thence North 35°03'14" West 242.10 feet;
- (9) thence North 25°43'49" West 71.31 feet;
- (10) thence North 34°44'06" West 456.32 feet;
- (11) thence North 43°23'11" West 97.28 feet;
- (12) thence North 35°03'14" West 174.96 feet;
- (13) thence South 64°19'46" West 170.00 feet;
- (14) thence South 63°43'55" West 199.11 feet

to a point on the boundary of said Amended Judgement; thence along the boundary of said Amended Judgement the following five (5) courses:

- (1) North 30°00'00" West 160.00 feet;
- (2) thence North 45°00'00" West 310.00 feet;
- (3) thence North 41°00'00" West 210.00 feet;
- (4) thence North 77°00'00" West 32.54 feet;
- (5) thence South 22°26'00" East 80.04 feet

to the TRUE POINT OF BEGINNING of the herein described parcel. Containing 11.65 acres, more or less.

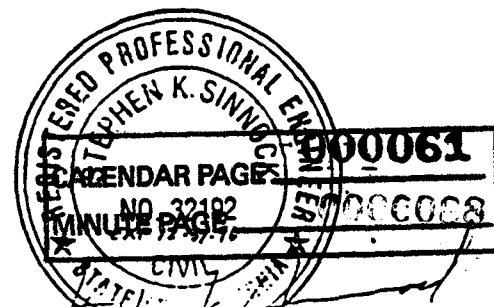


EXHIBIT "A"

Oct. 20, 1994.

PRC 8229.1

LEASE PARCEL TWO

A parcel of land located in the County of Sacramento, State of California, lying approximately three-quarters of a mile upstream from the confluence of the Mokelumne and San Joaquin Rivers, more particularly described as follows:

Commencing at a point on the boundary of that tract of land described in Amended Judgement No. 81526, recorded in Book 2279 at Page 98, Sacramento County Records, which bears North 31°35' East 210.00 feet from an iron pipe marked "LS 1818" as described in said Amended Judgement; thence along the boundary of said Amended Judgement the following six (6) courses:

- (1) North 35°21'10" West 362.94 feet;
- (2) thence North 22°26'00" West 80.04 feet;
- (3) thence South 77°00'00" East 32.54 feet;
- (4) thence South 41°00'00" East 210.00 feet;
- (5) thence South 45°00'00" East 310.00 feet;
- (6) thence South 30°00'00" East 160.00 feet

to the TRUE POINT OF BEGINNING of the herein described parcel; thence continuing along the boundary of said Amended Judgement the following five (5) courses:

- (1) South 38°00'00" East 350.00 feet;
- (2) thence South 18°00'00" East 150.00 feet;
- (3) thence South 25°00'00" East 350.00 feet;
- (4) thence South 76°00'00" East 230.00 feet;
- (5) thence South 10°30'50" East 57.91 feet;

thence leaving the boundary of said Amended Judgement and continuing along the following eight (8) courses:

- (1) North 60°56'46" East 326.72 feet;
- (2) thence North 35°03'14" West 242.10 feet;
- (3) thence North 25°43'49" West 71.31 feet;
- (4) thence North 34°44'06" West 456.32 feet;
- (5) thence North 43°23'11" West 97.28 feet;
- (6) thence North 35°03'14" West 174.96 feet;
- (7) thence South 64°19'46" West 170.00 feet;
- (8) thence South 63°43'55" West 199.11 feet

to the TRUE POINT OF BEGINNING of the herein described parcel. Containing 9.32 acres, more or less.

