

MINUTE ITEM
This Calendar Item No. C41 was approved as
Minute Item No. 41 by the California State Lands
Commission by a vote of 2 to 0 at its
10-30-07 meeting.

**CALENDAR ITEM
C41**

A 11
S 07

10/30/07
W 26247
E. Milstein
G. Kato

**CONSIDER APPROVAL AND EXECUTION OF
A COMPROMISE TITLE SETTLEMENT AGREEMENT
INVOLVING THE KAPILOFF LAND BANK ACT
CONCERNING AN APPROXIMATE 1 ACRE MORE OR LESS PARCEL OF LAND
IN THE CITY OF MARTINEZ, CONTRA COSTA COUNTY
AND ISSUANCE OF A GENERAL LEASE - PUBLIC AGENCY USE**

SETTLEMENT AGREEMENT PARTIES:

East Bay Regional Park District
2950 Peralta Oaks Court
Oakland, CA 94605-0381

California States Lands Commission

LEASE APPLICANT:

East Bay Regional Park District
2950 Peralta Oaks Court
Oakland, CA 94605-0381

BACKGROUND

State Lands Commission staff was contacted by the East Bay Regional Park District ("EBRPD") regarding EBRPD's proposal to conduct an exchange of property with the Union Pacific Railroad (UPRR) in order to gain parcels EBRPD needed for completion of the San Francisco Bay Trail and the Bay Area Ridge Trail. The portion of the trail involved in this item is a segment of the multi-use regional trail that will improve public access to nearby parkland and shorelines, and provide trail users with panoramic views of and across the Carquinez Strait. The initial proposal was to have EBRPD and UPRR exchange property rights in land adjacent to the Martinez Regional Shoreline and land adjacent to the UPRR tracks. EBRPD proposed to convey to UPRR several narrow strips of land that are unsuitable for park or public access purposes. This would also benefit the public by allowing the UPRR to complete its improvements at the new

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Martinez Inter-Modal facility. These railroad improvements would improve public access to mass transit, reduce auto emissions and improve traffic flow in the East Bay. EBRPD sought the Commission's assistance in making this exchange work.

Staff analysis of the proposed exchange uncovered several title concerns. The property that EBRPD proposes to convey to UPRR (as described in Exhibit B and shown on Exhibit A as the "Trust Termination Parcel") had been sold by the State in 1864 pursuant to Tideland Surveys (TLS) 2 and 4 (Contra Costa) and patented in 1867. As patented tidelands, the public trust easement remains on the property. A portion of this area was also within the area described in a purported statutory grant to the city of Martinez (Chapter 37, Statutes of 1851). However, in a 1914 Contra Costa Superior Court case, *Town of Martinez v. Wallace, et al.*, the court ruled that the Town of Martinez did not exist until 1876 and therefore the grant was invalid. However, the Legislature subsequently purported to amend the 1851 statute by Chapter 130, Statutes of 1917, allowing leasing of the property for public trust purposes for 50 year terms; it is unclear as to the affect of this statute, given the superior court decision. The Legislature subsequently granted certain state-owned tide and submerged lands west of TLS 4 to the city of Martinez by Chapter 442, Statutes of 1929. The 1851 and 1929 Statutes were repealed in 1976; and the same lands granted in 1929, along with additional lands, were granted to EBRPD by Chapter 815, Statutes of 1976. This statute specifically excluded a portion of the prior TLS sales from the grant, but significantly included the State's interest in other portions including the Trust Termination Parcel described in Exhibit B. Chapter 815 also granted three distinct parcels of land to the city of Martinez not involved in this transaction.

A portion of the UPRR parcel (Exhibit C), which was proposed to be exchanged to EBRPD, is not held in fee by UPRR, but rather is State-owned lands. UPRR has a limited right of use as authorized by former Civil Code Sections 477- 478 (later re-codified in Public Utilities Code Sections 7551-7554), which provided the railroad with a right-of-way from the State of California for so long as it is used for railroad purposes and thereafter the right-of-way reverts to the State. Rights-of-way conveyed by the State are non-exclusive use rights and the State may make conveyances of interests not inconsistent with the right-of-way. Therefore, the Commission may issue a lease to EBRPD for use of the state-owned property described in Exhibit C and shown on Exhibit A as the Lease Parcel.

Staff's analysis resulted in the conclusion that the actions that EBRPD needed the Commission to take did not require UPRR to be a party to either the trust termination, pursuant to the Kapiloff Land Bank Act, or the lease to EBRPD. In order to terminate the Public Trust easement interest on the EBRPD parcel ("Trust Termination

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Parcel”), EBRPD will first convey the Public Trust easement on the Trust Termination Parcel to the Commission and provide that \$5,700 be deposited in the Kapiloff Land Bank Fund in exchange for the Commission’s termination of the Public Trust easement.

Staff has determined that facilitating this exchange would be in the best interest of the State and benefit the public trust. The settlement agreement provides that the State will terminate any sovereign interests in the Trust Termination Parcel, including any public trust interest, using the authority conferred by Public Resources Code Sections 6307 and 8600-8633. In exchange, EBRPD will place the sum of \$5,700 into the Kapiloff Land Bank Fund for the purchase by the State Lands Commission of other land useful for public trust purposes. The Lease Parcel will be leased from the State to EBRPD for public access and recreational trail use.

PROPOSED LEASE:

AUTHORIZED USE:

Construction, use and maintenance of a multi-use public access and recreational use trail.

LEASE TERM:

20 years, beginning October 30, 2007.

CONSIDERATION:

The public use and benefit; with the State reserving the right at any time to set a monetary rent if the Commission finds such action to be in the State’s best interest.

OTHER PERTINENT INFORMATION:

Applicant has the right to use the property adjoining the lease premises.

STATUTORY AND OTHER REFERENCES:

- A. Public Resources Code: 6307 and 8600, et seq.
- B. Cal. Code of Regs.: Title 2, Div. 3; Title 14, Div. 6.
- C. Pursuant to Government Code section 66412(e), provisions of the Subdivision Map Act do not apply to title settlement agreements to which the CSLC is a party.
- D. Pursuant to the Commission's delegation of authority and the State CEQA Guidelines (14 CCR 15061), the staff has determined that this activity is exempt from the requirements of the CEQA pursuant to 14 Cal. Code Regs. 15061 as a statutorily exempt project pursuant to Public Resources Code sections 21080.11, a land exchange agreement settling title and boundary disputes.

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PERMIT STREAMLINING ACT:

N/A

EXHIBITS:

- A. Site and Location Map
- B. Trust Termination Parcel -- Legal Description
- C. Lease Parcel -- Legal Description

IT IS RECOMMENDED THAT THE COMMISSION:

1. FIND THAT THE ACTIVITY IS EXEMPT FROM THE REQUIREMENTS OF THE CEQA PURSUANT TO TITLE 14, CALIFORNIA CODE OF REGULATIONS, SECTION 15061 AS A STATUTORILY EXEMPT PROJECT PURSUANT TO PUBLIC RESOURCES CODE SECTION 2108.11, SETTLEMENT OF TITLE AND BOUNDARY PROBLEMS.
2. APPROVE, AND AUTHORIZE THE EXECUTIVE OFFICER OR HIS DESIGNEE TO EXECUTE, THE PROPOSED TITLE SETTLEMENT AGREEMENT IN A FORM SUBSTANTIALLY IN THE FORM OF THAT NOW ON FILE IN THE OFFICES OF THE STATE LANDS COMMISSION, INCLUDING THE FINDINGS TO TAKE EFFECT UPON THE RECORDING OF THE AGREEMENT WHICH WILL RESULT IN A TERMINATION OF ANY AND ALL SOVEREIGN PROPERTY RIGHTS IN THE SUBJECT PROPERTY.
3. FIND, EFFECTIVE UPON RECORDATION OF THE PROPOSED SETTLEMENT, THAT:
 - A. THE TRUST TERMINATION/EXCHANGE IS BEING CONDUCTED FOR THE PURPOSES OF FACILITATING THE ENHANCEMENT OF PUBLIC ACCESS TO AND ALONG THE SHORELINE OF THE CARQUINEZ STRAIT AND TO RESOLVE A TITLE DISPUTE, AS PROVIDED FOR IN SUBDIVISIONS (C) (4) AND (7) OF PUBLIC RESOURCES CODE SECTION 6307;
 - B. THE LANDS OR INTERESTS IN LANDS TO BE ACQUIRED BY THE \$5,700 IN FUNDS TO BE DEPOSITED INTO THE KAPILOFF LAND BANK FUND, OBTAINED FROM THE TRUST TERMINATION/EXCHANGE, WILL PROVIDE A SIGNIFICANT BENEFIT TO THE PUBLIC TRUST;

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- C. THE TRUST TERMINATION/EXCHANGE DOES NOT SUBSTANTIALLY INTERFERE WITH PUBLIC RIGHTS OF NAVIGATION AND FISHING;
 - D. THE AMOUNT OF FUNDS TO BE DEPOSITED INTO THE KAPILOFF LAND BANK FUND THROUGH THE AGREEMENT IS OF A VALUE EQUAL TO OR GREATER THAN THAT OF THE LANDS OR INTERESTS IN LANDS GIVEN BY THE TRUST IN EXCHANGE PURSUANT TO THE TRUST TERMINATION, SPECIFICALLY THE VALUE OF ANY SOVEREIGN INTERESTS IN THE SUBJECT PARCEL, IS LESS THAN OR EQUAL TO \$5,700;
 - E. THE LANDS OR INTEREST IN LANDS GIVEN IN EXCHANGE, BY THE TRUST TERMINATION, HAVE BEEN CUT OFF FROM WATER ACCESS AND ARE NO LONGER IN FACT TIDELANDS OR SUBMERGED LANDS OR NAVIGABLE WATERWAYS, BY VIRTUE OF THEIR HAVING BEEN FILLED OR RECLAIMED, AND ARE RELATIVELY USELESS FOR PUBLIC TRUST PURPOSES;
 - F. THE AREA OF THE STATE'S CLAIM IS A RELATIVELY SMALL PARCEL, 1 ACRE MORE OR LESS, OF FORMER TIDELANDS NOW LOCATED APPROXIMATELY 1,800 FEET FROM THE WATERS IN THE CARQUINEZ STRAITS;
 - G. THE TRUST TERMINATION PARCEL IS NO LONGER NECESSARY OR USEFUL FOR THE PURPOSES OF THE PUBLIC TRUST AND THE PUBLIC TRUST IS TERMINATED IN IT; AND
 - H. THE TRUST TERMINATION/EXCHANGE IS IN THE BEST INTERESTS OF THE STATE.
4. APPROVE RECORDATION ON BEHALF OF THE COMMISSION OF THE FOLLOWING DOCUMENTS:
- A. TITLE SETTLEMENT AGREEMENT IN SUBSTANTIALLY THE FORM OF THE COPY OF SUCH AGREEMENT ON FILE IN THE OFFICES OF THE COMMISSION.
 - B. PUBLIC TRUST EASEMENT TERMINATION ON THE LANDS DESCRIBED IN EXHIBIT B, ALSO DESCRIBED IN THE AGREEMENT AS THE TRUST TERMINATION PARCEL.

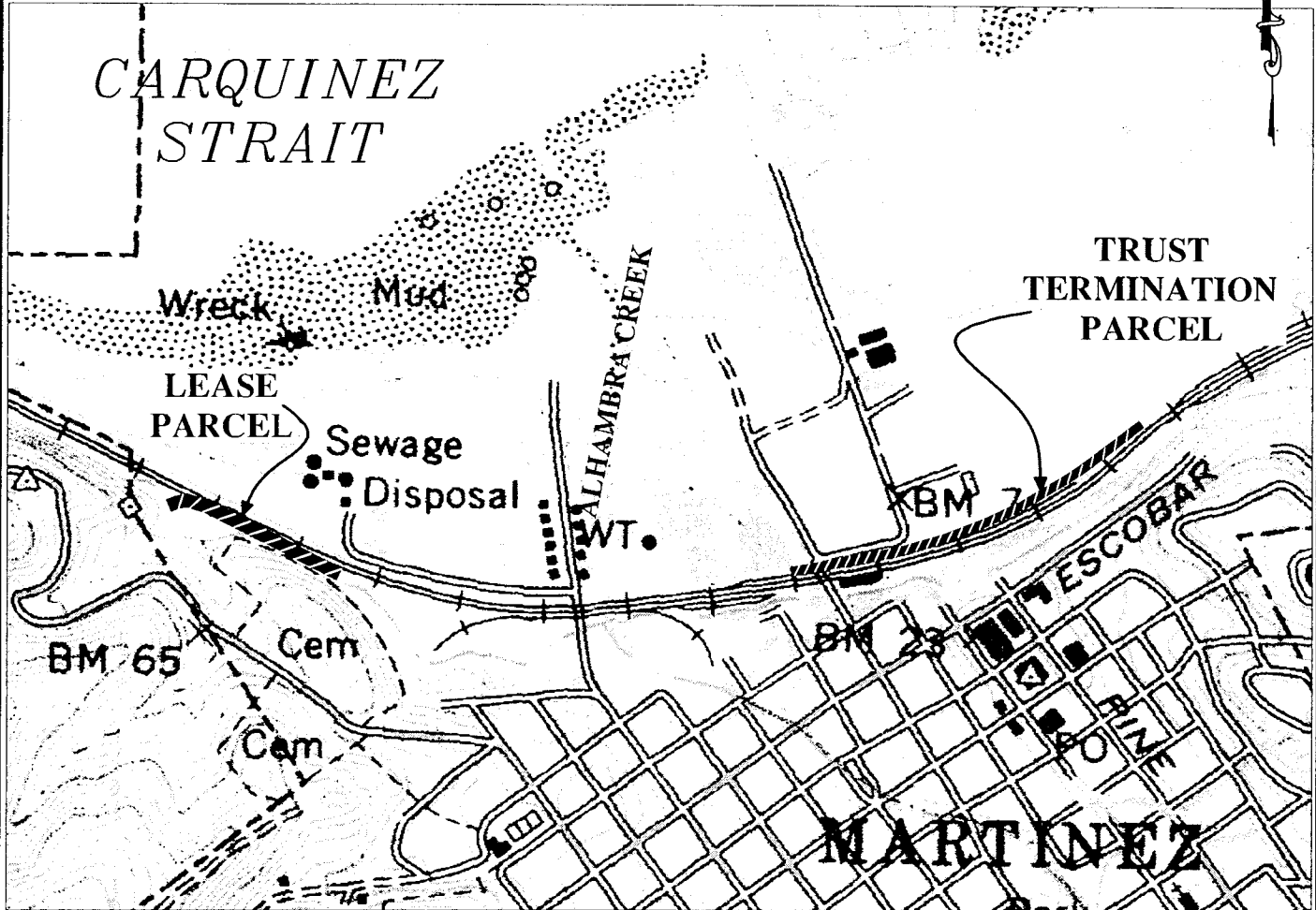
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5. ACTING ON ITS OWN BEHALF AND AS TRUSTEE OF THE KAPILOFF LAND BANK FUND, AUTHORIZE AND DIRECT THE STAFF OF THE STATE LANDS COMMISSION AND THE CALIFORNIA ATTORNEY GENERAL TO TAKE ALL NECESSARY OR APPROPRIATE ACTION ON BEHALF OF THE STATE LANDS COMMISSION AND THE KAPILOFF LAND BANK TRUSTEE, INCLUDING THE EXECUTION, ACKNOWLEDGMENT, ACCEPTANCE AND RECORDATION OF ALL DOCUMENTS AS MAY BE NECESSARY OR CONVENIENT TO CARRY OUT THE COMPROMISE TITLE SETTLEMENT AGREEMENT; AND TO APPEAR ON BEHALF OF THE COMMISSION AND TRUSTEE IN ANY LEGAL PROCEEDINGS RELATING TO THE SUBJECT MATTER OF THE AGREEMENT.

6. AUTHORIZE ISSUANCE OF A GENERAL LEASE – PUBLIC AGENCY USE, BEGINNING OCTOBER 30, 2007, FOR A TERM OF 20 YEARS, TO EAST BAY REGIONAL PARK DISTRICT, FOR PUBLIC ACCESS AND RECREATIONAL TRAIL PURPOSES, ON THE LANDS DESCRIBED IN EXHIBIT C; CONSIDERATION BEING THE PUBLIC USE AND BENEFIT, WITH THE STATE RESERVING THE RIGHT AT ANY TIME TO SET A MONETARY RENT IF THE COMMISSION FINDS SUCH ACTION TO BE IN THE STATE'S BEST INTEREST.

NOT TO SCALE

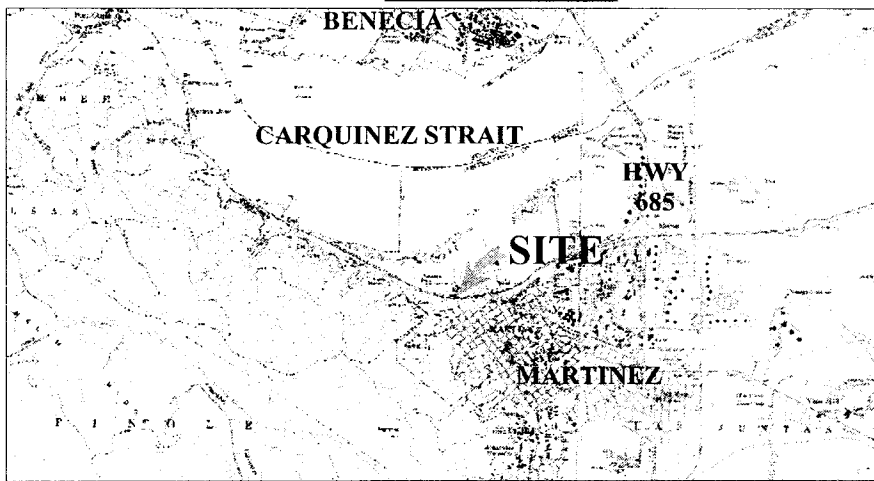
SITE



PROPOSED LEASE & TRUST TERMINATION PARCELS
EAST BAY REGIONAL PARK DISTRICT

NO SCALE

LOCATION



MAP SOURCE: USGS QUAD

Exhibit A

W 26247
EAST BAY
REGIONAL PARK DISTRICT
GENERAL LEASE &
TRUST TERMINATION
MARTINEZ
CONTRA COSTA COUNTY



MJF 10/15/07

This Exhibit is solely for purposes of generally defining the lease premises, is based on unverified information provided by the Lessee or other 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.

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EXHIBIT B

W26247

**LAND DESCRIPTION
TRUST TERMINATION PARCEL**

A parcel of filled tide and submerged land in the historic bed of the Strait of Carquines being a portion of lands patented by the State of California pursuant to Contra Costa Tideland Surveys No. 2 and 4, situated in the City of Martinez, Contra Costa County, California, described as follows:

Commencing at the southerly corner common to Tideland Surveys No. 2 and 3, said point designated as point J.C. No. 1 on the Record of Survey filed December 11, 1946 in Book 11, Licensed Surveyors Map at page 22, and shown on the Record of Survey filed March 10, 1955 in Book 16, Licensed Surveyors Map at page 39; thence from the point of commencing, along the southerly line of said Tideland Survey No. 2, S 46°56'53" W, (the bearings for this description are based on the California Coordinate System Zone III (CCCS83), 22.55 feet to a point on the northerly line of a parcel of land described in Franchise No. 3128 from the City of Martinez to the Southern Pacific Rail Road, dated February 6, 1929, Ordinance No. 144, said point being on a circle concave to the South, with a radius of 3014.75 feet and center bears S 24°23'24" E; thence westerly and southerly along said curve, through a central angle of 14°49'01", 779.63 feet; thence S 39°12'25" E, 96.00 feet to the true point of beginning, being on a point 54 feet, more or less, radial from the centerline of the Eastward Main line of the SPRR at Engineers Station 2499+50 S.C.; thence from said true point of beginning, along the northerly line of the Rail Road R/W S 50°47'35" W, 269.98 feet to a tangent curve to the right with a radius of 2810.76 feet thence southerly and westerly, along said curve, through a central angle of 28°00'00", 1373.59 feet to a point of compound curvature with a curve of radius 11404.52 feet and center bears N 11° 12'25" W; thence southerly and westerly along said curve, through an angle of 1°03'42"; 211.32 feet; thence leaving said curve, S 30°33'07" E, 10.47 feet to a point on a curve, concave to the north, with a radius of 11414.54 feet and center bears N 10°09'40" W; thence southerly and westerly, along said curve, through a central angle of 00°42'59", 142.74 feet; thence leaving said Rail Road R/W line along the westerly line of the parcel of land described in the deed to Doyle D. Hester, *et al.*, recorded December 3, 1965 in Book 5006, Official Records, page 149, N 30°28'40" W, 35.05 feet; thence leaving said line, N 79°19'53" E, 82.41; thence N 30°28'40" W, 5.31 feet; thence N 79°19'53" E, 293.60 feet to an angle point, thence N 79°09'12" E, 49.84 feet to a non-tangent curve with a radius of 2657.70 feet and center bears N 11°12'13" W; thence easterly and northerly along said curve through a central angle of 27°25'36", 1,272.19 feet; thence non tangent to said curve, N 51°00'47" E, 49.84 feet to an angle point; thence N 50°50'06" E, 249.93 feet, more or less to the westerly line of the hereinbefore mentioned RR Franchise parcel (No. 3128); thence along said line, S 39°12'25" E, 14.85 feet to the true point of beginning.

EXCEPTING THEREFROM any portion lying landward of the ordinary high water mark of the Strait of Carquines.

END OF DESCRIPTION

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EXHIBIT C

W26247

**LAND DESCRIPTION
LEASE PARCEL**

A fifteen (15) foot wide strip of filled tide and submerged land in the historic bed of the Strait of Carquines situated in the City of Martinez, Contra Costa County, California, the centerline of said strip described as follows:

Commencing at the point of intersection of the westerly line of Berrellesa Street as described in the deed to the City of Martinez, recorded July 17, 1935, in Vol. 393, Page 108 of Official Records, in the Office of the County Recorder of the County of Contra Costa, State of California, with the southern right of way line of the Union Pacific Railroad (formerly Southern Pacific Railroad, formerly San Pablo & Tulare Railroad Company, formerly Northern Railway Company); said point being on a curve concave to the north, which a radial bears S 02°54'58" E, having a radius of 2347.88 feet; thence from the point of commencement, easterly along said southern right of way line and said curve, through a central angle of 0°33'53", an arc length of 23.14 feet; thence leaving said southern right of way line, along a non-tangent line N 06°25'33" W, 15.52 feet, said line being referred to as Line A for the purposes of this description, to a point on a non-tangent curve concave to the north, having a radius of 2332.38 feet, to which a radial bears S 03°27'40" E, said point also being the True Point of Beginning; thence from the true point of beginning, westerly along said curve, through a central angle of 3°36'59", an arc length of 147.22 feet; thence along a non-tangent line S 88°37'52" W, 52.78 feet to the beginning of a non-tangent curve concave to the north, having a radius of 2334.38 feet, to which a radial bears S 01°27'01" W, said curve being parallel with and 13.5 feet northerly (measured on the radial lines) from said railroad southern right of way line; thence westerly along said parallel curve, through a central angle of 16°57'52", an arc length of 691.17 feet to the beginning of a compound curve concave to the north, having a radius of 6292.57 feet, said curve being parallel with and 13.5 feet northerly (measured on the radial lines) from said railroad southern right of way line; thence westerly along said parallel curve, through a central angle of 0°59'32", an arc length of 108.97 feet to the beginning of a compound curve concave to the north and northeast, having a radius of 500.00 feet; thence westerly and northwesterly along said curve, through a central angle of 7°33'22", an arc length of 65.94 feet; thence along a non-tangent line N 63°02'00" W, 200.00 feet; thence N 65°52'00" W, 110.00 feet; thence N 65°18'00" W, 100.00 feet; thence N 67°32'00" W, 110.00 feet; thence N 64°38'00" W, 195.00 feet; thence N 65°23'00" W, 97.03 feet to the beginning of a tangent curve concave to the southwest, having a radius of 110.00 feet; thence northwesterly along said curve, through a central angle of 7°01'28", an arc length of 13.49 feet; thence along a tangent line, N 72°24'28" W, 51.83 feet to the beginning of a tangent curve, concave to the south, having a radius of 50.00 feet; thence westerly along said curve, through a central angle of 35°22'46", an arc length of 30.87 feet; thence along a tangent line S 72°12'46" W, 15.74 feet to a point on said Union Pacific Railroad southern right of way line.

EXCEPTING THEREFROM any portion lying within Contra Costa County Tideland Survey No. 4 filed in the office of the California State Lands Commission, and patented to Oliver C. Coffin November 15, 1867.

The side lines of said strip shall be prolonged or shortened to meet at angle points, to terminate at the west end at said southern right of way line of the Union Pacific Railroad, and to terminate at the West line of said Tideland Survey No. 4.

END OF DESCRIPTION

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