

MINUTE ITEM

This Calendar Item No. 47
was approved as Minute Item
No. 47 by the State Lands
Commission by a vote of 3
to 0 at its 1/31/85
meeting.

A 74
S 38

CALENDAR ITEM

47

01/31/85
W 5C3.1328
AD 19
A. Scott
C. Fossum
D. Currier

SETTLEMENT AGREEMENT BETWEEN NINO FERRERO
ET AL AND THE STATE LANDS COMMISSION AT
AGUA HEDIONDA LAGOON, SAN DIEGO COUNTY

APPLICANTS: Nino Ferrero, Lea Ferrero,
Basil N. Spirtos, Jack M. Spirtos
and Penelope Spirtos
c/o Allan E. Tebbetts, Esq.
Ball, Hunt, Hart, Brown and Baerwitz
211 East Ocean Boulevard
Long Beach, California 90801

On October 18, 1982 a Suit to Quiet Title and for Declaratory Relief was filed by the applicants covering a parcel of land, a portion of which lies in Agua Hedionda Lagoon. The portion of the parcel within the historic limits of the lagoon was claimed to be tidelands by the State and as such subject to the Public Trust easement. Inasmuch as the parcel is entirely within the boundaries of a valid federal patent of Rancho Agua Hedionda the State claimed only a Public Trust Easement and not Sovereign fee ownership. In addition to the Public Trust Easement claims over this parcel the State also claimed that the public had established access and recreational rights over and across the entire parcel by virtue of implied dedication in accordance with the case of Gion v. City of Santa Cruz (1970) 2 Cal. 3d 29.

Concurrent with the negotiation of this settlement the State was involved in separate litigation which upon completion would define the extent of State ownership interests involving tidelands located within Rancho grants. This litigation Summa Corp. v. California ex rel State Lands Commission was recently decided by the United States Supreme Court and resulted in a decision that the State could not now assert a claim that it

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had acquired a Public Trust easement upon admission to the Union over tidelands within a Spanish or Mexican Rancho Grant subsequently confirmed by federal patent proceedings.

Following the Summa decision this agreement has been revised to incorporate the decision and to resolve only the implied dedication easements claims of the State. The implied dedication easements claims will be relocated and consolidated into a 25' wide non-exclusive easement for public access along one side of the parcel from the first public road to an easement of varying width, but not less than 25' wide, for access, recreation and navigation along the waterward boundary of the settlement parcel.

All of the above terms and conditions of settlement are contained in a proposed settlement agreement on file in the Sacramento office of the Commission.

Pursuant to the Commission's delegation of authority and the State CEQA Guidelines (14 Cal. Adm. Code 15061), the staff has determined that this activity is exempt from the requirements of the CEQA as a statutory exempt project. The project is exempt because it involves settlements of title and boundary problems.

Authority: P.R.C. 21080.11.

AB 884: N/A.

EXHIBITS: A. Site Map.
B. Description of Agreement Area.
C. Description of Public Easements.

IT IS THEREFORE RECOMMENDED THAT THE COMMISSION:

1. FIND THAT THE ACTIVITY IS EXEMPT FROM THE REQUIREMENTS OF THE CEQA PURSUANT TO 14 CAL. ADM. CODE 15061 AS A STATUTORY EXEMPT PROJECT PURSUANT TO P.R.C. 21080.11, SETTLEMENT OF TITLE AND BOUNDARY PROBLEMS.
2. FIND THAT THE PROPOSED SETTLEMENT IS IN THE BEST INTEREST OF THE STATE FOR THE IMPROVEMENT OF PUBLIC ACCESS AND RECREATION IN THE SETTLEMENT PARCEL.

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3. AUTHORIZE THE EXECUTION AND RECORDATION ON BEHALF OF THE COMMISSION OF A SETTLEMENT AGREEMENT BETWEEN NINO FERRERO, LEA FERRERO, BASIL N. SPIRTOS, JACK M. SPIRTOS AND PENELOPE SPIRTOS AND THE STATE IN SUBSTANTIALLY THE FORM OF THE AGREEMENT ON FILE IN THE OFFICES OF THE COMMISSION.
4. AUTHORIZE THE STAFF OF THE STATE LANDS COMMISSION AND THE OFFICE OF THE ATTORNEY GENERAL TO TAKE ALL FURTHER STEPS NECESSARY TO IMPLEMENT THE TERMS AND PROVISIONS OF THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO, EXECUTION OF ALL DOCUMENTS, MAPS, DEEDS, TITLE AND ESCROW INSTRUCTIONS, CERTIFICATES OF ACCEPTANCE AND CONSENT TO RECORD AND APPEARANCES IN ANY LEGAL PROCEEDINGS TO FINALIZE THE AGREEMENT.

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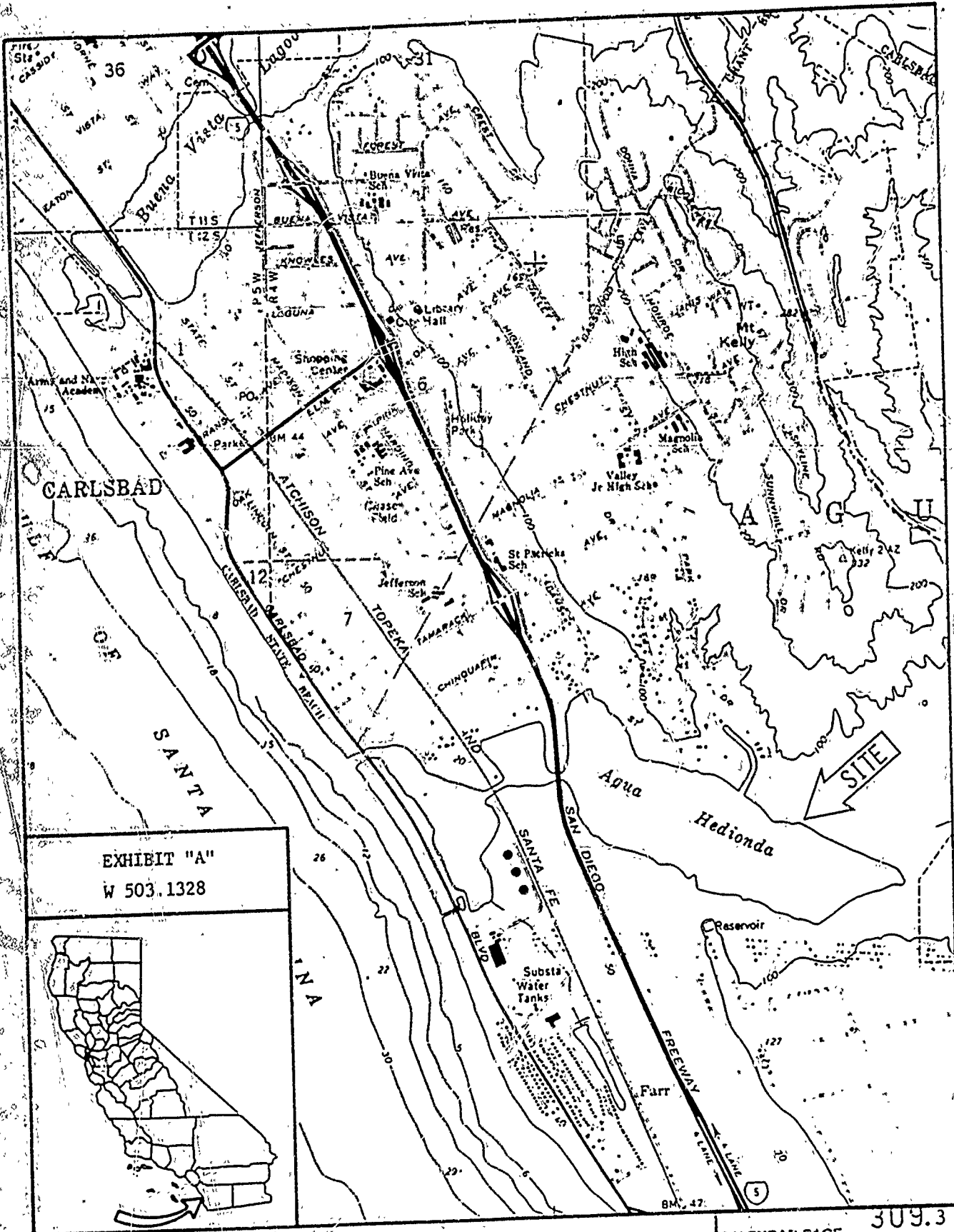


EXHIBIT "A"
W 503.1328

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EXHIBIT B
Agreement Area

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LAND DESCRIPTION

That portion of Lot "I" Rancho Agua Hedonidia, in the City of Carlsbad, County of San Diego, State of California, according to Map thereof No. 823, filed in the Office of the County Recorder of San Diego County, described as follows:

BEGINNING at Corner No. 15 of said Lot "I" as shown on said Map No. 823; thence southeasterly along the southerly line of said Lot "I", S.53°44'35"E., 499.45 feet to the most southwesterly corner of that parcel of land described in Parcel 1 of the deed to Robert W. Phipps, et ux, recorded October 29, 1958, under Document No. 179767 of Official Records and the TRUE POINT OF BEGINNING; thence along the boundary line of said land of Phipps as follows; N.25°01'15"E., (Record-N.24°53'50"E.) 597.84 feet; thence continuing along said boundary line S.47°36'05"E., 153.79 feet to the beginning of a tangent curve, concave northerly, having a radius of 355.00 feet; thence easterly along said curve 376.92 feet, through an angle of 60°50'00"; thence tangent to said curve N.71°33'55"E., 100.40 feet to the northeasterly corner of said land of Phipps; thence along the boundary line of said land of Phipps, S.25°01'15"W., 780.49 feet to the southwesterly line of said Lot; thence N. 64°25'37"W., along said southwesterly line 183.96 feet to Corner 16 of said Lot "I"; thence continuing along the southwesterly line of said Lot, N.53°44'35"W., 393.80 to the TRUE POINT OF BEGINNING.

Said land is shown on that certain record of survey recorded as Survey No. _____, Records of San Diego County.

END OF DESCRIPTION

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EXHIBIT C
Public Easements

W 503.1328

LAND DESCRIPTION

A NON-EXCLUSIVE EASEMENT FOR PUBLIC ACCESS, RECREATION and NAVIGATION over the following described parcel of land being a portion of Lot "I" of Rancho Agua Hedionda, in the City of Carlsbad, County of San Diego, State of California, according to map thereof No. 823, filed in the Office of the County Recorder of said county, more particularly described as follows:

Commencing at corner No. 15 of said Lot "I" as shown on said map No. 823; thence southeasterly along the southerly line of said Lot "I", S.53°44'35" E., 499.45 to the most southwesterly corner of that parcel of Land described in Parcel 1 of the deed to Robert W. Phipps, et ux, recorded October 29, 1958 under Document No. 179767 of Official Records and the TRUE POINT OF BEGINNING; thence along the boundary line of said land of Phipps, N.25°01'15"E., (Record N.24°53'50"E.) 45.73 feet to a point in said boundary line that is S.25°01'15"W., 552.11 feet from the centerline of Park Drive, as said Park Drive is shown on Record of Survey recorded as Survey No. 9860, Records of San Diego County; thence S.50°49'23"E., 398.23 feet; thence S.64°25'37"E., 183.72 feet to a point in the southeasterly line of said land of Phipps, last said point being distant S.25°01'15"W., 755.49 feet from the centerline of said Park Drive; thence along said southeasterly line, S.25°01'15"W., 25.00 feet to the most southerly corner of said land of Phipps; thence along said southerly line, N.64°25'37"W., 183.96 feet and N.53°44'35"W., 393.80 feet to the TRUE POINT OF BEGINNING.

Said land is shown on that certain record of survey recorded as Survey No. _____, Records of San Diego County.

END OF DESCRIPTION

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EXHIBIT C
Public Easements

W 503.1328

LAND DESCRIPTION

A NON-EXCLUSIVE EASEMENT FOR PUBLIC ACCESS (ingress and egress) over the following described parcel of land being a portion of Lot "I" of Rancho Agua Hedionda, in the City of Carlsbad, County of San Diego, State of California, according to map thereof No. 823, filed in the Office of the County Recorder of said county, more particularly described as follows:

A strip of land 25.00 feet wide lying northwesterly of and adjoining the following described line.

COMMENCING at Corner No. 15 of said Lot "I" as shown on said map No. 823; thence southeasterly along the southerly line of said Lot "I", S. 53°44'35"E., 499.45 feet to the most southwesterly corner of that parcel of land described in Parcel 1 of the deed to Robert W. Phipps, et ux, recorded October 29, 1958 under Document No. 179767 of Official Records; thence along the boundary line of said land of Phipps as follows: N. 25°01'15"E., (Record N. 24°53'50"E.) 597.84 feet; thence continuing along said boundary line S. 47°16'05"E., 153.79 feet to the beginning of a tangent curve, concave northerly, having a radius of 355.00 feet; thence easterly along said curve 376.92 feet, through an angle of 60°50'00"; thence tangent to said curve N. 71°33'55"E., 100.40 feet to the northeasterly corner of said land of Phipps and the TRUE POINT OF BEGINNING of the herein described line; thence S. 25°01'15"W. 780.49 feet to the end of the herein described line.

EXCEPTING THEREFROM that portion of said land included within Park Drive as described in deed recorded May 10, 1965, as Document No. 83318, of Official Records of San Diego County.

The side lines of said 25.00 foot strip are to be prolonged or shortened so as to terminate at the South Line of said Lot I and at the south line of said Park Drive respectfully.

Said land is shown on that certain record of Survey recorded as Survey No. _____, Records of San Diego County.

END OF DESCRIPTION

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