

MINUTE ITEM

This Calendar Item No. 64
was approved as Minute Item
No. 64 by the State Lands
Commission by a vote of 3
to 0 at its 2/4/89
meeting.

CALENDAR ITEM

A 9
S 3

64

02/06/89
W 503.1447
AD 83
Trout
Flushman
Fossum
Minnick

**APPROVAL OF SETTLEMENT OF LITIGATION IN THE CASE OF
CALIFORNIA COASTAL COMMISSION v. CIRINCIONE-COLES,
MARIN COUNTY SUPERIOR COURT NO. 125225,
BY A TITLE SETTLEMENT AND EXCHANGE AGREEMENT
INVOLVING LANDS ADJACENT TO TOMALES BAY**

This Calendar Item recommends settlement of a boundary and title dispute among the above-named parties. The dispute is about an approximate three and one-third acre area of land located in Marin County north of the town of Inverness on the west side of and adjacent to the County of Marin's Chicken Ranch Beach on Tomales Bay. The location of the property is depicted on EXHIBIT "A" and consists generally of a filled former tidal marsh and adjacent lands. This dispute is only part of an involved and bitterly fought lawsuit which was initially brought by the California Coastal Commission for alleged violations of a coastal permit issued to the Cirincione-Coles. That litigation was expanded by the Cirincione-Coles to include the issue of title to the land in dispute. (Herein the "Litigation".)

The land in dispute has an interesting history. The former tidal marsh was surveyed, sold and patented by the state pursuant to Tide Land Survey No. 170 (TLS 170) in the 1870's. The adjacent Rancho Puente de los Reyes was surveyed and a confirmatory patent issued by the United States in 1860. It is claimed by the Cirincione-Coles that the rancho survey encompassed the same area of land as TLS 170. In 1971, some portion of the land in dispute in the Litigation was the

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subject of a unanimous decision of the California Supreme Court, Marks v. Whitney, 6 Cal.3d 251. The Marks case was brought by the Cirincione-Coles' predecessor-in-interest, Larry Marks. Marks wanted to keep his neighbor and others from the lands described in TLS 170. In overruling both the trial and appellate courts the Supreme Court issued one of the leading Public Trust cases in the United States. The Court ruled that the tidelands owned by Marks by virtue of TLS 170 were burdened by a public easement for not only commerce, navigation and fisheries but also for "preservation of those lands in their natural state, so that they may serve as ecological units for scientific study, as open space, and as environment which provide food and habitat for fish and marine life and which favorable affect the scenery and climate of the area." (Pg. 260.) The extent of the effect of the Marks v. Whitney case is in issue in the Litigation.

The case with the Cirincione-Coles involved arduous, extensive, and expensive pre-trial discovery and preparation for trial. In connection with trial preparation, the Cirincione-Coles and the Commission each engaged expert consultants to provide expert advice and conduct prudent and necessary investigations concerning the physical and historical conditions concerning the settlement area and adjacent or similar areas of the Tomales Bay shoreline. Surveying experts also prepared maps and analyses showing the respective party's contentions as to the nature and extent of the Defendants' and SLC's respective titles and boundaries. The results of this preparation made clear to each of the parties that a settlement without trial would be in the interest of all parties.

Today very little of the subject property remains subject to tidal action. It is not in a natural state and has little wetland characteristics remaining. The property has been the subject of both natural and artificial processes including deposition, flooding, filling, grading, and channeling. In addition, the parties to the litigation vigorously dispute a multitude of legal and factual issues including the issues briefly discussed above as well as those relating to the causes of the change in the land's characteristics from what appeared to have been a tidal marsh in the 1850's and 1860's to its present state as a predominantly sand covered upland.

Pre-trial settlement negotiations proved fruitless until the Court supervised settlement conference just prior to the scheduled trial date. It was only with the assistance of the Court, after lengthy, extensive and difficult negotiations over the course of two days, that the parties finally reached a negotiated settlement concerning all enforcement,

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indemnification and title and boundary questions that were presented for determination in the Litigation and all other claims and causes of action that arise out of the facts, circumstances and events that are set forth in the complaint and cross-complaints in the Litigation.

In conjunction with the investigations of physical and historical conditions, maps and opinions and the evaluations of the parties of the uncertainties and contentions presented, the parties made a genuine effort through negotiation to determine the true location of their common boundary which would take into consideration all of the issues over which there was a bona fide dispute. For purposes of said negotiations, the parties relied upon and used the data prepared by the expert consultants retained by the respective parties hereto. As a result of these long-term expensive and thorough investigations the Cirincione-Coles and the Commission concluded, solely for purposes of this dispute, that locating a last natural ordinary high water mark by scientific analysis and available technology could be argued to be impracticable and was subject to reasonable dispute.

Solely for purposes of this Litigation, the parties acknowledge that, since 1850, the relationship of the settlement area to the waters and tides of Tomales Bay has been significantly altered, in part, because of the following: (a) changes in upland drainage patterns affecting the sediment transport system; (b) the effect of artificial activities in and around Tomales Bay. Thus, the physical conditions present today in the settlement area are no longer in a state of nature. In the Marks case, which concerned, at least in part, the area in dispute, the Court stated:

"It is impossible to determine at this time how much of such increment or decrement has resulted from man-made or artificial causes or to determine where the line of ordinary high water was [when the two Marks cases were begun], or where such line....would be in a state of nature..... From all that can now be determined, it will forever be impossible to separate natural from heretofore or now existing man-made influences upon the fluctuations of such line." (Marks v. Whitney, Marin Co. Sup. Ct. No. 37048, Corrected Judgment After Appeal, filed May 1, 1972.)

Thus, locating a last natural ordinary high water mark in the area in dispute by scientific analysis and available technology would be subject to considerable dispute and that, in view of

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the bona fide disputes between the parties, the exchange of potential interests and the agreement on the location of an agreed common boundary is reasonable and in the best interests of both parties.

As a result of said negotiations, the parties to the litigation have reached a proposed compromise Litigation Settlement Agreement ("Agreement") which, sets forth all the specific terms and conditions of the settlement. A copy of the Agreement is now on file in the Sacramento office of the Commission. The agreement may be broadly summarized as follows:

1. The Cirincione-Coles and the State Lands Commission have agreed on the location of a common boundary line between the Cirincione-Coles' Fee ("C-C Fee") and State Lands Commission's Fee ("SLC Fee") and have agreed to exchange their respective interests on opposing sides of the line.
2. In furtherance of such exchange, the Cirincione-Coles will convey to the State Lands Commission in fee the property that lies westerly of said agreed common boundary line and southerly of the bank of Third Valley Creek ("Pathway Area"). The Commission will agree to lease the Pathway Area to Marin County for a pathway when requested by the County.
3. In further exchange for the Commission's release of any Public Trust interest in the C-C Fee, the Cirincione-Coles' agree to pay SLC the sum of \$20,000 to be deposited in the Kapiloff Land Bank pursuant to Public Resources Code Section 8610 et seq.
4. With respect to SLC's fee, the Commission agrees to remove or caused to be removed pampas grass or scotch broom that may come to establish itself on the Commission's property. Such removal will be within a reasonable time. The Commission also agrees not to take any action or cause to be taken any action that would unreasonably affect the Cirincione-Coles' northern drainage, vegetation, or the view of Tomales Bay from the easterly deck attached to the Cirincione-Coles' house. The Commission also will agree to maintain the drainage that enters into the SLC's fee from the north. The Cirincione-Coles, or persons retained at the sole expense and responsibility of the Cirincione-Coles, are provided certain authority on certain terms and conditions to enter onto SLC's Fee to remove, etc. vegetation, etc. in order to maintain the Cirincione-Coles' view from the easterly deck attached to the Cirincione-Coles' house.

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5. The Cirincione-Coles shall pay the California Coastal Commission the sum of \$20,000.
6. Other agreements have been or are in process of being reached between the County of Marin and the Cirincione-Coles concerning the use of the C-C Fee for the stabling or grazing of horses, the replacement and erection of certain fences, the maintenance of drainages on the C-C Fee. SLC is not a party to such agreements.
7. The surveying necessary in connection with this settlement will be accomplished by the Commission staff or by a surveyor retained by the Commission. The Cirincione-Coles agree to pay for one-half of such costs upon receipt of billing from the Commission.
8. Mutual releases as appropriate will be executed by parties releasing all further claims or causes of actions arising out of the facts and circumstances described in the complaint and first cross-complaint.
9. The parties recognize that it is appropriate to obtain judicial approval of this Agreement and judicial confirmation of the title and boundaries of the respective parties as determined by this Agreement.

The Commission is vested with all former authority of the California Surveyor General. (P.R.C. Sec. 6102). SLC has been delegated jurisdiction over tide and submerged lands which have not been granted to local agencies in trust, and such jurisdiction and authority as remains in the State as to tidelands and submerged lands which have been granted, in trust, to local governmental agencies and private parties (P.R.C. Sec. 6301; see also P.R.C. Div. 6, including but not limited to, Sections 6216, 6307, 6308, 6357, 6463, 6464, and 7555), together with all authority necessary to accomplish the foregoing responsibilities implied from such Sections and from applicable case law.

Staff has appraised the potential interest of the State in the subject property and evaluated the law and evidence bearing on the title dispute, and has reached the opinion that the interest to be obtained by the State in real property together with the \$20,000 is equal to or greater than the value of the State's interest in the property which the State will exchange by quitclaim to the Cirincione-Coles.

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EXHIBITS:

- A. Site Map.
- A-1 Location Map.
- B. Settlement Area.
- C. Agreed Common Boundary Line
- D. Description of Quitclaim Deed from Cirincione-Coles to State (SLC Fee).
- E. Description of Quitclaim Deed from Cirincione-Coles to State (Pathway Area).
- F. Description of Quitclaim Deed from State to Cirincione-Coles (C-C Fee).
- G. Discription of Access Easement from State to Cirincione-Coles (Access Easement).

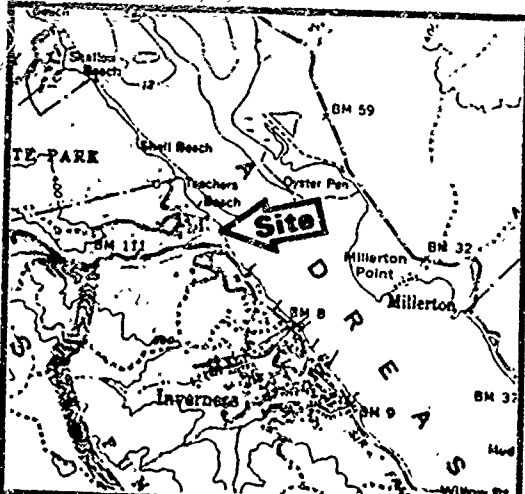
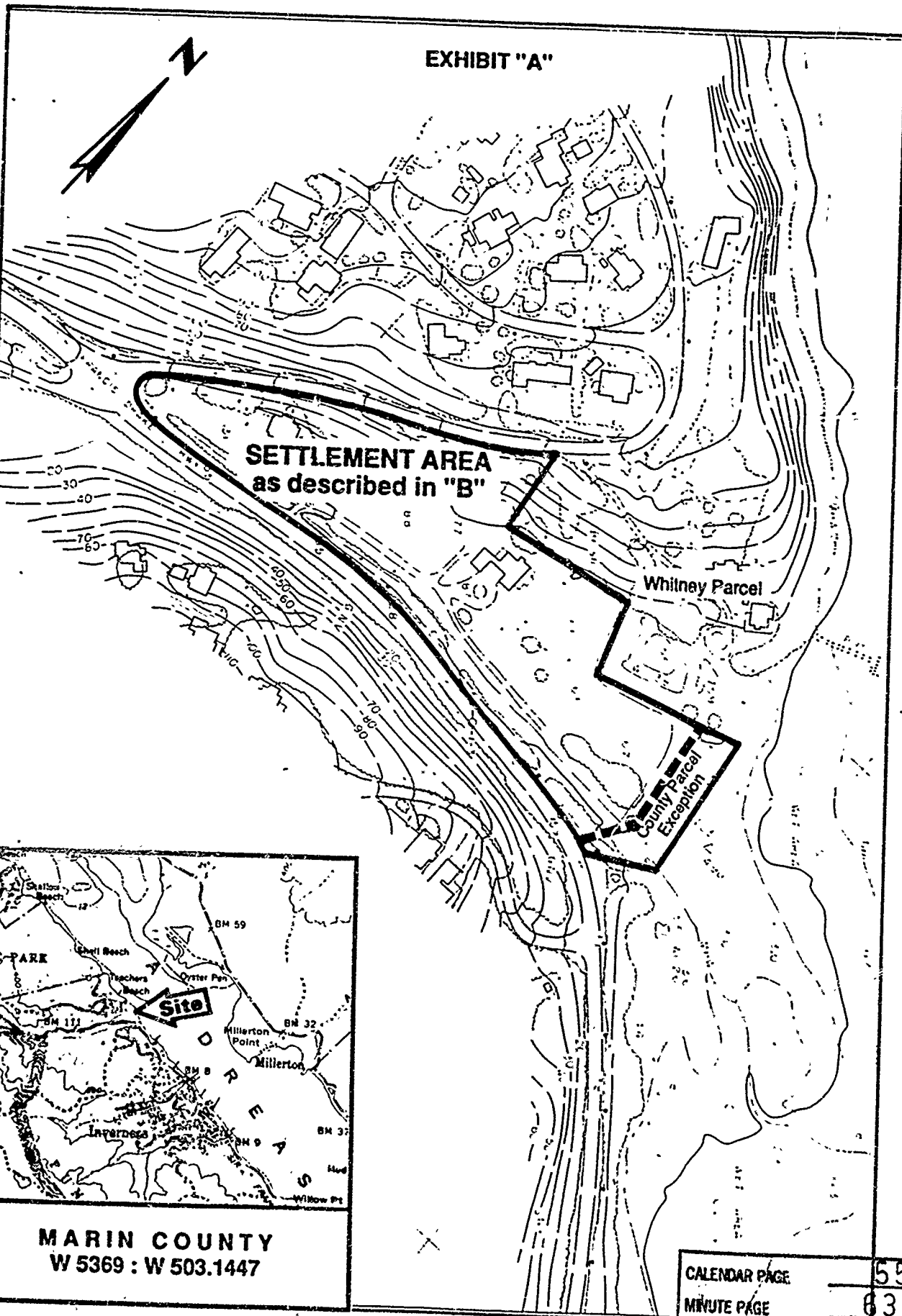
IT IS RECOMMENDED THAT THE COMMISSION:

1. FIND THAT THE ACTIVITY IS EXEMPT FROM THE REQUIREMENTS OF THE CEQA PURSUANT TO 14 CAL. ADM. CODE 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 LITIGATION SETTLEMENT AGREEMENT, INCLUDING THE EXCHANGE OF THE STATE'S INTEREST IN THE AREA DESCRIBED IN EXHIBIT "F" FOR THE CIRINCIONE-COLES' INTEREST IN THE AREAS DESCRIBED IN EXHIBITS "D" AND "E" PLUS THE DEPOSIT OF FUNDS (\$20,000) IN THE KAPILOFF LAND BANK WITH WHICH TO BUY AN EXCHANGE PARCEL:
 - A. THE AGREEMENT IS IN THE BEST INTEREST OF THE STATE FOR THE BENEFIT OF PUBLIC TRUST USES AND PURPOSES WHICH INCLUDE IMPROVEMENT OF NAVIGATION, AID IN RECLAMATION, FLOOD CONTROL PROTECTION, AND THE IMPROVEMENT OF FISHERIES, RECREATION, SCIENTIFIC STUDY, AND 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 TOGETHER WITH THE MONIES RECEIVED BY THE STATE ARE OF A VALUE EQUAL TO OR GREATER THAN THE VALUE OF THE INTERESTS IN THE PARCEL BEING RELINQUISHED BY THE STATE.
 - C. THE PARCEL TO BE QUITCLAIMED BY THE STATE HAS BEEN IMPROVED, RECLAIMED AND FILLED, HAS BEEN EXCLUDED FROM THE PUBLIC CHANNELS, AND IS NO LONGER AVAILABLE OR USEFUL OR SUSCEPTIBLE OF BEING USED FOR NAVIGATION AND FISHING AND IS NO LONGER IN FACT TIDELAND OR SUBMERGED LAND.

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- D. THE PARTIES HAVE A GOOD FAITH AND BONA FIDE DISPUTE AS TO THEIR RESPECTIVE INTERESTS WITHIN THE SUBJECT PROPERTY.
- E. THE PROPOSED LITIGATION SETTLEMENT AGREEMENT CONSTITUTES A COMPROMISE OF THE CONTESTED ISSUES OF LAW AND FACT UPON WHICH THE DISPUTE IS BASED.
- F. THE AGREEMENT IS IN LIEU OF THE COSTS, DELAYS AND UNCERTAINTIES OF FURTHER LITIGATION, IS CONSISTENT WITH AND IS AUTHORIZED BY THE REQUIREMENTS OF LAW.
- G. ON THE EFFECTIVE DATE OF THE AGREEMENT AND CONSISTENT WITH ITS TERMS, THE COMMISSION FINDS THE PARCEL TO BE QUITCLAIMED BY THE STATE (EXHIBIT "F") WILL NO LONGER BE NECESSARY OR USEFUL FOR THE PURPOSES OF THE PUBLIC TRUST AND THE PUBLIC TRUST INTEREST MAY BE TERMINATED.
3. APPROVE AND AUTHORIZE THE EXECUTION, ACKNOWLEDGEMENT AND RECORDATION ON BEHALF OF THE COMMISSION OF THE LITIGATION SETTLEMENT AGREEMENT IN SUBSTANTIALLY THE FORM OF THE COPY OF SUCH AGREEMENT ON FILE WITH THE COMMISSION AND ACCEPT THE FOLLOWING RIGHTS, TITLES AND INTERESTS ON BEHALF OF THE STATE OF CALIFORNIA AS SOVEREIGN LANDS OF THE CHARACTER OF TIDE AND SUBMERGED LANDS.
- A. QUITCLAIM OF INTEREST OF KATHRYN AND GERALD CIRINCIONE-COLES IN AND TO THE AREA DESCRIBED IN EXHIBIT "D" TO STATE.
- B. QUITCLAIM OF INTEREST OF KATHRYN AND GERALD CIRINCIONE-COLES IN AND TO PATHWAY AREA (EXHIBIT E) TO STATE.
4. AUTHORIZE AND DIRECT THE STAFF OF THE STATE LANDS COMMISSION AND/OR THE CALIFORNIA ATTORNEY GENERAL TO TAKE ALL NECESSARY OR APPROPRIATE ACTION ON BEHALF OF THE STATE LANDS COMMISSION, INCLUDING THE EXECUTION, ACKNOWLEDGEMENT, ACCEPTANCE, AND RECORDATION OF ALL DOCUMENTS AND PAYMENTS AS MAY BE NECESSARY OR CONVENIENT TO CARRY OUT THE LITIGATION SETTLEMENT AGREEMENT; AND TO APPEAR ON BEHALF OF THE COMMISSION IN ANY LEGAL PROCEEDINGS RELATING TO THE SUBJECT MATTER OF THE AGREEMENT.

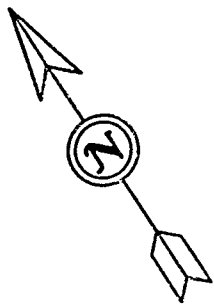
EXHIBIT "A"



MARIN COUNTY
W 5369 : W 503.1447

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EXHIBIT "A-1"



TOMALES BAY

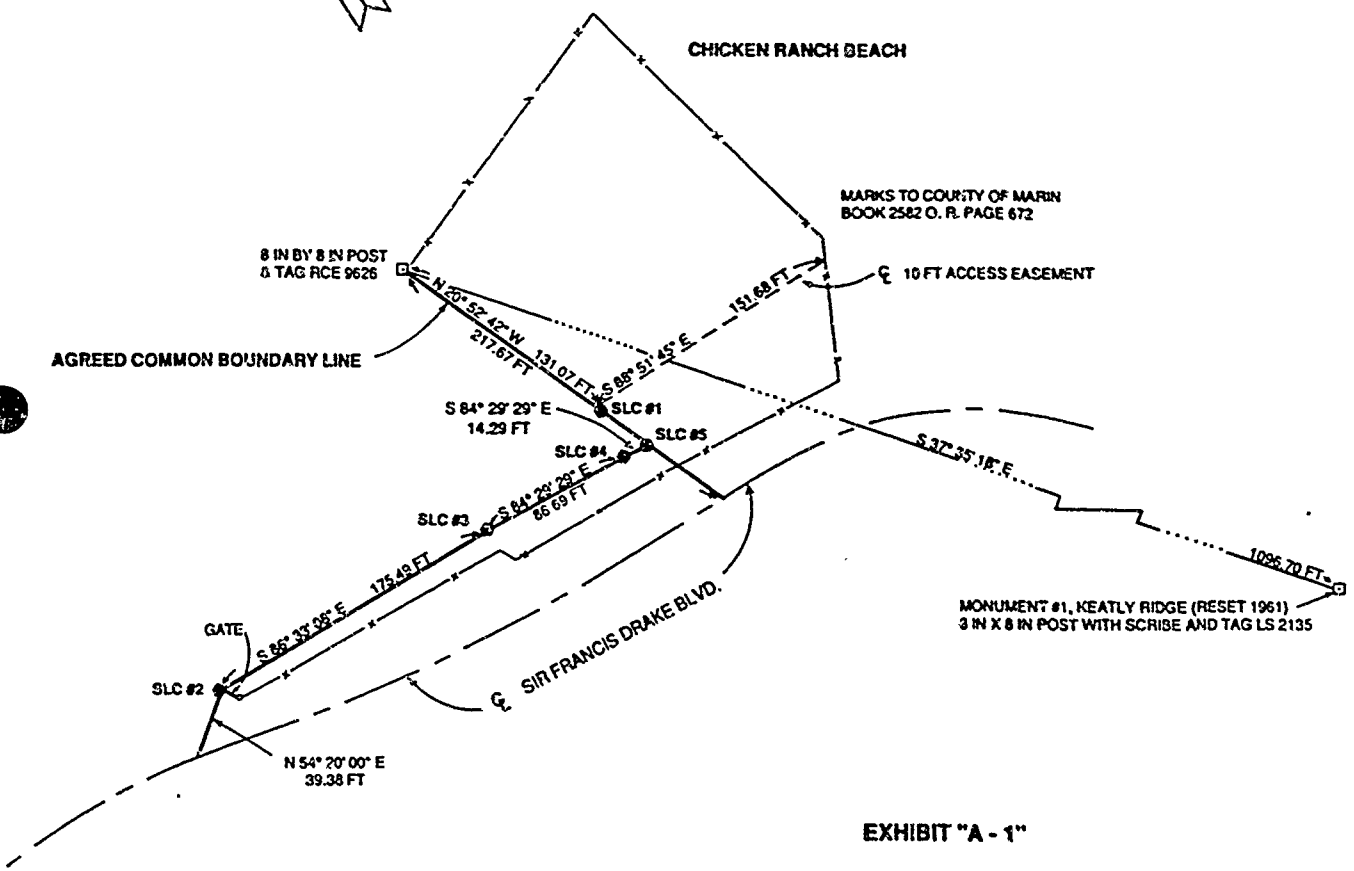


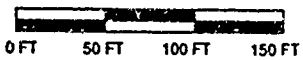
EXHIBIT "A-1"

EXHIBIT MAP PERTAINING TO EXHIBITS "C" THROUGH "G"
OF THE
LITIGATION SETTLEMENT AGREEMENT
AD 83
BY AND BETWEEN THE
CALIFORNIA COASTAL COMMISSION
STATE LANDS COMMISSION
COUNTY OF MARIN
KATHRYN AND GERALD CIMINCIONE - COLES

PREPARED FROM MAP AND SURVEY
FOR THE STATE LANDS COMMISSION
BY RAY CARLSON AND ASSOCIATES, INC.
DECEMBER 15, 1988

STATE LANDS COMMISSION MAP # CXB 300

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EXHIBIT "B"
(Settlement Area)

A parcel of land situated adjacent to Chicken Ranch Beach on Tomales Bay, northerly of the Town of Inverness, in the County of Marin, State of California, more particularly described as follows:

BEGINNING at a point on the surveyed line of the New County Road, which point bears by "True Meridian" North 56° 54' East 64.30 feet, North 37° 56' West 436.24 feet, North 44° 24' West 383.72 feet and North 89° 08' West 82.30 feet from a concrete monument marked No. 1 (reset 1961 with an 8 inch by 8 inch post with scribe and tag stamped LS 2135) set at the westerly extremity of that certain course "South 57° 46' West 64.30 feet" in the dividing line between the lands of Julia Shafter Hamilton and the O. L. Shafter Estate and noted in that certain agreement between the O. L. Shafter Estate Company, a corporation and Julia Shafter Hamilton, fixing the joint boundary line, said agreement being dated February 2, 1906 and recorded February 6, 1906 (it being assumed in this description that the call "South 57° 46' West" above set forth has a true meridian bearing of South 56° 54' West); and running thence along said surveyed line, by true meridian North 89° 08' West 97.87 feet; thence on a curve to the right whose center bears North 00° 52' East and whose radius is 1000 feet, distance 239.69 feet; thence North 75° 24' West 4.58 feet; thence on a curve to the left whose center bears South 14° 36' West and whose radius is 450 feet, distance 216.25 feet; thence North 77° 04' West 289.41 feet; thence on a curve to the right whose center bears North

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12° 56' West and whose radius is 500 feet, distance of 104.91 feet; thence leaving said surveyed line and running North 53° 57' 20" East 55.98 feet; thence North 25° 30' West 40.41 feet to the southeasterly line of a subdividing road; thence along said road line, North 51° 21' 30" East 266.74 feet, North 65° 05' East 210.18 feet and North 53° 55' 30" East 140.74 feet; thence leaving said road line and running South 13° 35' East 101.70 feet thence North 76° 25' East 217.55 feet to the southwesterly boundary line of that certain tract of land from Leonard W. David and Suzanne G. David, his wife, to Elizabeth G. Whitney by deed dated August 2, 1939 and recorded August 2, 1939 in Book 381 of Official Records, at Page 235, Marin County Records; thence along said boundary line, South 20° 52' 30" East 125.78 feet; thence North 70° 19' East 225 feet, more or less, to the easterly boundary line of the Rancho Punta de los Reyes, on the westerly shore of Tomales Bay; thence southeasterly along said boundary line of the Rancho Punta de los Reyes 230 feet, more or less, to a point which bears North 70° 19' East from the point of beginning; thence South 70° 19' West 150 feet, more or less, to the point of beginning.

EXCEPTING THEREFROM that portion within the boundaries of the property described in the deed from Larry H. Marks, Jr. et ux. to the County of Marin, recorded June 27, 1972, in Book 2582 at Page 672 of Official Records, Marin County.

END OF DESCRIPTION

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EXHIBIT "C"
(Agreed Common Boundary Line)

A common boundary line between the lands, owned in fee, by Gerald and Kathryn Cirincione-Coles and the sovereign lands, owned in fee, by the State of California, held in trust by the State Lands Commission pursuant to Public Resources Code Section 6301, lying northerly of the Town of Inverness, County of Marin, State of California, more particularly described as follows:

BEGINNING at an 8 inch by 8 inch post with tag stamped RCE 9626 as shown on Exhibit "A - 1" to this Litigation Settlement Agreement (herein Exhibit "A - 1"), which also bears N 37° 35' 18" W 1096.70 feet from Monument #1 (Reset 1961 with an 8 inch by 8 inch post with scribe and tag stamped LS 2135) as shown on said Exhibit "A - 1"; thence S 20° 52' 42" E 217.67 feet to the centerline of Sir Francis Drake Blvd. (New County Road) and the end of the herein described line.

END OF DESCRIPTION

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0.704

EXHIBIT "D"

(Quitclaim - Cirincione - Coles to State of California by and through the
State Lands Commission)

A parcel of land situated adjacent to Chicken Ranch Beach on
Tomales Bay, northerly of the Town of Inverness, County of Marin,
State of California, more particularly described as follows:

All that land as described in Exhibit "B" lying easterly and bayward of
that certain agreed common boundary line as described in Exhibit "C".

END OF DESCRIPTION

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EXHIBIT "E"

(Quitclaim - Cirincione - Coles to State of California by and through the
State Lands Commission)

A parcel of land lying northerly of the Town of Inverness in the County
of Marin, State of California, more particularly described as follows:

All that land lying westerly of that certain agreed common boundary line
as described in Exhibit "C", and southerly and southeasterly of the
following described line:

BEGINNING at SLC Monument #5 as shown on Exhibit "A - 1"; thence
N 84° 29' 29" W 14.29 feet to SLC Monument #4 as shown on Exhibit
"A - 1" to this Litigation Settlement Agreement (herein Exhibit "A - 1");
thence continuing N 84° 29' 29" W 86.69 feet to SLC Monument #3 as
shown on Exhibit "A - 1"; thence N 86° 33' 08" W 175.49 feet to SLC
Monument #2 as shown on said Exhibit "A - 1"; thence S 54° 20' 00" W
39.38 feet to the centerline of Sir Francis Drake Blvd. (New County
Road) and the end of the herein described line.

END OF DESCRIPTION

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0.706

EXHIBIT "F"

**(Quitclaim - State of California by and through the State Lands
Commission to Cirincione - Coles)**

A parcel of land situated adjacent to Chicken Ranch Beach on Tomales Bay, northerly of the Town of Inverness, County of Marin, State of California, more particularly described as follows:

All that land lying westerly and landward of that certain agreed common boundary line as described in Exhibit "C".

EXCEPTING THEREFROM that parcel of land for pathway purposes as described in Exhibit "E".

END OF DESCRIPTION

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EXHIBIT "G"
(Access Easement)

A strip of land, 10 feet wide, situated adjacent Chicken Ranch Beach on Tomales Bay, northerly of the Town of Inverness, County of Marin, State of California, lying 5 feet on each side of the following described centerline:

COMMENCING at an 8 inch by 8 inch post with tag stamped RCE 9626 as shown on Exhibit "A - 1" to this Litigation Settlement Agreement (herein Exhibit "A - 1") which also bears N 37° 35' 18" W 1096.70 feet from Monument #1 (Reset 1961 with an 8 inch by 8 inch post with scribe and tag stamped LS 2135) as shown on Exhibit "A - 1"; thence S 20° 52' 42" E 131.07 feet to the TRUE POINT OF BEGINNING; thence S 88° 51' 45" E 152 feet, more or less, to the property described in the deed from Larry H. Marks, Jr. et ux. to the County of Marin, recorded June 27, 1972, in Book 2582 at Page 672 of Official Records, Marin County and the end of the herein described centerline.

END OF DESCRIPTION

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0.708