

**Meeting Date:** 7/19/2016

**Report Type:** Consent

**Report ID:** 2016-00662

**Title: Purchase and Sale Agreement: Cannon Family Trust Property at Sutter's Landing**

**Location:** West Sutter's Landing (the extension of A Street between the extension of 23rd and 24th Streets), District 3

**Recommendation:** Pass a Motion authorizing the City Manager or the City Manager's designee to execute the Purchase and Sale Agreement, and any related documents, for the acquisition of the Cannon Family Trust Property at Sutter's Landing.

**Contact:** Richard Sanders, Program Manager, (916) 808-7034; David Levine, Support Services Manager, (916) 808-7943, Department of Public Works

**Presenter:** None

**Department:** Public Works Department

**Division:** Real Estate/Asset Management

**Dept ID:** 15004551

**Attachments:**

1-Description/Analysis

2-Agreement

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**City Attorney Review**

Approved as to Form

Maila Hansen

7/6/2016 12:32:23 PM

**Approvals/Acknowledgements**

Department Director or Designee: Jerry Way - 6/29/2016 3:27:08 PM

## Description/Analysis

**Issue Detail:** The Cannon Family Trust Property (Property) is located within Sutter's Landing, west of 28th Street (Assessor's Parcel Numbers 003-0032-008 and 003-0032-009). Between 1955 and 1958, the City leased the Property for the disposal of garbage, garden refuse, and other waste material as described in City Agreement No. 927 and Resolution No. 1170, executed on August 18th, 1955. The Property requires clean-up resulting from its use by the City as a landfill. A Purchase and Sale Agreement has been negotiated with the Cannon Family Trust for the acquisition of the Property at no cost, provided that the City assumes responsibility for the cost of any clean-up or closure efforts.

**Policy Considerations:** The recommendations in this report are in accordance with the provisions of City Code Section 3.04.010 regarding the purchase of real property owned by a private party.

**Economic Impacts:** None

### Environmental Considerations:

**California Environmental Quality Act (CEQA):** In accordance with Section 15061(b)(3) of the CEQA Guidelines, no environmental review is necessary because it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.

**Site Assessment:** A Phase I and Limited Phase II environmental assessment were completed for the Property. The results showed the presence of municipal waste and construction debris buried under the site to a depth of approximately 14 feet. Several elderberry shrubs with stem diameters over 1 inch exist, and are subject to Valley Elderberry Longhorn Beetle (VELB) habitat protection and/or mitigation under the Endangered Species Act.

**Sustainability:** Not applicable

**Commission/Committee Action:** None

**Rationale for Recommendation:** The Property is located in close proximity to the City's 28th Street Landfill, and acquisition of the Property is recommended for the following reasons:

- The City deposited garbage, garden refuse, and other waste material on the Property from 1955 to 1958. By acquiring the Property, and releasing the Cannon Family Trust from possible shared clean up responsibilities, the City's Recycling and Solid Waste division will be able to seek available grant funds and efficiently clean up the site.

- Based on the completed clean-up efforts of the adjacent Dellar landfill property, the City's overall clean-up costs are expected to be less if the City is the sole property owner.
- The Property is adjacent to Sutter's Landing and is not being maintained and managed. A number of code enforcement violations have been issued to the Cannon Family Trust. Acquisition of the Property will allow the City's Recycling and Solid Waste division to manage and re-use the site.

**Financial Considerations:** The cost to clean up the Property is estimated to be \$250,000 to \$800,000, based on estimates provided in the Limited Phase II environmental assessment. Sufficient funding is available to support costs in this range in the Cannon-Scollan Trust capital improvement project (Y13000200, Solid Waste Fund, Fund 6007). Grant opportunities are currently available for landfill clean-up projects, which the Recycling and Solid Waste Division plans to pursue. Future operating and maintenance costs are anticipated to be proportionally similar to the costs of the adjacent Dellar landfill property.

**Local Business Enterprise (LBE):** Not applicable

File No.: ACQ-10-20-00  
Project: Cannon acquisition  
WO: 753992  
APN's: 003-0032-008; 003-0032-009  
Escrow #: 13-5014937  
Title Company: Fidelity National Title Company  
Date of Preliminary Title Report: 11/9/2015

**Grantor:**        **SHARON CANNON FACQUE, Successor Trustee of the Cannon Family Trust**

**Grantee:**       **CITY OF SACRAMENTO, a municipal corporation**

PURCHASE AND SALE AGREEMENT

BACKGROUND

- A. Sharon Cannon Facque, Successor Trustee of the Cannon Family Trust ("Grantor"), owns the real property ("Property") described in the grant deed attached as Exhibit "A", and;
- B. The Property was leased to the City of Sacramento, a municipal corporation ("Grantee" or "City") between July 1, 1955 and June 30, 1958 for the purpose of disposal of garbage, garden refuse, and other waste material as described in City Agreement No. 927, and;
- C. Grantor desires to convey and the City desires to acquire fee title in the Property on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the payment and other obligations set forth below, Grantor and City (referred to together as "Parties") mutually agree as follows:

AGREEMENT

- 1. Execution and Delivery of Deed.** City has opened an escrow account with Fidelity National Title Company ("Escrow Holder"), 1375 Exposition Blvd, Suite 240, Sacramento, CA 95815, (916) 646-6057, Escrow Number 13-5014937. Upon execution of this Agreement and Deed by Grantor, Grantor shall deliver the Agreement and Deed to the City, and upon full execution of the Agreement, City shall deliver the Deed and a copy of the Agreement to Escrow Holder.
- 2. Payment/Purchase Price.** The Parties agree that acquisition of the Property by City shall be at no cost. The Parties further agree that in consideration of the no cost acquisition, City shall release Grantor from any future responsibilities related to the environmental condition of the Property, including any potential clean-up or closure orders related to the presence of garbage, garden refuse, and other waste material as described in City Agreement No. 927, on or under the Property.
- 3. Escrow.** Unless extended by the mutual agreement of both parties, the escrow shall close within **ninety (90) days** after execution of this Agreement by both parties.
  - A. **Title/Grant Deed.** At close of escrow, Grantor will convey to City real property interest by means of a duly executed and acknowledged Grant Deed in substantially identical form to that contained in Exhibit "A" of this Agreement.
  - B. The close of escrow is conditioned on the Property Right being conveyed to City free

and clear of all rights, restrictions, easements, impediments, encumbrances, liens, assessments or other security interests of any kind, except: (a) easements or rights-of-way for public roads or public utilities, if any; and (b) items identified as exceptions #8, #9, and #10 in the preliminary report of title dated November 9, 2015 provided by Fidelity National Title Company, title number 13-5014937.

C. **Title Insurance.** City may obtain a CLTA extended coverage owner's policy of title insurance insuring that clear title to the Property Rights is vested in City upon recording of the Deed.

D. **Fees.** The City shall pay all escrow, recording and title insurance fees incurred in this transaction.

This Agreement may serve in whole or in part as escrow instructions. The issuance of any further escrow instructions shall be the sole responsibility of the City. Grantor agrees to execute such additional documents as may be reasonably necessary to consummate the purchase and sale herein contemplated.

**4. Eminent Domain.**

A. It is mutually understood that the acquisition of the Property Rights by City are for a public purpose, and therefore, the Property Rights are otherwise subject to taking by the power of eminent domain. The acquisition by and through this Agreement is in lieu of City's exercise of the power of eminent domain.

B. If any eminent domain action has been filed by the City for acquisition of the Property Right, Grantor hereby agrees and consents to the dismissal of such action. The Grantor waives any and all claims to any money that may have been deposited in the Superior Court or with the State Treasurer in any such action and waives any and all claims for damages or costs, including attorney's fees, arising by virtue of the abandonment of the action pursuant to Section 1268.510 of the California Code of Civil Procedure.

**5. Amendment.** This agreement may be modified, changed, or rescinded only by an instrument in writing executed by the parties hereto.

**6. Just Compensation.** Grantor agrees that performance of this Agreement by City shall constitute full and fair compensation and consideration for any and all claims that Grantor may have against City by reason of the acquisition, improvement, possession or occupancy of the Property Right, and Grantor hereby waives any and all such claims, including claims for severance or taking compensation or damages on account of the acquisition of the Property Right. The foregoing waiver includes any and all rights or claims that Grantor may have under Article 1, section 19 of the California Constitution, the Eminent Domain Law, or any other law or regulation; provided that this section shall not apply to claims for relocation assistance, if any, to which Grantor may be entitled pursuant to applicable sections in Chapter 16 of Division 7 of Title 1 of the California Government Code.

**7. No Leases.** Grantor warrants that there are no leases on all or any portion of the Property, and the Grantor further agrees to hold the City harmless and reimburse the City for any of its losses and expenses occasioned by reason of any lease of all or any portion of the Property

**8. Grantor's Representations.** Grantor makes the following representations:

A. Grantor certifies that it owns full legal title to the Property, and has full power and authority to convey all property rights described herein to City.

B. To the best of Grantor's knowledge there is no suit, action, arbitration, legal, administrative or other proceeding or inquiry pending or threatened against the Property, or any portion thereof, or pending or threatened against Grantor which could (1) affect Grantor's title to the Property, or any portion thereof, (2) affect the value of the Property Right, or any portion thereof, or (3) subject an owner of the Property Right, or any portion thereof, to liability.

C. To the best of Grantor's knowledge there are no uncured notices which have been served upon Grantor from any governmental agency notifying Grantor of any violations of law, ordinance, rule or regulation which would affect the Property Rights or any portion thereof, excepting the "Notice of Pending Enforcement Proceeding or Action" recorded by the City of Sacramento in Book 20150827 at Page 1487 and Book 20150827 at Page 1488 of Official Records, Sacramento County.

D. To the best of Grantor's knowledge, the Property was leased to the City from July 1, 1955 and June 30, 1958 for the purpose of disposal of garbage, garden refuse, and other waste material.

E. Grantor has no knowledge of the production, storage, disposal, presence, observance or release of any Hazardous Substances (as defined below) in, upon, about or below the Property.

F. To the best of Grantor's knowledge, there are no notices or other information giving Grantor reason to believe that any conditions existing on the Property or in the vicinity thereof subject or could subject an owner of the Property Right to potential liabilities under any federal, state or local law, statute, ordinance, regulation, rule, order, decree, or other governmental requirement that pertains to the regulation of Hazardous Substances and/or the protection of public health and safety or the environment, including, but not limited to, the ambient air, soil, soil vapor, groundwater, surface water or land use.

G. Grantor has no knowledge of any violation of any such law, statute, ordinance, regulation, rule, order, decree, or other governmental requirement arising out of Grantor's ownership or use of the Property, nor of any legal, administrative or other action or proceeding, pending or threatened, affecting the Property and relating to environmental compliance.

H. To the best of Grantor's knowledge there is no license, permit, option, right of first refusal or other agreement, written or oral, which affects the Property or any portion thereof.

I. To the best of Grantor's knowledge, conveyance of the property rights described herein will not constitute a breach or default under any agreement to which Grantor is bound and/or to which the Property is subject.

Each of the above representations is material and is relied upon by City. Each of the above representations shall be deemed to have been made as of the date that the Deed is recorded, and shall survive the recording of the Deed by a period of two years following the date that the Deed is recorded. If, before the recording of the Deed, Grantor discovers any information or facts that would materially change any of these representations, Grantor shall immediately give notice to City of such facts and information. If any of the foregoing representations ceases to be

true before the recording of the Deed, Grantor shall remedy the problem before the recording of the Deed.

**9. Hazardous Substances.**

A. **Liability for Hazardous Substances.** The parties acknowledge, understand and agree that any liability associated with the presence of any Hazardous Substances, as defined below, on or adjacent to any portion of the Property shall be governed by the provisions of Section 10 (Indemnification) below, regardless of whether any inspection, examination, sampling, testing, assessment or other investigation is conducted by City.

B. **Definitions.**

(1) As used herein, the term "Hazardous Substances" means:

(a) Those substances included within the definitions of hazardous substance, hazardous waste, hazardous material, toxic substance, solid waste, or pollutant or contaminant under any Environmental Law, as defined below;

(b) Those substances listed in the United States Department of Transportation Table [49 CFR § 172.101], or by the Environmental Protection Agency, or any successor agency, as hazardous substances [40 CFR Part 302];

(c) Other substances, materials, and wastes that are or become regulated or classified as hazardous or toxic under federal, state or local laws or regulations; and

(d) Any material, waste, or substance that is

- 1) a petroleum or refined petroleum product,
- 2) asbestos,
- 3) polychlorinated biphenyl,
- 4) designated as a hazardous substance pursuant to 33 USCS §1321 or listed pursuant to 33 USCS §1317,
- 5) a flammable explosive, or
- 6) a radioactive material.

(2) As used herein, the term "Environmental Law" means all federal, state, local or municipal laws, rules, orders, regulations, statutes, ordinances, codes, decrees or requirements of any government authority regulating, relating to, or imposing liability or standards of conduct concerning any Hazardous Substance, or pertaining to environmental conditions on, under, or about any of the properties described in this Agreement, as now or may at any later time be in effect, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA) [42 USCS §§9601 *et seq.*]; the Resource Conservation and Recovery Act of 1976 (RCRA) [42 USCS §§6901 *et seq.*]; the Clean Water Act, also known as the Federal Water Pollution Control Act (FWPCA) [33 USCS §§1251 *et seq.*]; the Toxic Substances Control Act (TSCA) [15 USCS §§2601 *et seq.*]; the Hazardous Materials Transportation Act (HMTA) [49 USCS §§1801 *et seq.*]; the Insecticide, Fungicide, Rodenticide Act (7 USCS §§136 *et seq.*); the Superfund Amendments and Reauthorization Act [42 USCS §§6901 *et seq.*]; the Clean Air Act [42 USCS §§7401 *et*

*seq.*]; the Safe Drinking Water Act [42 USCS §§300f *et seq.*]; the Solid Waste Disposal Act [42 USCS §§6901 *et seq.*]; the Surface Mining Control and Reclamation Act [30 USCS §§1201 *et seq.*]; the Emergency Planning and Community Right to Know Act [42 USCS §§11001 *et seq.*]; the Occupational Safety and Health Act [29 USCS §§655 and 657]; the California Underground Storage of Hazardous Substances Act [Health and Safety Code §§25280 *et seq.*]; the California Hazardous Substances Account Act [Health and Safety Code §§25100 *et seq.*]; the California Safe Drinking Water and Toxic Enforcement Act [Health and Safety Code §§24249.5 *et seq.*]; the Porter-Cologne Water Quality Act [Water Code §§13000 *et seq.*], together with any amendments of or regulations promulgated under the statutes cited above, and any other federal, state or local law, statute, ordinance or regulation now in effect or later enacted that pertains to the regulation or protection of the environment, including ambient air, soil, soil vapor, groundwater, surface water, or land use.

**10. Indemnification.** Each party (the "Indemnifying Party") agrees and covenants to indemnify, defend (with counsel acceptable to the other party, which consent shall not be unreasonably withheld), and hold the other party, and its officers, employees and agents, harmless from and against any and all liabilities, penalties, losses, damages, costs, expenses (including reasonable attorneys' fees, whether for outside or staff counsel), causes of action, claims, or judgments that arise by reason of any death, bodily injury, personal injury, property damage, or violation of any law or regulation resulting from any alleged or actual acts or omissions related to the performance of this Agreement or the occupancy or use of the Property (including, but not limited to, the use, storage, treatment, transportation, release, or disposal of Hazardous Substances on or about any portion of the Property), by the Indemnifying Party, its officers, employees, agents or any other person or entity employed by or acting on their behalf.

It is the intention of the Parties that the provisions of this indemnity be interpreted to impose on each party responsibility to the other for the acts and omissions of their governing boards, officers, directors, officials, employees, volunteers, agents or contractors. It is also the intention of the parties that, where comparative fault is determined to have been contributory, principles of comparative fault will be followed and each party shall bear the proportionate cost of any claims attributable to the fault of that party, its governing board, officers, directors, officials, employees, volunteers, agents, or contractors.

The right to defense and indemnity under this Section shall initiate upon occurrence of the event giving rise to a claim and tendered in writing to the Indemnifying Party. The Indemnifying Party shall defend the Indemnified Party with counsel reasonably acceptable to the Indemnified Party. Notwithstanding the foregoing, the Indemnified Party shall be entitled, on its own behalf, and at its own initial expense, to assume control of its defense with counsel reasonably selected by it.

The parties further agree and understand as follows: a party does not, and shall not be deemed to, waive any rights against the other party which it may have by reason of the aforesaid indemnity and hold harmless agreement because of any self-insurance or insurance coverage available; the scope of the aforesaid indemnity and hold harmless agreement is to be construed broadly and liberally to provide the maximum coverage in accordance with their terms and to the extent permitted by law; no specific term or word contained in this Section 10 shall be construed as a limitation on the scope of the indemnification and defense rights and obligations of the parties unless specifically so provided. Nothing in this indemnity shall be construed to create any duty to, any standard of care with reference to, or any liability or obligation, contractual or otherwise, to any third party. The provisions of this Section 10 shall survive the recording of any deeds hereunder.

**11. Compliance with all Laws.** City shall comply with all applicable federal, state, and local laws,

regulations and enactments; local ordinances, rules and regulations; and the requirements of any other duly authorized governmental agency. In addition, City shall comply with all applicable local, state and federal occupational safety and health acts and regulations. City shall file any and all reports as required by federal, state, and local law, including but not limited to the Statement of Diversion and Use with the Division of Water Rights, California State Water Resources Control Board. City shall assume responsibility for and payment of any fines or penalties levied on City arising from inaccurate reporting or non-compliance. In addition, City shall assume responsibility for and payment of any future fees imposed by federal, state, or local government agencies related to regulatory requirements, including but not limited to diversion of water.

**12. Notices.** Any notice that either party may or is required to give the other shall be in writing, and shall be either personally delivered or sent by regular U.S. Mail, to the following address:

To City

Real Estate Services  
City of Sacramento  
915 I Street, 2<sup>nd</sup> Floor  
Sacramento, CA 95814  
Attn: Supervisor, Real Estate Services

To Grantor

Sharon Facque  
Cannon Family Trust  
4910 Gila Bend Road  
Reno Nv 89511

**13. Binding on Successors.** This Agreement shall be binding on and shall inure to the benefit of the City and Grantor, and their respective successors, assigns, and their past, present and future officers, employees and agents; provided that this Agreement may only be assigned with the written consent of both parties, and any attempt to assign this Agreement without such consent shall be void.

**14. Counterparts.** This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

**15. Entire Agreement.** The parties have herein set forth the whole of their Agreement. All prior oral discussions, representations, and/or agreements, if any, are specifically superseded by this Agreement, which is intended by the parties to contain all of the terms and conditions agreed to by them with regard to acquisition of the Property Right by City.

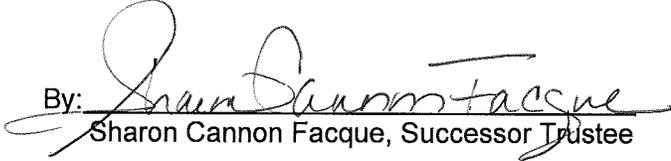
**16. Authority.** Each individual executing this Agreement on behalf of an entity represents and warrants that he or she has been authorized to do so by the entity on whose behalf he or she executes this Agreement and that said entity will thereby be obligated to perform the terms of this Agreement.

*{Remainder of Page Intentionally Left Blank}*

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates set forth below.

**Grantor:**

**CANNON FAMILY TRUST**

By:   
Sharon Cannon Facque, Successor Trustee

Date: 2/8/14

**Grantee:**

**CITY OF SACRAMENTO**  
a municipal corporation

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_  
For John F. Shirey, City Manager

Date: \_\_\_\_\_

APPROVED AS TO FORM:

By: \_\_\_\_\_  
City Attorney

ATTEST:

By: \_\_\_\_\_  
City Clerk

**Exhibit "A"**

GRANT DEED

RECORDING REQUESTED BY  
AND FOR THE BENEFIT OF

**CITY OF SACRAMENTO**  
**NO FEE DOCUMENT**  
**Govt Code 27383**

WHEN RECORDED MAIL TO

CITY OF SACRAMENTO  
Real Estate Services  
915 I Street  
Sacramento, California 95814  
Attn: Supervisor, Real Estate Services

MAILTAX STATEMENTS TO

CITY OF SACRAMENTO  
915 I Street, 5<sup>th</sup> Floor  
Sacramento, California 95814  
Attn: Finance Administration

SPACE ABOVE THIS LINE FOR RECORDER'S USE

NO TRANSFER TAX DUE per R&T Code 11922  
Grantee is a Government Agency

ACQ-10-20-00  
City RES File

5014937  
Escrow

\_\_\_\_\_  
City Agreement #

003-0032-008 & 003-0032-009  
APN's

## GRANT DEED

**Sharon Cannon Facque, Successor Trustee of the Cannon Family Trust,**

hereby grant(s) to

**CITY OF SACRAMENTO, a municipal corporation,**

all that real property situated in the County of Sacramento, State of California, described as follows:

SEE ATTACHED LEGAL DESCRIPTION MARKED EXHIBIT 'A'

By: \_\_\_\_\_  
Sharon Cannon Facque, Successor Trustee of  
the **Cannon Family Trust**

Dated: \_\_\_\_\_

"Approved as to form - City Attorney"

## EXHIBIT "A"

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF SACRAMENTO, COUNTY OF SACRAMENTO, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

### Parcel One:

Lots 1 and 2 and the North 110 feet of Lots 7 and 8 in the Block bounded by "A" and "B" Streets, 23rd and 24th Streets of the City of Sacramento, according to the Official Map or Plan of said City.

Excepting therefrom all that portion thereof within that strip of land 50 feet in width, conveyed by John Mackey to the City of Sacramento, by deed dated May 17, recorded in Book 287 of Deeds, Page 346, which said 50 foot strip is more particularly described as follows:

Commencing at a point on the center line of 23rd Street, distant 50.09 feet North of the centerline of "B" Street and running thence in an Easterly direction parallel to said center line of "B" Street, a distance of 725.3 feet thence, on a curve to the left having a radius of 3728 feet, a distance of 79.1 feet to a point on the center line of 25th Street; thence Northerly along the center line of said 25th Street, a distance of 50.03 feet; thence Westerly on a curve to the right having a radius of 3678 feet, a distance of 79.3 feet; thence in a Westerly direction parallel to and distant 100.09 feet from the center line of "B" Street, a distance of 725.30 feet; thence in a Southerly direction along the center line of 23rd Street a distance of 50.00 feet to the point of commencement, containing .853 of an acre, said land being a strip of land substantially 50.00 feet wide lying immediately North of and adjoining the B Street or North Levee of the City of Sacramento, between the centerline of 23rd Street and the center line of 25th Street of said City of Sacramento.

### Parcel Two:

Lots 3, 4, 5 and 6 in the Block bounded by "A" and "B" Streets, 23rd and 24th Streets of the City of Sacramento, according to the Official Map or Plan of said City.

Excepting therefrom all that portion thereof within that strip of land 50 feet in width, conveyed by John Mackey to the City of Sacramento, by deed dated May 17, recorded in Book 287 of Deeds, Page 346, which said 50 foot strip is more particularly described as follows:

Commencing at a point on the center line of 23rd Street, distant 50.09 feet North of the centerline of "B" Street and running thence in an Easterly direction parallel to said center line of "B" Street, a distance of 725.3 feet thence, on a curve to the left having a radius of 3728 feet, a distance of 79.1 feet to a point on the center line of 25th Street; thence Northerly along the center line of said 25th Street, a distance of 50.03 feet; thence Westerly on a curve to the right having a radius of 3678 feet, a distance of 79.3 feet; thence in a Westerly direction parallel to and distant 100.09 feet from the center line of "B" Street, a distance of 725.30 feet; thence in a Southerly direction along the center line of 23rd Street a distance of 50.00 feet to the point of commencement, containing .853 of an acre, said land being a strip of land substantially 50.00 feet wide lying immediately North of and adjoining the B Street or North Levee of the City of Sacramento, between the centerline of 23rd Street and the center line of 25th Street of said City of Sacramento.

Also excepting therefrom all that portion thereof within that property described as "Parcel No. 2" in that certain Quitclaim Deed from the City of Sacramento to Southern Pacific Company, recorded August 5, 1966 in Book 660805, Page 115, of Official Records.

APN: 003-0032-008-0000, 003-0032-009-0000