

MINUTE ITEM

This Calendar Item No. 13  
was approved as Minute Item  
No. 13 by the State Lands  
Commission by a vote of 3  
to 0 at its 7/19/78  
meeting.

CALENDAR ITEM

13.

7/78  
W 21730  
Cook

COMPROMISE IN LIEU OF LITIGATION BY WAY OF  
EXCHANGE AND BOUNDARY AGREEMENT RESPECTING  
DISPUTED TITLES TO PARCELS OF REAL PROPERTY IN THE  
CITY OF MILPITAS, SANTA CLARA COUNTY, CALIFORNIA  
B.L.A. 175

Alpha Land Company and Milpitas Golf Associates assert ownership, free of any State right title or interest, of a 150.608 acre parcel of real property in Santa Clara County, California, herein referred to as "Title Study Parcel", which is more particularly described in the "Description of Title Study Parcel", which is attached hereto, marked Exhibit "A", and is made a part hereof. The Title Study Parcel is also depicted on the attached plats marked Exhibits "D", "E" and "F".

The staff has made a study of the titles and has reached the following conclusions with respect to the Title Study Parcel:

1. Historically, the parcel consisted of salt marsh of the upper reaches of South San Francisco Bay and may have included portions of Penitencia Creek, there being substantial uncertainty and dispute in the evidence of the exact location of natural or artificial conditions of such creek. Based on interferences most favorable to the State, the creek outside the Rancho Meandus may have been about 11½ acres. On the other hand the creek may have been totally outside the parcel.
2. The navigable/tidal character of the creek is uncertain.
3. The parcel has been reclaimed for years and was used for farming with a drainage ditch (probable diversion of the original creek) along its northeasterly boundary.
4. The major portion of the parcel (identified as parcel 1 on Exhibit "F") is now used as a golf course leased to the City of Milpitas. Parcel 2 of Exhibit "F" is proposed for condominium construction.

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5. Private parent titles for the majority of the parcel extend from the Ranchos, Rancho Rincon de los Esteros (White) called to the center of Penitencia Creek, but Rancho Los Tulanitos meandered the right (easterly) bank of the creek.
6. By Swamp and Overflowed locations Nos. 4204 and 4229 the State in 1938 and 1936 patented the area between the meanders (48.37 acres according to the patents) as Swamp and Overflowed Lands. The parcels so patented were not located within 2 miles of the city limits of any city in existence at that time.
7. The patents contained the express reservations required by California Constitution Art. I Sec. 25, of the absolute right of the public to fish; 1/16th of the minerals; as well as reservations to the United States relating to reclamation.
8. Substantial uncertainties in the evidence include the following:
  - a. The historic extent and location of the creek.
  - b. The location of the Rancho and Swamp and Overflowed Patent boundaries.
  - c. The actual location of the lines of various surveys, over the years, including the township lines, resulting in serious questions concerning what realty was included within the Rancho's; and what was included within the State's Patents.
  - d. The character of the salt marsh and creek elevations below or above lines of the ordinary high or ordinary low tides.

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9. The facts are the subject of vigorous dispute and their resolution would require either expensive, protracted and uncertain litigation or a compromise settlement in lieu of litigation.
10. Staff believes that it is in the best interests of the State, and recommends that the State Lands Commission approve a settlement of the dispute in lieu of litigation which gives up the State's claims (so far unidentified by agreement or Court Decree) to the tidelands or submerged lands which may have been included within the 135.22 acres M/L of the subject parcel within the Rancho's; to the possible 48.37 acres more or less, within the Swamp Lands Patents by reason of their possible tideland / navigable / submerged character; to the express reservations within the Swamp Land Patents, of whatever area and of wherever location, IN EXCHANGE for undisputed State title to 1.103 acres in fee simple, held by reason of its sovereignty, in trust. Such settlement is fully set forth in the agreement on file, summarized further, as follows:
  - a. The State, in its sovereign capacity, will receive the fee title (including mineral rights) subject to the public trust in a 1.103 acre portion of the Title Study Parcel described in the "Description of Exchange Parcel" which is attached hereto, marked Exhibit "B" and is made a part hereof. The Exchange Parcel passing to the State is also depicted on the attached Exhibits "D", "E" and "F".
  - b. In exchange, the private claimants will receive fee simple title, free of any State right, title, or interest (including the reservation to the State in the State Swamp and Overflowed Lands

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Patents) in the remainder of the Title Study Parcel, such remainder being more particularly described in the "Description of Patent Parcel", which is attached hereto, marked Exhibit "C" and made a part hereof. The Patent Parcel is also depicted on Exhibits "D", "E" and "F".

c. The State will receive, without cost, title insurance in the sum of \$75,000 insuring its title to the Exchange Parcel.

d. The transaction is more fully set forth in the form of agreement on file with the State Lands Commission.

11. The Title Study Parcel has been appraised; the title evidence has been reviewed; and the State's claim therein has been evaluated, showing that the parcel passing to the State is of a value of \$75,000, which is equal to or greater than the value of the State's interest being given up in the patent parcel.

12. Proposed development will provide street frontage along the parcel to be received by the State, without State cost.

EXHIBITS:

- A. Description of Title Study Parcel.
- B. Description of Exchange Parcel.
- C. Description of Patent Parcel.
- D. Air Photo Plat.
- E. Parcel Plat (Quad Sheet).
- F. Exchange Parcel Plat.

IT IS RECOMMENDED THAT THE COMMISSION:

1. AUTHORIZE AND APPROVE THE SETTLEMENT IN SUBSTANTIALLY THE FORM OF THE AGREEMENT ON FILE WITH THE COMMISSION.
2. AUTHORIZE THE EXECUTION AND RECORDING OF THE AGREEMENT AND ANY PATENTS, DEED, CERTIFICATES OF ACCEPTANCE, ESCROW INSTRUCTIONS, OR OTHER DOCUMENTS NECESSARY TO CARRY OUT THE PROVISIONS OF THE AGREEMENT AND TO TAKE ALL OTHER ACTION AS MAY BE NECESSARY OR APPROPRIATE IN THE FURTHERANCE THEREOF.

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3. FIND THAT THE EXCHANGE OF INTERESTS IN LANDS AND RIGHTS IS IN THE BEST INTERESTS OF THE STATE FOR AID IN RECLAMATION; THAT IT WILL NOT SUBSTANTIALLY INTERFERE WITH THE RIGHTS OF NAVIGATION AND FISHING IN THE WATERS INVOLVED, AND THAT THE STATE WILL RECEIVE LANDS AND INTEREST IN LANDS EQUAL TO OR GREATER IN VALUE THAN ANY LANDS OR INTERESTS IN LANDS RELINQUISHED BY THE STATE PURSUANT TO SAID AGREEMENT.
4. AUTHORIZE THE EXECUTION OF A STATE PATENT TO ALPHA LAND COMPANY AND MILPITAS GOLF ASSOCIATES, AS THEIR RESPECTIVE INTERESTS APPEAR OF RECORD, OF THE REAL PROPERTY DESCRIBED IN EXHIBIT "C", ATTACHED AND BY REFERENCE MADE A PART HEREOF.
5. FIND AND DECLARE THAT UPON THE EXECUTION AND RECORDATION OF THE AGREEMENT IN THE OFFICE OF THE COUNTY RECORDER OF SANTA CLARA COUNTY, THAT THE REAL PROPERTY DESCRIBED IN EXHIBIT "C":
  - a. HAS BEEN CUT OFF FROM NAVIGABLE WATERS, IMPROVED, FILLED, AND RECLAIMED BY THE PRIVATE PARTY OR PREDECESSORS IN INTEREST;
  - b. HAS BEEN SEVERED FROM THE PUBLIC CHANNELS AND WATERWAYS AND IS NO LONGER AVAILABLE OR USEFUL OR SUSCEPTIBLE OF BEING USED FOR COMMERCE, NAVIGATION, AND FISHING, AND IS NO LONGER IN FACT TIDELANDS OR SUBMERGED LANDS AND THEREFORE SHALL BE FREED FROM SUCH PUBLIC TRUST.
6. AUTHORIZE THE STATE LANDS COMMISSION'S STAFF, AND/OR THE OFFICE OF THE ATTORNEY GENERAL, TO TAKE ALL FURTHER ACTION NECESSARY TO IMPLEMENT THE TRANSACTION DESCRIBED ABOVE, INCLUDING BUT NOT LIMITED TO, APPEARANCES IN ANY LEGAL PROCEEDINGS BROUGHT CONCERNING THE ABOVE TRANSACTION.
7. FIND THAT THE AGREEMENT IS IN SETTLEMENT OF TITLE AND BOUNDARY LITIGATION AND THE PROVISIONS OF THE CALIFORNIA ENVIRONMENTAL QUALITY ACT ARE INAPPLICABLE.



Description of Title Study Parcel

That real property in the County of Santa Clara, State of California,  
described as follows:

PARCELS 1 and 2, as shown on Map entitled, "Parcel Map, being  
a portion of the Rancho Rincon De Los Esteros, City of Milpitas,  
Santa Clara County, California", which Map was recorded on  
February 1, 1978 in Book 412 of Maps, pages 12 and 13, in the  
office of the County Recorder of Santa Clara County.

Containing 150.608 acres, more or less.

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EXHIBIT A

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Description of Exchange Parcel

That real property in the County of Santa Clara, State of California, described as follows:

COMMENCING at the southeasterly corner of Parcel 2 as said parcel is shown on that certain Parcel Map recorded February 1, 1978, in Book 412 of Maps on pages 12 and 13 in the Office of the County Recorder of Santa Clara County; thence along the easterly line of said Parcel 2 N.  $21^{\circ}07'13''$  E. 279.80 feet; thence continuing along said easterly line of Parcel 2, along a tangent curve to the left having a radius of 450.00 feet, through a central angle of  $8^{\circ}39'08''$  for an arc distance of 67.95 feet; thence continuing along the easterly line of Parcel 2, N.  $37^{\circ}04'10''$  W. 736.00 feet; thence continuing along the easterly line of Parcel 2, N.  $19^{\circ}02'28''$  W. 109.50 feet; thence continuing along the easterly line of Parcel 2, N.  $85^{\circ}47'00''$  E. 20.35 feet to the TRUE POINT OF BEGINNING; thence continuing along the easterly line of Parcel 2 N.  $85^{\circ}47'00''$  E. 354.84 feet, thence continuing along the easterly line of Parcel 2 N.  $04^{\circ}13'00''$  West 668.97 feet; thence leaving the easterly line of Parcel 2 S.  $86^{\circ}50'21''$  W. 2.78 feet; thence along a tangent curve to the left having a radius of 12.00 feet, through a central angle of  $91^{\circ}03'21''$ , an arc distance of 19.07 feet; thence S.  $04^{\circ}13'00''$  E. 307.31 feet; thence along a tangent curve to the right having a radius of 278.00 feet, through a central angle of  $77^{\circ}00'00''$ , for an arc distance of 373.61 feet to a point of reverse curvature; thence along a tangent curve to the left having a radius of 222.00 feet, through a central angle of  $38^{\circ}44'17''$ , for an arc distance of 150.10 feet to the TRUE POINT OF BEGINNING.

Containing 1.103 acres.

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EXHIBIT B

Description of Patent Parcel

That real property in the County of Santa Clara, State of California, described as follows:

PARCELS 1 and 2, as shown on Map entitled, "Parcel Map, being a portion of the Rancho Rincon De Los Esteros, City of Milpitas, Santa Clara County, California", which Map was recorded on February 1, 1978 in Book #12 of Maps, pages 12 and 13, in the office of the County Recorder of Santa Clara County.

EXCEPTING therefrom that portion of said Parcel 2 described as follows:

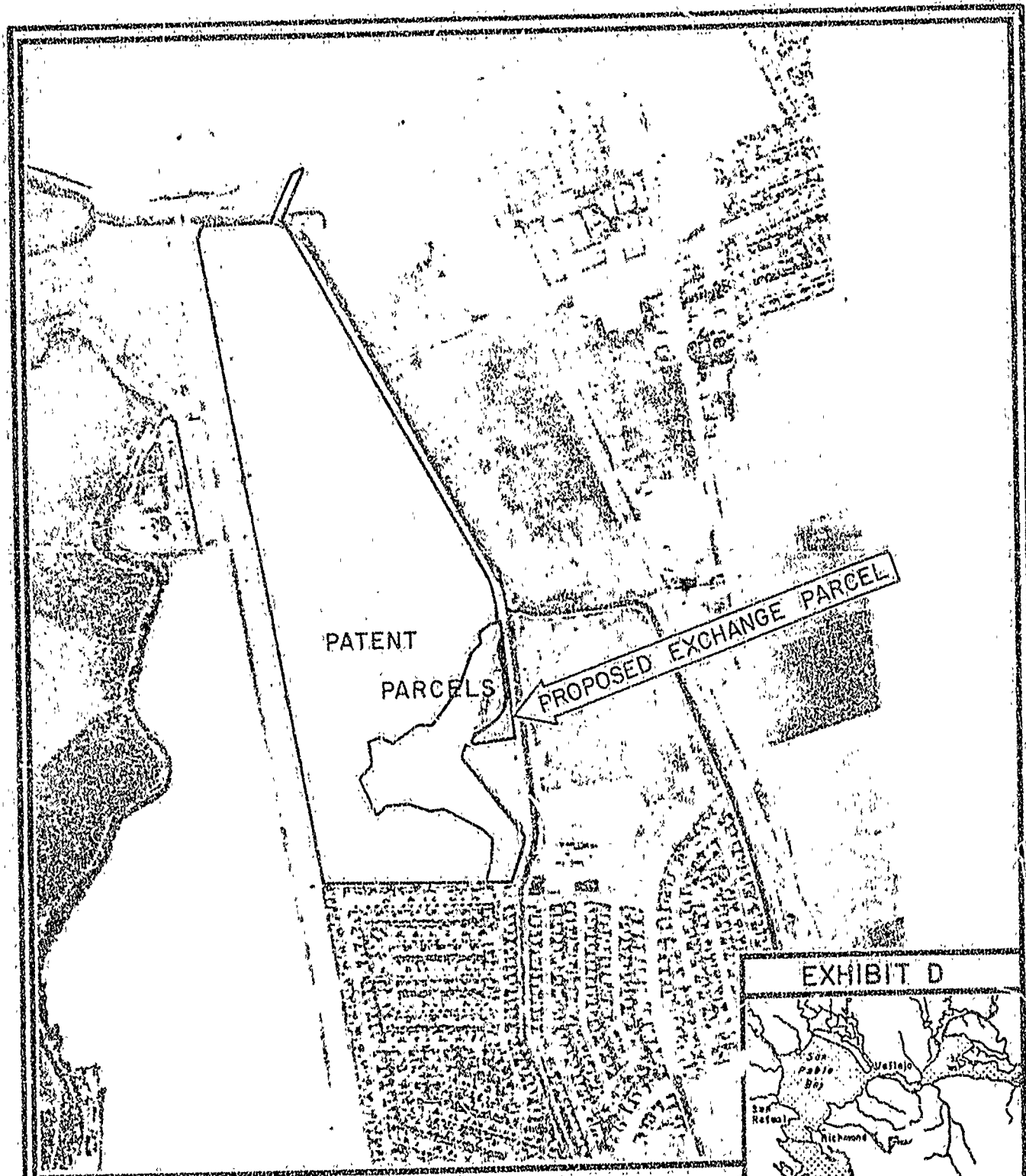
COMMENCING at the southeasterly corner of said Parcel 2; thence along the easterly line of said Parcel 2 N. 21° 07' 13" E., 279.80 feet; thence continuing along said easterly line of Parcel 2, along a tangent curve to the left having a radius of 450.00 feet, through a central angle of 8° 39' 08", for an arc distance of 67.95 feet; thence continuing along the easterly line of Parcel 2, N. 37° 04' 10" W. 736.00 feet; thence continuing along the easterly line of Parcel 2, N. 19° 02' 28" W. 109.30 feet; thence continuing along the easterly line of Parcel 2, N. 85° 47' 00" E. 20.35 feet to the TRUE POINT OF BEGINNING; thence continuing along the easterly line of Parcel 2 N. 85° 47' 00" E. 354.84 feet; thence continuing along the easterly line of Parcel 2 N. 04° 13' 00" West 668.97 feet; thence leaving the easterly line of Parcel 2 S. 86° 50' 21" W. 2.78 feet; thence along a tangent curve to the left having a radius of 12.00 feet, through a central angle of 91° 03' 21", an arc distance of 19.07 feet; thence S. 04° 13' 00" E. 307.31 feet; thence along a tangent curve to the right having a radius of 278.00 feet, through a central angle of 77° 00' 00", for an arc distance of 373.61 feet to a point of reverse curvature; thence along a tangent curve to the left having a radius of 222.00 feet, through a central angle of 38° 44' 17", for an arc distance of 150.10 feet to the TRUE POINT OF BEGINNING.

Containing 149.305 acres, more or less.

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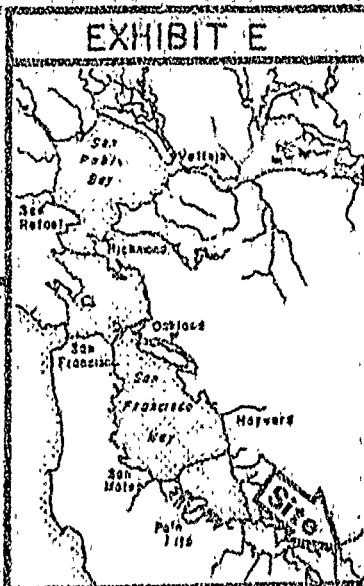
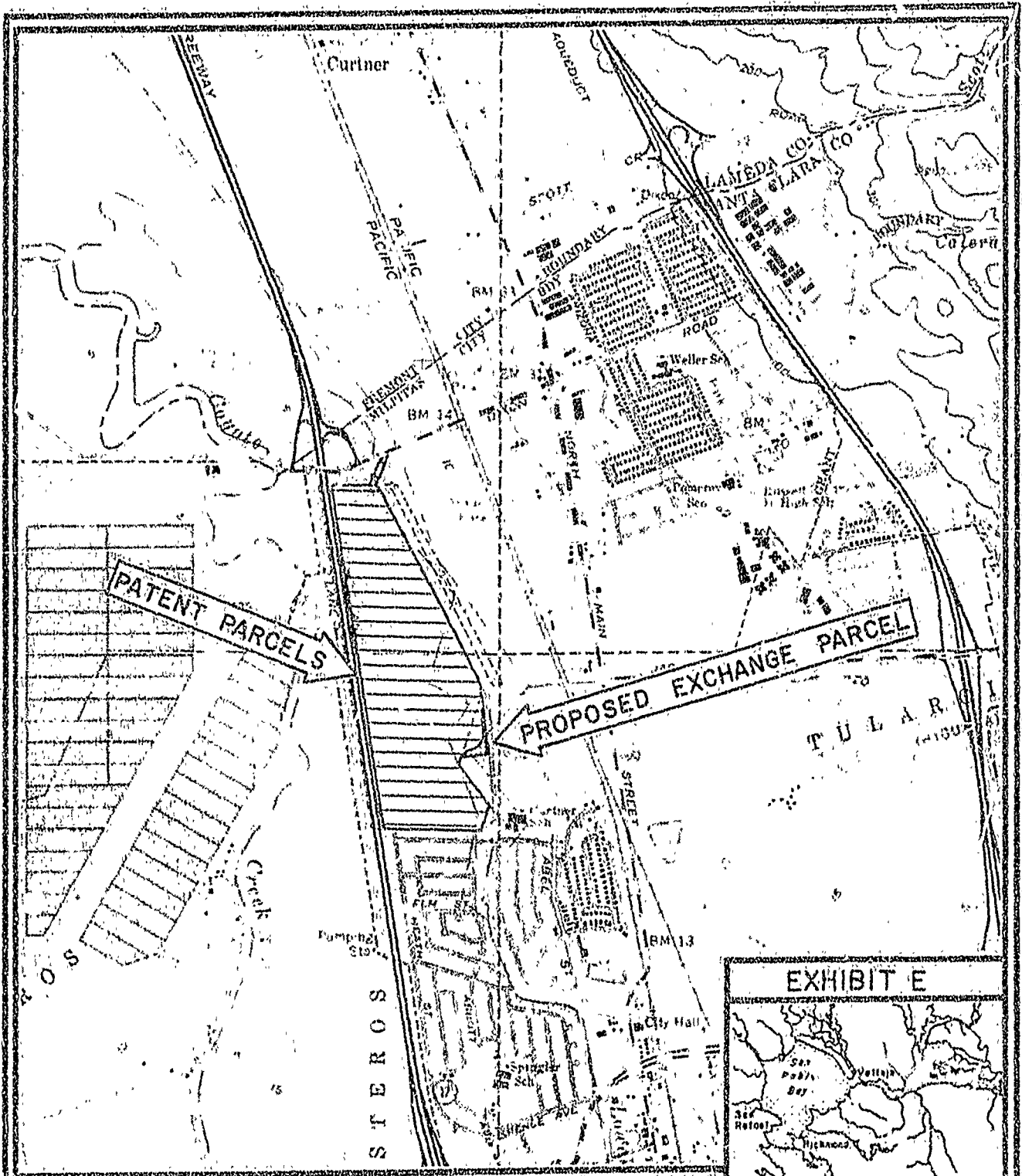
EXHIBIT C





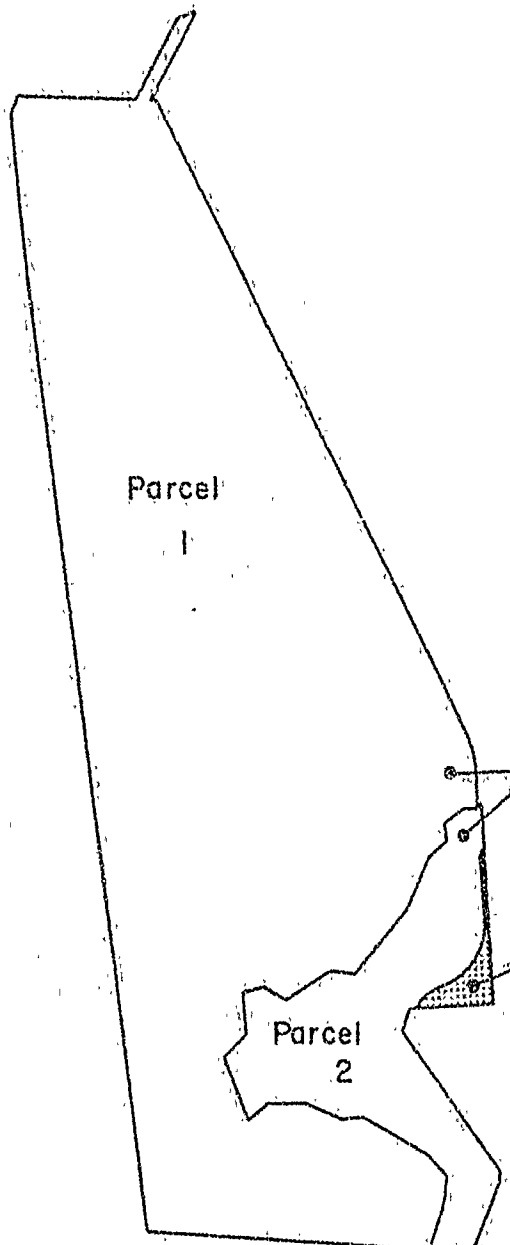
STATE LANDS COMMISSION  
 AIR PHOTO PLAT  
 EXPOSURE NO. 19-1  
 of S.F. BCDC FLIGHT on Nov. 10, 1969

Prepared by: jsf Date: June 28, 1978  
 Title Study: Alpha Land Co - Dawson W 21730 23-N34-E 158



STATE LANDS COMMISSION  
 PORTION OF U.S.G.S. QUADRANGLE  
 MILPITAS 1961  
 PHOTOREVISED 1968 & 1973

Prepared by: jat Date: April 5, 1978  
 Title Study: Alpha Land Co. - Dawson W 21730 23-N 34-E 158



Parcel 1

Patent Parcels

1.103 Ac. proposed exchange parcel being a portion of Parcel 2

Parcel 2

EXHIBIT F



STATE LANDS COMMISSION

PROPOSED EXCHANGE PARCEL

Prepared by: jst

Date: April 5, 1978

Title Study: Alpha Land Co. - Dawson

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23 - N 34 - E 158