

MINUTE ITEM

This Calendar Item No. 48
was approved as Minute Item
No. 48 by the State Lands
Commission by a vote of 3
to 0 at its 5-27-80
meeting.

MINUTE ITEM

5/29/80
W 22224
Cook

48. COMPROMISE TITLE SETTLEMENT

During consideration of Calendar Item 48 attached, Chairman Kenneth Cory thanked Walter Cook, Staff Counsel, and his staff for their work on this matter.

Upon motion duly made and carried, the resolution as presented in Calendar Item 48 was approved by a vote of 3-0.

Attachment: Calendar Item 48

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48.

COMPROMISE TITLE SETTLEMENT

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SUMMARY OF TITLE DISPUTE

A title dispute exists between the State in its sovereign capacity and Jesse D. Yohanan and Joreita Yohanan, hereafter referred to as the "PRIVATE PARTIES", concerning State-Private ownership of a 9.36+ acre parcel of real property located in the City of Burlingame, County of San Mateo, directly below the San Francisco Airport, along San Francisco Bay and located within a commercially developed neighborhood. The said real property is referred to as the SUBJECT PARCEL, and is described in the attached Exhibit "A", and is depicted on the attached Exhibit "B".

The PRIVATE PARTIES CLAIM as successors in interest to the State's Swamp and Overflowed Lands Patent of Survey No. 101, San Mateo County, issued in 1864, and the State's Tideland Patent of Survey No. 12 issued in 1875, which may have included a small portion of the subject parcel.

The PRIVATE PARTIES contend that the said State patents conveyed all right, title and interest of the State within the subject parcel without any reservations to the State, express or implied; and that the private party now holds title to said real property in fee simple absolute, free and clear of any State right, title or interest therein.

The staff of the State Lands Commission has conducted a study of the evidence of title to the subject parcel and has drawn a number of evidentiary conclusions, including those summarized below:

1. That the subject parcel was included within the perimeter description of said swamp and overflowed lands patent, and, perhaps, within said Tidelands Patent;
2. That in a natural state, it consisted of marsh grass and sloughs, and was covered, at least in part, by the ordinary tides, the precise extent of such tidal action being uncertain;
3. That prior to 1931 it had almost totally eroded away to become bay mud flats;

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4. That the subject parcel remained as bay mud flats until it was filled in 1963-1967, under Permit from the Army Corps of Engineers;
5. That it is now, and since said filling has been cut off from the tidal waters of San Francisco Bay, but is otherwise unimproved;
6. That there is no record of any Federal List or Patent to the State under the Arkansas Swamp Lands Act.

The Staff, contrary to the contentions of the private parties, is of the opinion that the title evidence and the applicable legal principles of law would lead to the conclusion that the State, in its sovereign capacity, is the owner of some public trust right, title or interest in the subject parcel, the exact extent and nature of which is subject to uncertainty and dispute.

LAND BANK PARCEL:

Pursuant to Commission Minute Item No. 25, of its regular public meeting on September 26, 1979, the Commission, on behalf of the STATE OF CALIFORNIA, in its sovereign capacity, and the TRUST FOR PUBLIC LAND (TPL) have entered into a "Land Bank Option Agreement" whereby TPL has agreed to convey to the State, under the terms and conditions of the agreement, about 441 acres of real property in Contra Costa County, (described in the attached Exhibit C, and depicted on the attached Exhibit D) and referred to as the LAND BANK PARCEL, consisting of marsh lands along the southerly shoreline of Suisun Bay in the vicinity of Point Edith and the mouth of Pacheco Creek, upon payment to TPL of a total purchase price of \$200,000, (being about \$453.51 per acre), or, from time to time, undivided interests therein, upon a lesser payment to TPL, equal to the percentage the amount such lesser payment bears to the total price of \$200,000.

PROPOSED SETTLEMENT:

The private parties have offered to resolve this title dispute by a written agreement in compromise settlement of the legal and evidentiary issues. The staff of the State Lands Commission recommends approval of the settlement in substantially the form of the agreement, a copy of which is now on file with the State Lands Commission.

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While the agreement sets forth all the specific terms and conditions of the settlement, a brief summary of some of the principal terms and conditions of the settlement is set forth below, as follows:

1. The private parties will purchase from TPL for the purchase price of \$135,000.00 the fee title to an undivided 67.5% interest in the LAND BANK PARCEL, such interest to be conveyed by TPL to the State in its sovereign capacity as real property of the legal character of tidelands and submerged land held under the public trust. The 67.5% interest is equivalent to 298 $\frac{1}{2}$ acres of the Land Bank Parcel.
2. In exchange for such conveyance to the State, the State will convey all its right, title and interest in, (and will terminate the public trust upon) the SUBJECT PARCEL, to the Yohanans or their successors in interest, reserving a reasonable public access easement thereon. The public access is to be that access hereafter required by the San Francisco Bay Conservation and Development as more specifically provided by the proposed Settlement Agreement.
3. The agreement provides for an escrow and will be effective upon its recordation.
4. The Yohanans will provide a standard form of C.L.T.A. title insurance in the amount of \$135,000.00, insuring the State's title to the 67.5% interest in the LAND BANK PARCEL without cost to the State.

Staff has appraised the SUBJECT PARCEL and has evaluated the law and the evidence bearing on the title dispute, and is of the opinion that the said sum of \$135,000.00 is equal to or greater than the value of the State's interest in the SUBJECT PARCEL.

The settlement is made in contemplation of a lease of the State's interest, to be acquired in the LAND BANK PARCEL, to the California Department of Fish and Game for fish, wildlife and other environmental purposes with the parcel to remain substantially as undeveloped open space.

The agreement will accomplish the following:

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Subject Parcel:

0.29 miles of boundary cleared

9.36 acres cleared in private ownership

Land Bank Parcel:

0.84 miles (pro-rata equivalent) of boundary cleared

298 acres (pro-rata equivalent) in State sovereign ownership

EXHIBITS: A-Subject Parcel Description
 B-Subject Parcel Plat
 C-Land Bank Parcel Description
 D-Land Bank Parcel Plat
 E-Public Easement Description

IT IS THEREFORE RECOMMENDED THAT THE COMMISSION:

1. FIND THAT THE PROPOSED COMPROMISE TITLE SETTLEMENT AGREEMENT, INCLUDING THE EXCHANGE OF THE STATE'S INTEREST IN THE SUBJECT PARCEL FOR THE LAND BANK PARCEL IS IN THE BEST INTERESTS OF THE STATE FOR THE IMPROVEMENT OF NAVIGATION; AID IN RECLAMATION; FOR FLOOD CONTROL PROTECTION; TO ENHANCE THE CONFIGURATION OF THE SHORELINE FOR THE IMPROVEMENT OF THE WATER AND UPLAND; FOR THE PROTECTION, PRESERVATION AND ENHANCEMENT OF THE TIDELANDS AND SUBMERGED LANDS AND PUBLIC ACCESS THERETO AND PUBLIC USE THEREOF PURSUANT TO THE PUBLIC TRUST; THAT IT WILL NOT SUBSTANTIALLY INTERFERE WITH THE RIGHTS OF NAVIGATION AND FISHING IN THE WATERS INVOLVED; AND THAT THE REAL PROPERTY RECEIVED BY THE STATE, IS OF A VALUE EQUAL TO OR GREATER THAN THE VALUE OF THE INTERESTS IN THE SUBJECT PARCEL BEING RELINQUISHED BY THE STATE.
2. FIND THAT THE PARTIES HAVE A GOOD FAITH AND BONA FIDE DISPUTE RESPECTING THE PRIVATE-STATE TITLES WITHIN THE SUBJECT PARCEL; THAT THE PROPOSED AGREEMENT CONSTITUTES A COMPROMISE OF THE CONTESTED ISSUES OF LAW AND EVIDENCE UPON WHICH THE DISPUTE IS BASED; THAT IT IS IN LIEU OF THE COSTS, DELAYS AND UNCERTAINTIES OF TITLE LITIGATION; THAT IT IS CONSISTENT WITH AND IS AUTHORIZED BY THE REQUIREMENTS OF LAW INCLUDING SECTION 6307 OF THE PUBLIC RESOURCES CODE, AS WELL AS THE OTHER PROVISIONS OF DIVISION SIX THEREOF, AND IS CONSISTENT WITH THE STATE'S POWER TO RESOLVE AND SETTLE A CONTROVERSY IN LIEU OF LITIGATION; THAT ON THE EFFECTIVE DATE OF THE AGREEMENT AND CONSISTENT WITH THE TERMS THEREOF, INCLUDING THE RESERVED PUBLIC ACCESS EASEMENT, THE SUBJECT PARCEL

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WILL NO LONGER BE NECESSARY OR USEFUL FOR THE PURPOSES OF THE PUBLIC TRUST AND THE PUBLIC TRUST MAY BE TERMINATED THEREON; AND THAT THE PROPOSED AGREEMENT IS IN THE BEST INTERESTS OF THE STATE.

3. FIND AND DETERMINE THAT SETTLEMENT OF THIS TITLE DISPUTE IN LIEU OF LITIGATION IS NOT A PROJECT WITHIN THE REQUIREMENTS OF CEQA AS PROVIDED BY SECTION 6371, PUBLIC RESOURCES CODE AND AS EXPRESSLY PROVIDED BY THE REGULATIONS OF THE COMMISSION ADOPTED AT ITS REGULAR PUBLIC MEETING ON MARCH 30, 1978, MINUTE ITEM NO. 19. (TITLE 2, DIV. 3, ARTICLE 10, SECTION 2903(d), CAL. ADMIN. CODE), PURSUANT TO THE PROVISIONS OF THE STATE AIR GUIDELINES, INCLUDING, TITLE 14, DIV. 6, CH. 3, ARTICLE 5, SEC. 15050 (c) (1) (c), AND ARTICLE 8, SEC. 15100.4, WHICH AUTHORIZE PUBLIC AGENCIES TO LIST EXEMPT ACTIVITIES.
4. APPROVE AND AUTHORIZE THE EXECUTION, ACKNOWLEDGEMENT AND RECORDATION ON BEHALF OF THE COMMISSION OF THE FOLLOWING DOCUMENTS:
 - A. THE COMPROMISE TITLE SETTLEMENT AGREEMENT IN SUBSTANTIALLY THE FORM OF THE COPY OF SUCH AGREEMENT OF FILE WITH THE COMMISSION.
 - B. A PATENT CERTIFICATE AND A PATENT OF THE SUBJECT PARCEL IN SAN MATEO COUNTY, CALIFORNIA, DESCRIBED IN EXHIBIT A, FOREVER FREE OF THE PUBLIC TRUST, EXCEPTING AND RESERVING, HOWEVER, THE PUBLIC TRUST ACCESS EASEMENT PROVIDED BY SAID AGREEMENT.
 - C. A CERTIFICATE OF ACCEPTANCE AND CONSENT TO RECORDING OF THE CONVEYANCE TO THE STATE OF THE UNDIVIDED 67.5% FEE INTEREST IN THE LAND BANK PARCEL IN CONTRA COSTA COUNTY CALIFORNIA, DESCRIBED IN EXHIBIT C, AND OF THE DEED TO THE STATE OF THE SAID PUBLIC TRUST ACCESS EASEMENT EXCEPTED AND RESERVED FROM THE SUBJECT PARCEL, DESCRIBED IN EXHIBIT E, AS REAL PROPERTY OF THE LEGAL CHARACTER OF TIDELANDS AND SUBMERGED LANDS, OWNED BY THE STATE BY REASON OF ITS SOVEREIGNTY UNDER THE PUBLIC TRUST.
5. 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 AND RECORDATION OF DOCUMENTS OF TITLE, CONVEYANCES, STIPULATIONS, ESCROW INSTRUCTIONS, DEEDS, AGREEMENTS, CERTIFICATES OF ACCEPTANCE AND CONSENTS TO RECORDATION, AND SUCH OTHER DOCUMENTS AS MAY BE REASONABLE AND CONVENIENT TO CARRY OUT THE SAID COMPROMISE TITLE SETTLEMENT AGREEMENT; TO APPEAR ON BEHALF OF THE COMMISSION IN ANY LEGAL PROCEEDINGS RELATING TO THE SUBJECT MATTER THEREOF; AND TO PREPARE AND FILE THE NOTICE AUTHORIZED BY SECTION 21108(b) OF THE PUBLIC RESOURCES CODE, (CEQA)

EXHIBIT "A"

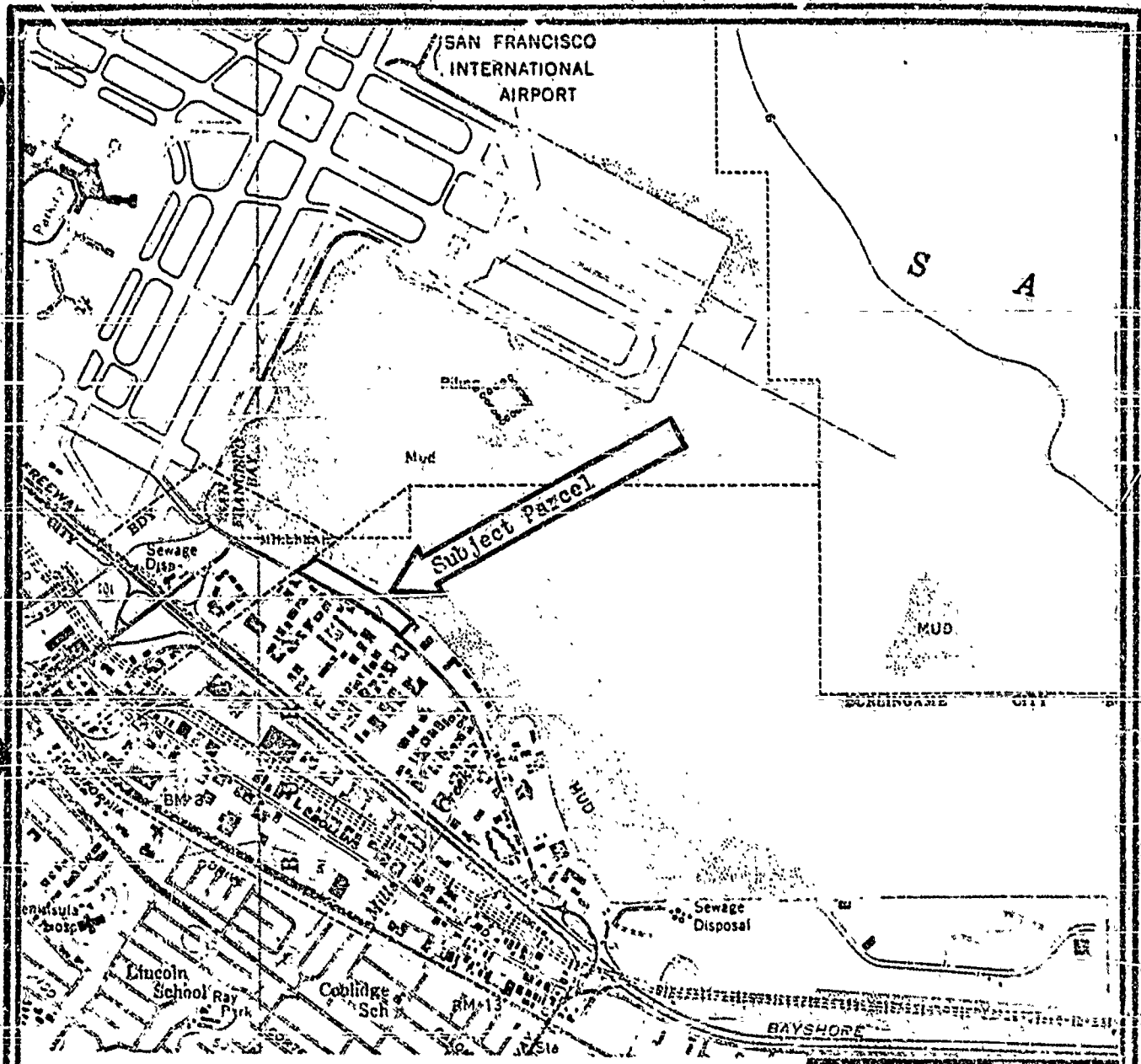
All that certain real property situate in the City of Burlingame, County of San Mateo, State of California, described as follows:

A PORTION of Sections 11 and 12, Township 4 South, Range 5 West, Mount Diablo Base and Meridian and being more particularly described as follows:

BEGINNING at the intersection of the corporate limits line common to Millbrae and Burlingame with a line parallel to and perpendicularly distant 20.50 feet Southwesterly from the Northeasterly Right of Way line of the Bayshore Highway, 125 feet wide as granted by Mills Estate, Incorporated, to the State of California, by Deed recorded August 8, 1925 in Book 177 of Official Records of San Mateo County at page 307, said point of beginning being distant on said Corporate limits line North $53^{\circ} 11' 36''$ East 114.57 feet from the most Northerly corner of the subdivision shown on that certain map entitled "EAST MILLSDALE INDUSTRIAL PARK UNIT NO. 1", which map was filed in the office of the Recorder of the County of San Mateo, State of California on January 23, 1959 in Book 50 of Maps at pages 24 and 25; thence from said point of beginning and along said parallel line, the following courses: South $61^{\circ} 00' 00''$ East 897.98 feet, and tangent to the preceding course on the arc of a curve to the right having a radius of 2542.00 feet and a central angle of $15^{\circ} 37' 08''$ an arc length of 692.95 feet to a point thereon; thence leaving said parallel line North $44^{\circ} 37' 08''$ East 260.00 feet to a point on a line parallel with and perpendicularly distant 239.50 feet Northeasterly from the above mentioned Northeasterly Right of Way line of Bayshore Highway, last said parallel line being the Southwesterly boundary line of the lands described in Parcel 2 in the Deed from Atlantic Life Insurance Company, to The City and County of San Francisco, recorded December 27, 1960 in Book 3911 of Official Records of San Mateo County at page 310; thence along last said Southwesterly line from a tangent that bears North $45^{\circ} 22' 52''$ West on the arc of a curve to the left having a radius of 2802.00 feet and a central angle of $15^{\circ} 37' 08''$, an arc length of 763.83 feet; thence continuing on said Southwesterly line of Parcel 2, North $61^{\circ} 00' 00''$ West 781.17 feet to the above mentioned Corporate Limits line common to Millbrae and Burlingame; thence along said Corporate Limits line South $53^{\circ} 11' 36''$ West 285.04 feet to the point of beginning.

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EXHIBIT A



0.29 miles of boundary established
 9.36 acres cleared in private ownership
 NOTE: parcel passing to State depicted
 on Exhibit D.

STATE LANDS COMMISSION
 PORTION OF U.S.G.S. QUADRANGLE
 SAN MATEO 1956
 PHOTOREVISED 1968 & 1973



Prepared by: B Lee Date: 7-20-79

EXHIBIT C

PARCEL ONE

All that portion of Swamp and Overflow Surveys Nos. 87, 88 and 89; that portion of Tide Land Survey No. 207, and that portion of the 976.04 acre parcel described in the deed to C. A. Hooper & Co. recorded June 1, 1932, in Book 310, page 498 of Official Records of Contra Costa County, California, all within unincorporated territory of said county and described as a whole as follows:

Commencing at the Northwesterly corner of the 273.183 acre parcel of land awarded to the United States of America in the Final Judgement in condemnation under Action No. C-69-369 in the United States District Court, entitled United States of America, plaintiff, vs. V. P. Baker et al., defendants, a certified copy of which was recorded November 19, 1973, in Book 7094, page 482, of said Official Records;

Thence South $27^{\circ} 48' 59''$ East 5930.49 feet along the Southwesterly line of said 273.183 acre parcel of land to the Southwesterly corner thereof in the Northerly line of the 200 foot wide strip of land firstly described in the deed recorded June 18, 1913 in Book 205, page 141 of deeds of said Official Records;

Thence South $70^{\circ} 25'$ West 1665.13 feet along said Northerly line to the Point of Beginning of this description;

- (1) Thence North $27^{\circ} 48' 59''$ West 6102.91 feet, parallel with the above mentioned Southwesterly line of the 273.183 acre parcel of land, to the mean high tide line of Suisun Bay;

Thence meandering along said mean high tide line the following courses:

- (2) South $5^{\circ} 14' 30''$ West 70.80 feet;
- (3) South $57^{\circ} 32'$ West 307.74 feet, and
- (4) South $62^{\circ} 59'$ East 302.68 feet;
- (5) Thence South $69^{\circ} 36'$ East 138.42 feet to the low water line of Suisun Bay;

Thence meandering along said low water line the following courses:

- (6) South $4^{\circ} 07'$ East 311 feet;
- (7) South $19^{\circ} 18'$ West 516 feet;

- (8) South 52° 37' West 541 feet;
- (9) South 41° 46' West 650 feet;
- (10) South 26° 20' West 398 feet;
- (11) South 62° 31' West 624 feet;
- (12) South 88° 20' 15" West 1438.90 Feet to the Easterly line of the 30.00 foot wide strip of land described as Parcel One in the deed to Monsanto Chemical Company, recorded June 30, 1952, in Book 1954, page 245 of said Official Records, said point hereinafter being referred to as Point "A";
- (13) Thence South 61° 54' 15" West 652.74 feet along said low water line to the Northeasterly line of the 106.09 acre parcel described in the deed to Associated Oil Company recorded March 28, 1913, in Book 201, page 65 of Deeds, and the Northeasterly line of the tract of land described as Parcel Two in the deed to Tide Water Associated Oil Company, recorded December 17, 1941, in Book 635, page 396 of said Official Records;

Thence along said Northeasterly lines and along the Southerly line of the above mentioned Tide Land Survey No. 207 the following courses:

- (14) South 18° 15' East 1244.83 feet;
- (15) South 36° 05' East 170.93 feet;
- (16) North 22° 51' East 316.39 feet, and
- (17) North 55° 00' East 380 feet to the above mentioned Easterly line of the 30.00 foot wide strip of land to Monsanto Chemical Company, said point hereinafter being referred to as Point "B";
- (18) Thence South 31° 48' East 3934.18 feet along the Northeasterly line of said 30.00 foot wide strip of land to the above mentioned Northerly line of the 200 foot wide strip of land firstly described in the deed recorded in Book 205, page 141 of Deeds, of said Official Records;
- (19) Thence North 70° 25' East 2603.38 feet along said Northerly line to the Point of Beginning.

EXCEPTING therefrom that portion of the above mentioned 30.00 foot wide strip of land to Monsanto Chemical Company, the Easterly line being described as follows:

Beginning at Point "A" referred to in Course (12) above;
Thence South 17° 19' 30" East 1171.38 feet to Point "B"
referred to in Course (17) above, the sidelines of said
30.00 foot wide strip of land to be lengthened or shortened
to terminate in Courses (13 and 17) above.

Containing 391.184 acres, more or less, after deducting
area of excepted 30.00 foot wide strip of land.

PARCEL TWO

All that portion of Tide Land Survey No. 207 in unincorporated
territory of the County of Contra Costa, State of California,
described as follows:

Beginning at the intersection of the Northwesterly line
of said Tide Land Survey No. 207 with the Easterly line
of the 30 foot wide strip of land described as Parcel One
in the deed to Monsanto Chemical Company recorded June 30,
1952 in Book 1954, page 245 of Official Records of said
County, said point being hereinafter referred to as Point "C";

- (1) Thence North 71° 51' East 103.88 feet and
- (2) North 58° 15' East 1905.93 feet along said Northwesterly
line;
- (3) Thence South 31° 45' East 1003.90 feet, leaving said
Northwesterly line, to the low water line of Suisun
Bay;

Thence meandering along said low water line the following
courses:

- (4) South 26° 20' West 298.86 feet,
- (5) South 62° 31' West 624 feet and
- (6) South 88° 20' 15" West 1438.90 feet to said Easterly
line of the 30 foot wide strip of land, said point
being hereinafter referred to as Point "A";
- (7) Thence South 61° 54' 15" West 652.74 feet along said
low water line to the Northeasterly line to the 106.09
acre parcel described in the deed to Associated Oil
Company recorded March 28, 1913 in Book 201, page
65 of deeds, and the Northeasterly line of the tract
of land described as Parcel Two in the deed to Tide
Water Associated Oil Company recorded December 17,
1941 in Book 635, page 396 of said Official Records;

(8) Thence North $18^{\circ} 15'$ West 540 feet along said Northeasterly lines to said Northwesterly line of Tide Land Survey No. 207.

(9) Thence North $71^{\circ} 51'$ East 655.52 feet along said Northwesterly line to the Point of Beginning.

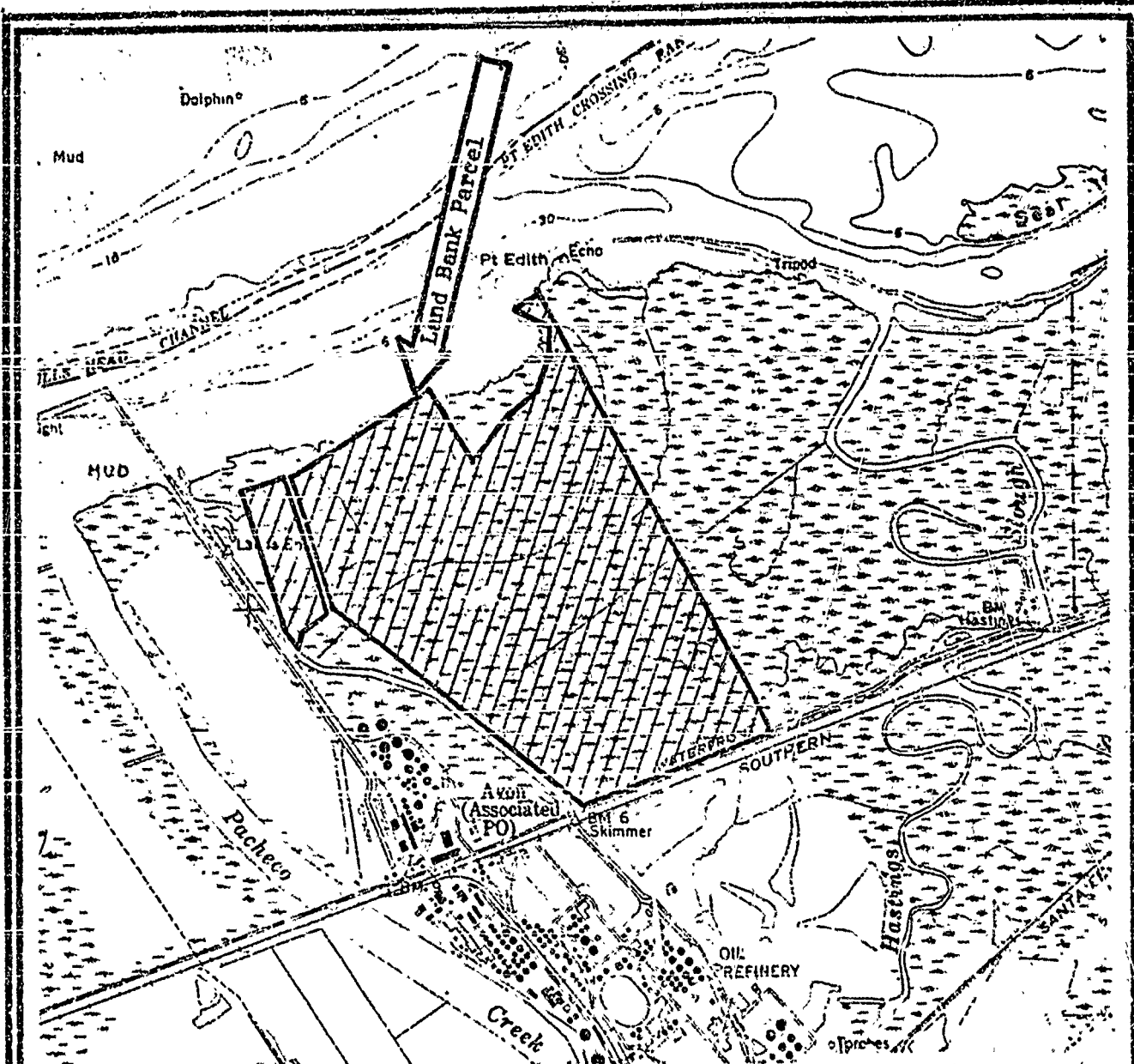
EXCEPTING therefrom that portion of said 30 foot wide strip of land described in deed recorded in Book 1954, page 245 of Official Records, the Easterly line being described as follows:

Beginning at Point "C";

Thence South $17^{\circ} 19' 30''$ East 427.27 feet to Point "A", the sidelines of said 30 foot wide strip of land being lengthened or shortened so as to terminate in Courses (7) and (9).

Containing 50.234 acres, more or less, after deducting the area of the excepted 30 foot wide strip of land.

Subject to easements, rights-of-way and restrictions of record.



Yochanan (W22224) Settlement

298 ± acres (pro-rata equivalent) to State
 0.84 ± miles (pro-rata equivalent) of boundary established

NOTE: Base sheet from USGS Quadrangle PORT CHICAGO 1959, photorevised 1968

STATE LANDS COMMISSION

LAND BANK PARCEL PLAT

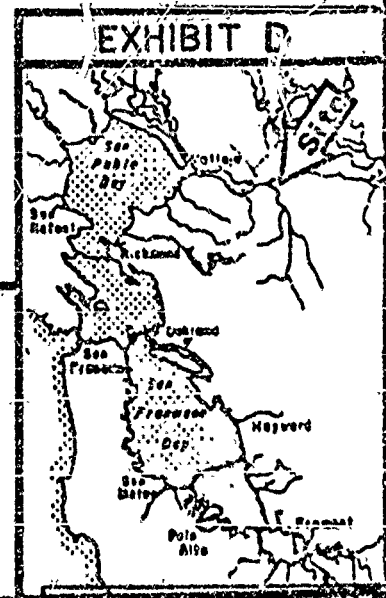
Agreement approved per SLC Minute Item 25 of Sept. 26, 1979. Parcel contains 441 ± acres and has 1.21 ± miles of water boundary.

Prepared by : Alexander

Date: 4/13/79

Title Study: T.P.L. - KNUDSON PARCEL

W 22121



DATE: 4/13/79 228
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EXHIBIT "E"

PUBLIC EASEMENT

A public trust access easement on, over and across a strip of real property situate in San Mateo County, State of California, being ten feet in width and being herein described as follows:

The southerly ten feet of the northwesterly forty four feet and the northeasterly ten feet of that parcel described in Exhibit A of that agreement between Jesse D. Yohanan, et al and John Bjorner, et al recorded November 7, 1979 on Reel 7912, Image 170 of Official Records of San Mateo County.

for the purposes of Public non-motorized bay access, for recreational, fishing and similar public enjoyment. Neither party shall be required to make any repairs nor to maintain or improve the PUBLIC EASEMENT, but may do so at its option. State shall have no obligation to preserve or protect the remainder of the SUBJECT PARCEL from flooding, subsidence, sloughing off, or other damage or injury arising from actions on, or use of the PUBLIC EASEMENT, and SECOND PARTY hereby waives any and all claims, demands, or causes of action against the State for personal injury or damages which may arise from conditions upon or use of the PUBLIC EASEMENT.

"Second party may, at its expense, make such repairs, maintenance, improvements, fencing or changes in the physical conditions in the public easement as are reasonably necessary to protect the remainder of the subject parcel so long as the same do not unreasonably damage or interfere with the utility or the public use of the public easement, or so long as a comparable public easement of similar size and utility is provided. Such alternate public easement must be acceptable to STATE who shall signify acceptance in writing. Such acceptance shall not be unreasonably withheld. For a period of five years from the date of recording of the within easement, the public easement may be relocated by second party to the extent such relocation is required by the San Francisco Bay Conservation and Development Commission or other regulatory agency. Relocation of the public easement will become effective upon the delivery to the State of a duly executed and acknowledged easement deed for the relocated public easement consistent with the requirements hereof and shall be upon the same terms and conditions of the within created public easement, and thereupon, the State shall deliver to second party its duly executed and acknowledged quitclaim deed of the within public easement being so relocated or changed."

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EXHIBIT E

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