

MINUTE ITEM

This Calendar Item No. 41  
was approved as Minute Item  
No. 41 by the State Lands  
Commission by a vote of 3  
to 0 at its 3/24/83  
meeting.

MINUTE ITEM

41

3/24/83  
W 22632  
Valentine

APPROVAL OF A  
COMPROMISE TITLE SETTLEMENT AGREEMENT  
CITY OF NEWARK, ALAMEDA COUNTY

During consideration of Calendar Item 41 attached, Assistant Executive Officer Trout noted that the following statement was omitted from the Calendar Item and is submitted for the record:

THE SETTLEMENT PARCEL HAS BEEN FILLED AND RECLAIMED AND IS NO LONGER SUBJECT TO TIDAL ACTION.

Upon motion duly made and carried, the resolution in Calendar Item 41 was approved as presented, by a vote of 3-0.

Attachment:

Calendar Item 41

A 25

S 11

CALL DAY PAGE	
548	

CALENDAR ITEM

41

3/24/83  
W 22632  
Valentine  
SLI 95

APPROVAL OF A  
COMPROMISE TITLE SETTLEMENT AGREEMENT  
CITY OF NEWARK, ALAMEDA COUNTY

PRIVATE PARTIES:

Salvatore Niosi and Silvano Vial

A title dispute exists between the State in its sovereign capacity and Salvatore Niosi and Silvano Vial, ("private parties") concerning ownership of a 3.6-acre portion of a larger 12.67-acre parcel of real property located in the City of Newark, Alameda County. The property is just south of Mayhews Landing Road and bounded by Thornton Avenue on the east, Willow Street on the west, and Sunset Avenue on the south. The real property is referred to as the subject parcel, and is described in Exhibit "A", and is depicted on Exhibit "B".

Private party is in the process of acquiring the subject parcel as successor in interest to the State's Tideland Patent of Survey No. 73 issued in 1865, which included part of the subject parcel. If private party has not acquired the subject parcel in fee, excluding existing State interest within 90 days of consideration of this matter by the State Lands Commission this authorization is withdrawn.

n 25

S 11 (Added 3/21/83)

-1-

Non-Substantive Revision 10/4/83

CALENDAR PAGE	278
MINUTE PAGE	549

CALENDAR ITEM NO. 41 (CONTD)

The private parties contend that the State patent conveyed all right, title and interest of the State within the subject parcel without any reservations to the State, express or implied, and that they now hold title to the property free and clear of any State right, title or interest.

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 factual conclusions, including those summarized below:

1. A portion of the subject parcel was included within the perimeter description of State's Tideland Patent of Survey No. 73.
2. The portion included within that survey is unimproved and reclaimed historic wetlands which formerly consisted of marsh grass and a slough. It was in a natural state covered, at least in part, by the ordinary tides, the precise extent of coverage being uncertain.

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 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 the State's interest is however, subject to uncertainty and dispute.

The private party has offered to resolve the title dispute by 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 now on file with the State Lands Commission.

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 for \$19,000 an undivided 23 percent interest of the Land Bank Parcel to be conveyed to the State as real property of the legal character of tidelands and submerged land held under the public trust. The Land Bank Parcel is described in Exhibit "C" and depicted on Exhibit "D".

(Added 3/21/83)

-2-

CALENDAR PAGE	278A
MINUTE PAGE	550

CALENDAR ITEM NO. 41 (CONTD)

2. In exchange for this conveyance to the State, the State will convey to private parties all its right, title and interest, and will terminate the public trust interest in the subject parcel.
3. The agreement provides for an escrow and will be effective upon its recordation. Escrow costs will be without cost to the State.
4. Private parties will provide a standard form of C.L.T.A. title insurance in the amount of \$19,000, insuring the State's title to the exchange 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 when the offer was made the sum of \$19,000 was equal to or greater than the value of the State's interest in the subject parcel. Since the offer was made the value of the parcel may have increased. However, private parties orally accepted staff's outstanding offer, which had no expiration date, prior to completion of an appraisal update.

The private parties will convey to the State by grant deed a ten foot wide non-exclusive public access easement on the north side of the Alameda County Flood Control Channel (formerly Alameda Creek) where it runs along the subject parcel.

AB 884: N/A.

EXHIBITS:

- A. Subject Parcel Description.
- B. Subject Parcel Plat.
- C. Land Bank Description.
- D. Land Bank Parcel Plat.

IT IS THEREFORE RECOMMENDED THAT THE COMMISSION:

FIND THAT THE PROPOSED COMPROMISE TITLE SETTLEMENT AGREEMENT, INCLUDING THE EXCHANGE OF THE STATE'S INTEREST IN THE SUBJECT PARCEL FOR THE EXCHANGE PARCEL, IS:

1. IN THE BEST INTERESTS OF THE STATE FOR FLOOD CONTROL AND FOR THE PROTECTION, PRESERVATION AND ENHANCEMENT OF THE TIDELANDS AND SUBMERGED LAND.

CALENDAR ITEM NO. 41 (CONTD)

2. 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.
3. THE PARTIES HAVE A GOOD FAITH AND BONA FIDE DISPUTE RESPECTING THE PRIVATE-STATE TITLES WITHIN THE PARCEL.
4. THE PROPOSED AGREEMENT CONSTITUTES A COMPROMISE OF THE CONTESTED ISSUES OF LAW AND EVIDENCE UPON WHICH THE DISPUTE IS BASED.
5. THE AGREEMENT IS IN LIEU OF THE COSTS, DELAYS AND UNCERTAINTIES OF TITLE LITIGATION; IT IS CONSISTENT WITH AND IS AUTHORIZED BY THE REQUIREMENTS OF LAW.
6. ON THE EFFECTIVE DATE OF THE AGREEMENT AND CONSISTENT WITH ITS TERMS, THE SUBJECT PARCEL WILL NO LONGER BE NECESSARY OR USEFUL FOR THE PURPOSES OF THE PUBLIC TRUST AND THE PUBLIC TRUST MAY BE TERMINATED.
7. THE PROPOSED AGREEMENT IS IN THE BEST INTERESTS OF THE STATE; SETTLEMENT OF THIS TITLE DISPUTE IN LIEU OF LITIGATION IS NOT A PROJECT WITHIN THE REQUIREMENTS OF CEQA PRC SECTION 21080.11.

APPROVE AND AUTHORIZE THE EXECUTION, ACKNOWLEDGEMENT AND RECORDATION ON BEHALF OF THE COMMISSION OF THE FOLLOWING DOCUMENTS:

1. THE COMPROMISE TITLE SETTLEMENT AGREEMENT IN SUBSTANTIALLY THE FORM OF THE COPY OF SUCH AGREEMENT ON FILE WITH THE COMMISSION.
2. A PATENT CERTIFICATE AND A PATENT OF THE SUBJECT PARCEL IN ALAMEDA 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.
3. A CERTIFICATE OF ACCEPTANCE AND CONSENT TO RECORD THE CONVEYANCE TO THE STATE OF THE EXCHANGE PARCEL IN SOLANO COUNTY, CALIFORNIA, DESCRIBED IN EXHIBIT "C", AS REAL PROPERTY OF THE LEGAL CHARACTER OF TIDELANDS AND SUBMERGED LANDS, OWNED BY THE STATE BY REASON OF ITS SOVEREIGNTY.

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 ALL DOCUMENTS AS MAY BE NECESSARY OR CONVENIENT TO CARRY OUT THE COMPROMISE TITLE SETTLEMENT AGREEMENT; AND TO APPEAR ON BEHALF OF THE COMMISSION IN ANY LEGAL PROCEEDINGS RELATING TO THE SUBJECT MATTER OF THE AGREEMENT.

(Added 3/21/83)

CALENDAR ITEM NO. 41 (CONTD)

FIND THAT IF PRIVATE PARTY HAS NOT ACQUIRED THE SUBJECT  
PARCEL IN FEE, EXCLUDING EXISTING STATE INTEREST WITHIN  
90 DAYS OF CONSIDERATION OF THIS MATTER BY THE STATE LANDS  
COMMISSION THIS AUTHORIZATION IS WITHDRAWN.

(Added 3/22/83)

-5-

CALENDAR PAGE	278	D
MINUTE PAGE	553	



EXHIBIT A-1

LAND DESCRIPTION

TRUST TERMINATION PARCEL

A parcel of land within a portion of projected Section 2, T5S, R2W, MDM, in the City of Newark, County of Alameda, State of California, described as follows:

All that land described in that certain Grant Deed, recorded March 24, 1966 in Reel 1733, image 411, Alameda County Records.

EXCEPTING THEREFROM any portion lying northwesterly of a line that is parallel with and measures 16.5 feet distant northwesterly from the original centerline of the county road known as Mayhews Landing Road, as said road is designated on the "Map Showing the Town of Newark", filed April 27, 1880, in Map Book 17, page 42, Alameda County Records.

ALSO EXCEPTING THEREFROM any portion lying southwesterly of the northwesterly line of Thornton Avenue (formerly Dumbarton Road) as said line is described in that certain Indenture recorded April 12, 1926 in Book 1279, page 119, Alameda County Records.

END OF DESCRIPTION

PREPARED BY THE BOUNDARY AND TITLE UNIT, LEROY WEED, SUPERVISOR.

Non-substantial addition 4/26/83

CALENDAR PAGE	278 E
PAGE	554

## EXHIBIT A-2

## LAND DESCRIPTION

## QUITCLAIM PARCEL

A parcel of land within a portion of projected Section 2, T5S, R2W, MDM, in the City of Newark, County of Alameda, State of California, said parcel being a NON-EXCLUSIVE PUBLIC ACCESS EASEMENT; and said easement being a strip of land 10 feet wide, measured northerly and north-westerly at right angles from the following described boundary line:

BEGINNING at the intersection of the western line of Willow Street as said street is shown on the "Map Showing the Town of Newark", filed April 27, 1880, in Map Book 17, page 42, Alameda County Records, with the northern boundary line of that property described in deed to Alameda County Flood Control and Water Conservation District, recorded November 19, 1957, in Book 8524, page 473, Series No. AM/114888, Alameda County Records; thence westerly along said northerly boundary line S 75° 59' 07" W, 348.22; thence S 5° 24' 31" W, 400.00 feet; thence S 76° 48' 32" W, 122.78 feet; thence S 72° 21' 56" W, 83.50 feet to a point on an arc of a curve to the left, whose radial line 286.00 feet long bears S 31° 32' 31" E; thence along the arc of said curve a distance of 174.95 feet to a point from which a radial line bears S 66° 35' 29" E; thence on a line tangent to the last said curve S 23° 24' 31" W, 61.36 feet more or less to the northeastern boundary line of Thornton Avenue (formerly Dumbarton Road) as said boundary line is described in that certain Indenture recorded April 12, 1926 in Book 1279 at pages 119-121, Alameda County Records.

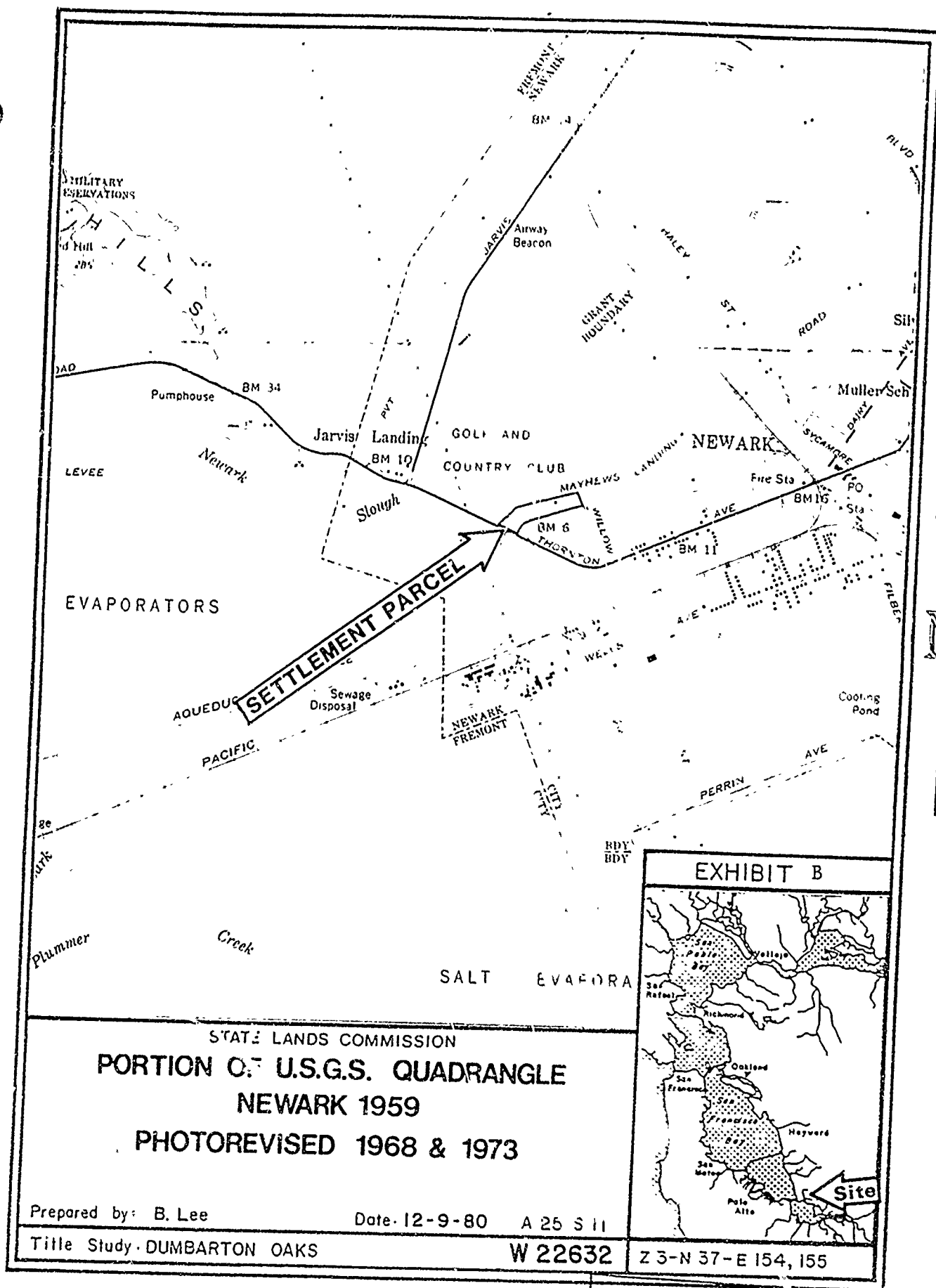
END OF DESCRIPTION

PREPARED BY THE BOUNDARY AND TITLE UNIT, LEROY WEED, SUPERVISOR.

Non-substantial addition 4/26/83

CALLING PAGE	278
INDEX PAGE	555





(Added 3/22/83)

CALENDAR PAGE 278 G  
 MINUTE PAGE 556

DESCRIPTION OF LAND BANK PARCEL

Exhibit C

W22611

A portion of Sections 35 and 36, Township 5 North, Range 2 West, M.D.B. & M., City of Suisun City, County of Solano, State of California, more particularly described as follows:

Commencing at the intersection of the easterly line of the Southern Pacific Railroad right-of-way and the southerly line of Cordelia Street (County Road No. 76); thence along said easterly line South  $22^{\circ}21'23''$  West, 324.00 feet more or less to the TRUE POINT OF BEGINNING and continuing along said easterly line South  $22^{\circ}21'23''$  West, 1625.00 feet more or less to the Northerly line of a Pacific Gas and Electric Company easement recorded July 17, 1972, in Book 1763 of Official Records, Solano County, at page 535; thence along said northerly line South  $88^{\circ}49'18''$  East, 930.5 feet more or less; thence continuing along said northerly line North  $80^{\circ}35'46''$  East 668.46 feet more or less; thence North  $10^{\circ}32'23''$  West, 360.25 feet more or less to a tangent curve concave to the Northeast; thence along said curve having a radius of 118.00 feet and a central angle of  $8^{\circ}14'51''$ , a distance of 16.99 feet more or less; thence a non-tangent bearing North  $11^{\circ}44'34''$  West a distance of 116.79 feet more or less; thence North  $10^{\circ}10'30''$  West, 53.79 feet more or less; thence South  $83^{\circ}30'27''$  East, 24.97 feet more or less, thence North  $6^{\circ}38'45''$  West, 780.38 feet more or less; thence North  $89^{\circ}51'00''$  West, 410.00 feet more or less; thence North  $0^{\circ}09'00''$  East, 100.00 feet more or less; thence North  $89^{\circ}51'00''$  West, 402.47 feet more or less to THE TRUE POINT OF BEGINNING.

Reserving therefrom, an easement for the purposes of access and maintenance over and through the following describe property:

A portion of Sections 35 and 36, Township 5 North, Range 2 West, M.D.B. & M., City of Suisun City, County of Solano, State of California, more particularly described as follows:

A strip of land 50' in width, lying 25 feet each side of the following described centerline; commencing at the intersection of the easterly line of the Southern Pacific Railroad right-of-way and the southerly line of Cordelia Street; thence South  $22^{\circ}21'23''$  West, 351.00 feet more or less to the TRUE POINT OF BEGINNING; thence South  $89^{\circ}51'00''$  East, 388.00 feet more or less; thence South  $0^{\circ}09'00''$  West, 100.00 feet more or less; thence South  $89^{\circ}51'00''$  East, 410.00 feet more or less; thence South  $6^{\circ}38'45''$  East, 725.00 feet more or less; thence North  $83^{\circ}30'27''$  West, 25.00 feet more or less; thence South  $1^{\circ}10'30''$  East, 85.00 feet more or less; thence South  $11^{\circ}44'34''$  East, 163.00 feet more or less; thence South  $13^{\circ}06'13''$  East, 105.00 feet more or less.

END OF DESCRIPTION

REVISED FEBRUARY 3, 1982 BY TECHNICAL SERVICES UNIT, ROY MINNICK, SUPERVISOR

Added 3/22/83)

CALENDAR PAGE	278	H
MINUTE PAGE	557	

