

MINUTE ITEM 44

This Calendar Item No. 44
was approved as Minute Item
No. 44 by the State Lands
Commission by a vote of 3
to 0 at its 1/31/85
meeting.

A 18
S 10

CALENDAR ITEM

44

01/31/85
W 23499
AD 18
Meier

APPROVAL OF TITLE SETTLEMENT AGREEMENT
CITY OF UNION CITY, ALAMEDA COUNTY

PRIVATE PARTIES: Lincoln Property Company
No. 584 Limited Partnership

A title dispute exists between the State in its sovereign capacity and Lincoln Property Company No. 584 Limited Partnership, a California limited partnership ("private parties") concerning ownership of approximately 79.335 acres, located in the City of Union City, Alameda County. The subject property is west of Union City Boulevard, and north of Bettencourt Way. The real property is referred to as the Subject Parcels, with approximately 79.095 acres designated as Parcel "A" and the second parcel of approximately .24 acres designated as Parcel "B". The Subject Parcels are described in Exhibit "A" and are depicted in Exhibit "B".

The State is record owner of the former bed of Alameda Creek, which occupies all of Parcel "B" and crosses Parcel "A". The natural creek bed, however, now entirely reclaimed, cannot be precisely located.

The private party is the record owner of options in the rest of the Subject Parcels. It is successor in interest to the patent of Rancho Potrero de los Cerritos and to the State's swamp and overflow patents of Surveys Nos. 204, 217, and 275. The private party contends that the Rancho and S.O patents conveyed all right, title, and interest of the State within the Subject Parcels, with the exception of the natural bed of Alameda Creek, without any reservations to the State, express or implied. Private parties, therefore, contend that, with the exception of the natural creek bed, they now hold title to the

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property free and clear of any State right, title, or interest. Private parties also contend that the precise size and location of the natural creek bed, now entirely reclaimed and filled, cannot be determined, and that its true location and size is not the same as that indicated as of record.

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

1. That portion of the Subject Parcels south of the natural bed of Alameda Creek was included within the perimeter descriptions of Rancho Potrero de los Cerritos.
2. That portion of the Subject Parcels north of the former creek bed was included within State swamp and overflow patents of Surveys Nos. 204, 217, and 275.
3. The descriptions of the above-referenced Rancho and swamp and overflow patents all called to the banks of Alameda Creek and did not encompass any part of the creek bed itself.
4. Alameda Creek has been diverted to the north, and the natural creek bed has been entirely reclaimed.
5. In its natural state, Alameda Creek was navigable at all locations here discussed.
6. Disputes and discrepancies in evidence exist as to the precise location of the banks of the natural creek bed at the locations here discussed, leaving substantially uncertain the precise size and location of the State's sovereign lands within the former waterway.
7. A portion included within the above-referenced swamp and overflow surveys is unimproved, reclaimed, historic wetlands which formerly consisted of marsh grass. In its natural state, it was covered, at least in part, by the ordinary tides, the precise extent of coverage being uncertain.

The staff is of the opinion that the title evidence and the applicable legal principles 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.

The staff is of the opinion that, because the bed of the former creek bed and all tidelands within the subject parcel have been filled or otherwise cut off from the tides, the proposed agreement, hereinafter summarized, will facilitate acquisition of lands by the State for the improvement of navigation, aid to reclamation, and enhancement of the configuration of the shoreline for the improvement of the water and upland. Furthermore, since the Subject Parcels have been entirely reclaimed, the proposed agreement will not interfere with the public's right of navigation and fishing.

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

1. The private parties will deposit \$400,000 into an escrow account to be released into the Land Bank Trust Fund administered by the State Lands Commission as trustee. The sum will be used by the State Lands Commission to acquire other lands more reasonably susceptible to use for public trust purposes.
2. In exchange for this deposit of monies into the Land Bank Trust Fund, the State will convey to the private party all its right, title, and interest in the Subject Parcels and will terminate the public trust interest therein.
3. No State interests will be released or conveyed to the private party, unless and until the private party exercises all its options on the Subject Parcels, thereby becoming the fee owner of the parcels.

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4. The agreement provides for an escrow, which will be without cost to the State. The terms of the agreement shall be final upon recordation of the patents to the subject parcels.

The staff has reviewed appraisals of the Subject Parcels and has evaluated the law and the evidence bearing on the title dispute. It is, therefore, the opinion of the staff that the sum of \$400,000 is equal to or greater than the value of the State's interest in the subject parcels.

The staff has not had an opportunity to complete review of the description of Parcel A, as set forth in Exhibit "A". In order to ensure accuracy, it would be appropriate for the Commission to authorize further review and modification of the description in order to reflect the terms of the agreement.

In order to facilitate the development which is the private party's objective in entering into this agreement, the private party also proposes immediate annexation of the State's sovereign lands into the Union Sanitary District. The proposed annexation agreement would require the private party to indemnify the State for any and all liability arising from annexation. The staff is of the opinion that the proposed annexation would have no detrimental effect on the State and would help facilitate the proposed title settlement agreement.

AB 884: N/A.

OTHER PERTINENT INFORMATION:

1. Pursuant to the Commission's delegation of authority and the State CEQA Guidelines (14 Cal. Adm. Code 15061), the staff has determined that this activity is exempt from the requirements of the CEQA as a statutory exempt project. The project is exempt because it involves settlements of title and boundary problems.

Authority: P.R.C. 21080.11.

EXHIBITS:

- A. Subject Parcel Description.
- B. Subject Parcel Plat.

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 AS A STATUTORY EXEMPT PROJECT PURSUANT TO P.R.C. 21080.11, SETTLEMENT OF TITLE AND BOUNDARY PROBLEMS.
2. FIND THAT:
 - A) THE PROPOSED COMPROMISE TITLE SETTLEMENT AGREEMENT, INCLUDING THE EXCHANGE OF THE STATE'S INTEREST IN THE SUBJECT PARCELS FOR THE DEPOSIT OF FUNDS IN THE LAND BANK TRUST FUND, IS IN THE BEST INTERESTS OF THE STATE;
 - B) THE SUM TO BE DEPOSITED INTO THE LAND BANK TRUST FUND, PURSUANT TO SAID AGREEMENT, IS EQUAL TO OR GREATER THAN THE VALUE OF THE INTERESTS IN THE SUBJECT PARCELS BEING RELINQUISHED BY THE STATE;
 - C) THE PARTIES HAVE A GOOD FAITH AND BONA FIDE DISPUTE RESPECTING THE PRIVATE-STATE TITLES WITHIN THE PARCEL;
 - D) THE PROPOSED AGREEMENT CONSTITUTES A COMPROMISE OF THE CONTESTED ISSUES OF LAW AND EVIDENCE UPON WHICH THE DISPUTE IS BASED;
 - E) THE AGREEMENT IS IN LIEU OF THE COSTS, DELAYS AND UNCERTAINTIES OF TITLE LITIGATION AND IS CONSISTENT WITH AND AUTHORIZED BY THE REQUIREMENTS OF LAW;
 - F) THE PROPOSED AGREEMENT WILL RESULT IN IMPROVEMENT TO NAVIGATION, AID TO RECLAMATION, AND ENHANCEMENT OF THE CONFIGURATION OF THE SHORELINE FOR IMPROVEMENT OF THE WATER AND UPLAND, AND WILL NOT INTERFERE WITH ANY PUBLIC RIGHT OF NAVIGATION OR FISHING OVER THE LAND INVOLVED;
 - G) 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; THE SUBJECT PARCEL HAS BEEN REMOVED FROM THE PUBLIC WATERWAYS AND IS NO LONGER, IN FACT, TIDELANDS OR SUBMERGED LANDS.

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3. 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 ON FILE WITH THE COMMISSION;
 - B) A PATENT OF THE SUBJECT PARCEL "A" IN ALAMEDA COUNTY, CALIFORNIA, DESCRIBED IN EXHIBIT "A", FOREVER FREE OF THE PUBLIC TRUST; AND
 - C) A PATENT OF THE SUBJECT PARCEL "B" IN ALAMEDA COUNTY, CALIFORNIA, DESCRIBED IN EXHIBIT "A", FOREVER FREE OF THE PUBLIC TRUST.
4. AUTHORIZE THE FURTHER REVIEW AND MODIFICATION OF THE LEGAL DESCRIPTION OF THE SUBJECT PARCELS BY THE STAFF IN ORDER TO ENSURE ACCURACY AND TO REFLECT MORE ACCURATELY THE TERMS OF THE AGREEMENT.
5. AUTHORIZE THE EXECUTION OF THE PROPOSED ANNEXATION AGREEMENT AND CONSENT TO ANNEXATION OF THE STATE'S SOVEREIGN LANDS WITHIN THE SUBJECT PARCEL INTO THE UNION SANITARY DISTRICT.
6. 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 THE ANNEXATION AGREEMENT, AND TO APPEAR ON BEHALF OF THE COMMISSION IN ANY LEGAL PROCEEDINGS RELATING TO THE SUBJECT MATTER OF THE AGREEMENT.

EXHIBIT "A"
DESCRIPTION

PARCEL A

A parcel of land in the State of California, County of Alameda,
City of Union City.

Beginning at the intersection of the line separating Sections 4
and 9, Township 4 South, Range 2 West, with the westerly line of
the Southern Pacific Transportation Company right of way as said
point is shown on Record of Survey 380 filed March 27, 1969, Book
7, Page 49;

Thence, along the Southern Pacific Transportation Company right of
way North 41° 37' 15" West, a distance of 405.37 feet;

Thence, North 41° 34' 40" West, a distance of 642.63 feet;

Thence, South 48° 33' 44" West, a distance of 99.57 feet more or
less;

Thence, on a tangent curve to the left, radius 908.28 feet, central
angle 27° 03' 55" an arc length of 429.05 feet;

Thence, South 21° 29' 49" West, a distance of 189.24 feet;

Thence, South 0° 42' 48" West, a distance of 182.60 feet more or
less;

Thence, South 89° 24' 46" East, a distance of 228.20 feet;

Thence, South 13° 10' 45" West, a distance of 2132.52 feet;

Thence, South 89° 46' 38" East, a distance of 404.03 feet;

Thence, South 47° 31' 38" East, a distance of 224.40 feet;

Thence, North 71° 58' 22" East, a distance of 184.40 feet;

Thence, South 0° 36' 45" West, a distance of 290.33 feet;

Thence, South 89° 23' 15" East, a distance of 668.08 feet;

Thence, South 23° 1' 38" East, a distance of 41.11 feet;

Thence, North 85° 41' 55" East, a distance of 29.151 feet;

Thence, North 38° 58' 45" West, a distance of 29.62 feet;

Thence, North 18° 10' 45" West, a distance of 96.63 feet;

Thence, North 32° 23' 45" West, a distance of 52.330 feet;

Thence, North 16° 24' 45" West, a distance of 81.31 feet;

Thence, North 33° 23' 15" West, a distance of 60.60 feet;

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Thence, North 15° 17' 35" West, a distance of 87.550 feet;
Thence, North 10° 49' 35" West, a distance of 43.63 feet;
Thence, North 10° 49' 35" West, a distance of 77.270 feet;
Thence, North 2° 20' 5" East, a distance of 69.73 feet;
Thence, North 6° 32' 45" East, a distance of 60.24 feet;
Thence, North 1° 10' 15" East, a distance of 109.70 feet;
Thence, along a non-tangent curve whose center bears North 56° 18' 58" West, radius 300.90 feet, central angle 60° 08' 17" an arc length of 315.93 feet;
Thence, on a non-tangent line North 29° 31' 31" West, a distance of 84.52 feet;
Thence, North 37° 07' 16" West, a distance of 71.33 feet;
Thence North 41° 37' 15" West, a distance of 5.08 feet;
Thence, South 81° 22' 45" West, a distance of 11.92 feet;
Thence, North 41° 37' 15" West, a distance of 591.70 feet to the point of beginning. An area of 79.0953 acres.

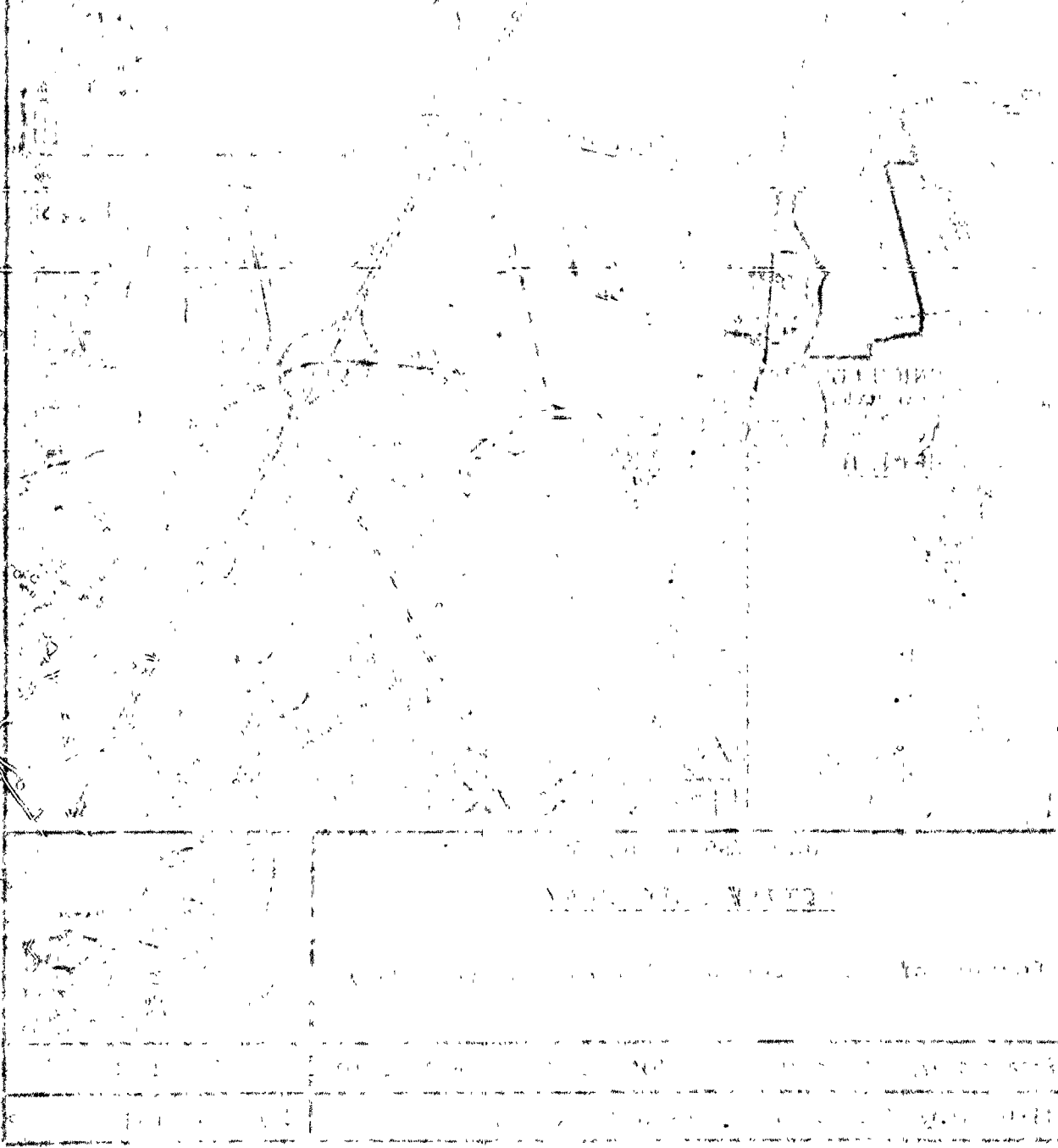
PARCEL B

In the City of Union City

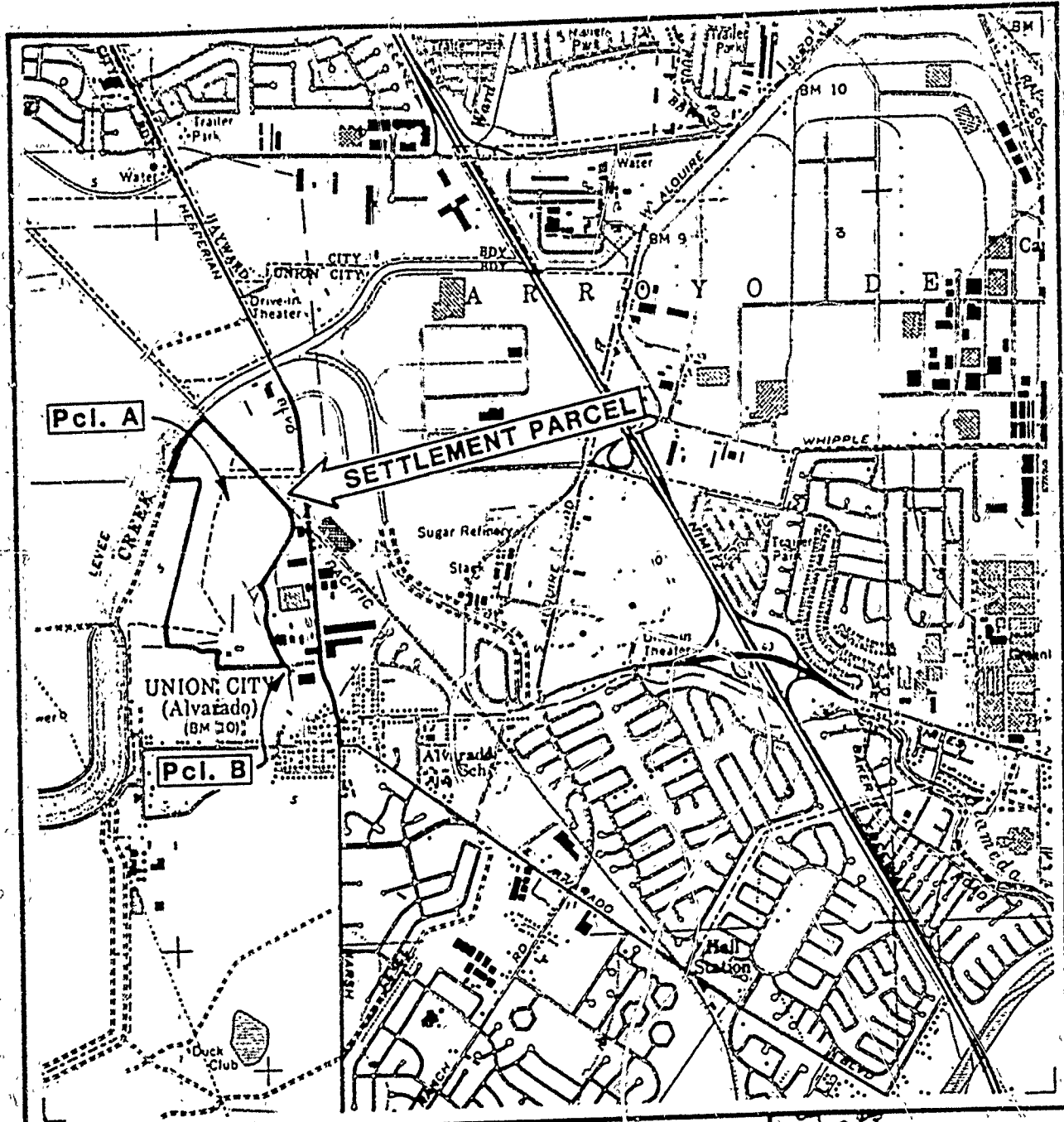
Beginning at the intersection of the western line of that certain parcel of land conveyed to Randall I. Warner, et ux, by deed recorded August 3, 1962 in Reel 647 of Official Records, at Image 214, Records of Alameda County with the southern line of that certain parcel of land conveyed to East Bay Excavating Company, a partnership, by deed recorded March 16, 1962 in Reel 537 of Official Records at Image 780, Records of Alameda County, and running thence along said southern line south 84° 47' 30" west 33 feet, more or less, to an intersection thereof with the general western line of last said parcel of land; thence in a general northerly direction along last said line the following courses and distances: north 19° 00' 30" west 139.91 feet, north 29° 07' 30" west 61.77 feet and north 39° 53' 10" west 32.33 feet to an intersection thereof with the northern line north 84° 47' 30" east 80 feet, more or less, to an intersection thereof with the aforesaid western line of the Warner parcel of land; thence along said western line of the Warner parcel of land; thence along said western line south 13° east 220 feet, more or less to the point of beginning.

Being a portion of the land shown on that certain map entitled "Plat of the Rancho Arroyo de la Alameda, finally confirmed to Jose De Jesus Vallejo", filed October 13, 1857 in Book "A" of Patton's, page 70 in the office of the Recorder of Alameda County.

Said property is also shown on reference maps in the office of the Assessor of Alameda County in Map Book 482, Block 6, Parcel 10.

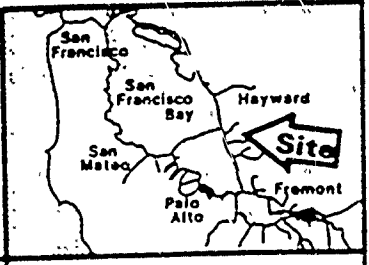


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STATE LANDS COMMISSION
SETTLEMENT PLAT

Portion of USGS Quadrangle NEWARK 1959 (PR 1980)



Prepared by: JKHering Date: 11-2-84 A: 18 S: 10
 Title Study: LINCOLN PROP DEV-ALA CRK .W:23499

EXHIBIT B
 Z 3-N40-E154

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