MINUTE ITEM

This Calendar Item No. 36 was approved as Minute Item No. 36 by the State Lands Commission by a vote of 3 to 0 at its 4/22/82 meeting.

CALENDAR ITEM

36

4/22/82
W 22738
Peterson
Valentine
SLL 86

AUTHORIZATION FOR SETTLEMENT OF
STATE OF CALIFORNIA,
ACTING BY AND THROUGH THE
STATE LANDS COMMISSION v. CARTER, ET AL.,
ALAMEDA COUNTY SUPERIOR COURT
NO. H-75264-8

In February 1982, the State of California was served as a co-defendant in Jones v. Carter, et al., Alameda County Superior Court No. H-75264-8, an action for specific performance of a land sale contract involving a portion of the historic bed of Alameda Creek, a navigable waterway. The State Lands Commission answered and filed a cross complaint to quiet title in the State against the adverse claims of cross-defendants to the property described in Exhibit "A" and depicted on Exhibit "B".

Marie Carter, Ernest Claus Voigt and Jacqueline Voigt, the cross-defendents in the above action, are the owners of record of 30869 Vallejo Street, Union City. They contend that the State has no ownership interest in the subject property and that they have the legal and equitable right to title.

Staff to the State Lands Commission has studied the evidence of title to the subject property. Approximately 3,200 square feet of the approximately 13,000 square-foot parcel lie within the banks of Alameda Creek as Alameda Creek existed on September 9, 1850. In its natural state, the portion of Alameda Creek where the subject property is located was a tidal waterway and was navigable. No patent or other document of transfer purporting to transfer the State's interest in the subject property has ever been executed by State officials. The portion of the subject property lying within the banks of Alameda Creek is not within any confirmed rancho. Alameda Creek was filled many years ago, cutting off the subject property from any waterway. Thereafter, the deed to the subject property was reformed to include a portion of the filled bed of Alameda Creek. The subject property was improved with a single family residence, the rear yard of which substantially consists of the former creek bed.

A 15

S 8

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Non-Substantive 4/14/83

In view of these facts, staff has concluded that the State acquired title in fee simple subject to the public trust for commerce, navigation and fisheries of that portion of the subject property which was below the ordinary high water mark of Alameda Creek when the State was admitted to the Union on September 9, 1850. However, the State's right to possession of said property, if the State's interests are proven, is subject to uncertainty and dispute due to cross-defendents' having a deed giving color of title to the former creek bed and also equitable rights to the land.

The private parties have offered to resolve this title dispute by entering into a Compromise Settlement Agreement. The Staff of the Commission, with concurrence of the attorney general, recommends approval of the settlement substantially in the form of the Compromise Settlement Agreement, with the following principal provisions, on file with the State Lands Commission:

1. The State will convey by patent all its right, title and interest in the subject property to Marie Carter, Ernest Claus Voigt and Jacqueline Voigt, free of the public trust for commerce, navigation and fisheries.

2. In exchange, the above-named persons shall purchase for a $4,200 fee title to an undivided 6.45 percent interest in the Land Bank Parcel the Commission approved at its March 23, 1982 meeting, Calendar Item 37. The Land Bank Parcel is described in Exhibit "C" and depicted on Exhibit "D". Said approved Land Bank Agreement provides that the Trust for Public Land will convey to the State approximately 40 acres of wetlands, or undivided interests therein, near Suisun City, Solano County, for a total puchase price of $65,000 or $1,500 per acre.

   This interest shall be conveyed to the State in its sovereign capacity as tide and submerged lands subject to the public trust.

3. Escrow costs and a standard CLTA title policy in the amount of $4,200 insuring the State's title to the Land Bank Parcel shall be without cost to the State.

4. The settlement shall be effective upon entry of an appropriate judgment from Alameda County Superior Court confirming the Compromise Settlement Agreement and recordation of the Compromise Settlement Agreement and a certified copy of the judgment.

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Staff has appraised the State interest in the subject property. The Office of the Attorney General, in consultation with staff, has evaluated the law and facts bearing on the title dispute and has concluded that the exchange provided for in the Compromise Settlement Agreement will be in the best interests of the State and that the State will receive interests in lands equal to or greater in value than any interests in lands relinquished pursuant to the Compromise Settlement Agreement.

EXHIBITS:
A. Land Description of Patent Parcel.
B. Site Map of Patent Parcel.
C. Land Description of Land Bank Parcel.
D. Plat of Land Bank Parcel.

IT IS RECOMMENDED THAT THE COMMISSION:

1. APPROVE THE EXCHANGE AS PROPOSED AND AUTHORIZE THE EXECUTIVE OFFICER AND THE OFFICE OF THE ATTORNEY GENERAL, IN SETTLEMENT OF STATE OF CALIFORNIA, ACTING BY AND THROUGH THE STATE LANDS COMMISSION v. CARTER, ET AL., ALAMEDA COUNTY SUPERIOR COURT NO. H-75264-8, TO EXECUTE THE COMPROMISE SETTLEMENT AGREEMENT AND STIPULATION FOR ENTRY OF JUDGMENT ON FILE IN THE OFFICE OF THE COMMISSION, WHICH ARE INCORPORATED HEREIN BY REFERENCE.

2. FIND THAT THE PROPOSED COMPROMISE 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, FOR FLOOD CONTROL PROTECTION, AND TO ENHANCE THE CONFIGURATION OF THE SHORELINE FOR THE IMPROVEMENT OF THE WATER AND UPLAND; THAT IT WILL NOT SUBSTANTIALLY INTERFERE WITH THE RIGHTS OF NAVIGATION AND FISHING; AND THAT THE STATE WILL RECEIVE LANDS AND INTERESTS IN LANDS EQUAL TO OR GREATER IN VALUE THAN ANY LANDS OR INTERESTS IN LANDS RELINQUISHED BY THE STATE PURSUANT TO SAID COMPROMISE SETTLEMENT AGREEMENT.

3. FIND THAT THE PARTIES HAVE A GOOD FAITH AND BONA FIDE DISPUTE RESPECTING THE PRIVATE - STATE TITLES WITHIN THE SUBJECT PROPERTY; THAT THE PROPOSED COMPROMISE SETTLEMENT AGREEMENT CONSTITUTES A COMPROMISE OF THE CONTESTED ISSUES OF LAW AND FACT UPON WHICH THE DISPUTE IS BASED; THAT THE SETTLEMENT IS IN LIEU OF THE COSTS, DELAYS AND UNCERTAINTIES OF TITLE LITIGATION; THAT SETTLEMENT IS CONSISTENT WITH AND IS AUTHORIZED BY THE REQUIREMENTS OF LAW, INCLUDING P.R.C. 6307 AND

OTHER PROVISIONS OF DIV. 6 OF THE P.R.C. AND THE STATE'S POWER TO RESOLVE AND SETTLE CONTROVERSIES IN LIEU OF LITIGATION.

4. FIND AND DECLARE THAT UPON THE DELIVERY OF THE PATENT AND ITS RECORDATION IN ALAMEDA COUNTY THE REAL PROPERTY, DESCRIBED IN EXHIBIT "A" AND IN THE PATENT, HAS BEEN IMPROVED, FILLED AND RECLAIMED; HAS BEEN CUT OFF FROM THE PUBLIC CHANNELS AND IS NO LONGER AVAILABLE OR USEFUL OR SUSCEPTIBLE OF BEING USED FOR NAVIGATION AND FISHING; IS NO LONGER IN FACT TIDELANDS OR SUBMERGED LANDS; AND THEREFORE SHALL BE FREED FROM THE PUBLIC TRUST FOR NAVIGATION AND FISHING.

5. FIND THAT BECAUSE THIS TRANSACTION IS IN SETTLEMENT OF A TITLE DISPUTE THE PROVISIONS OF CEQA ARE INAPPLICABLE.

6. AUTHORIZE ACCEPTANCE OF THE CONVEYANCE TO THE STATE OF THE UNDIVIDED PERCENT FEE INTEREST IN THE LAND BANK PARCEL IN SOLANO COUNTY, AS TIDE AND SUBMERGED LANDS SUBJECT TO THE PUBLIC TRUST, AND AUTHORIZE EXECUTION BY THE EXECUTIVE OFFICER OF A CERTIFICATE OF ACCEPTANCE AND CONSENT TO RECORDING OF SAID CONVEYANCE.

7. AUTHORIZE ISSUANCE OF A PATENT CERTIFICATE AND PATENT OF THE SUBJECT PROPERTY IN ALAMEDA COUNTY, CALIFORNIA, DESCRIBED IN EXHIBIT "A", FREE OF THE PUBLIC TRUST.

8. AUTHORIZE THE STAFF OF THE STATE LANDS COMMISSION AND THE OFFICE OF THE ATTORNEY GENERAL TO TAKE ALL FURTHER STEPS NECESSARY OR APPROPRIATE TO IMPLEMENT THE ABOVE SETTLEMENT, INCLUDING BUT NOT LIMITED TO THE EXECUTION, ACKNOWLEDGEMENT AND RECORDATION OF ALL DOCUMENTS OF TITLE, CONVEYANCES, STIPULATIONS, ESCROW INSTRUCTIONS, AGREEMENTS, CERTIFICATES OF ACCEPTANCE, AND COURT DOCUMENTS; AND TO FILE ANY DOCUMENTS AND APPEAR IN ANY LEGAL PROCEEDINGS NECESSARY OR REQUIRED TO ACCOMPLISH THE TERMS AND PROVISIONS OF THE COMPROMISE SETTLEMENT AGREEMENT.

EXHIBIT A

W22738

Land Description
(Patent Parcel)

A parcel of land situated in the City of Union City, County of Alameda, State of California, described as follows:

Parcel C, of Parcel Map 2885, filed November 14, 1979, in Map Book 113, Page 56, Alameda County Records.

END OF DESCRIPTION

PREPARED APRIL 2, 1982, BY TECHNICAL SERVICES UNIT, ROY MINNICK, SUPERVISOR.

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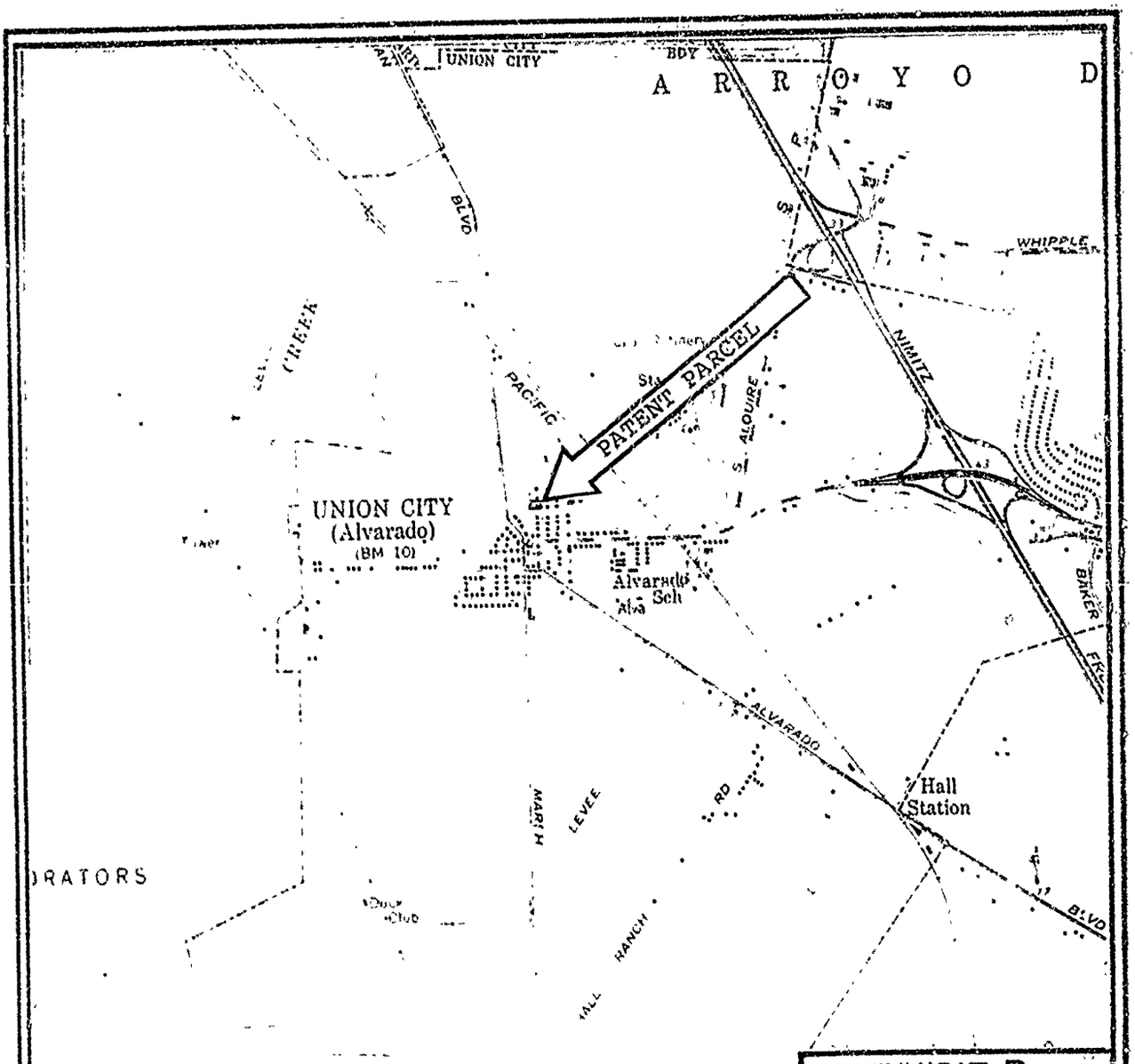

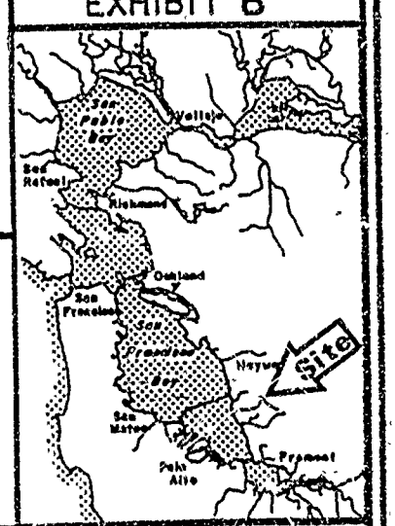

A.P. No. 483-0010-50

STATE LANDS COMMISSION

SITE MAP OF

PATENT PARCEL

Prepared by A.A. Shimonauff Date 6-9-81 A: 15 S: 18

Title Study Union City-Carter & Voight W 22738

Z3 -N 40 -E 154

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DESCRIPTION OF LAND BANK PARCEL

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°21'23" West, 324.00 feet more or less to the TRUE POINT OF BEGINNING and continuing along said easterly line South 22°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°49'18" East, 930.5 feet more or less; thence continuing along said northerly line North 80°35'46" East 668.46 feet more or less; thence North 10°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°14'51", a distance of 16.99 feet more or less; thence a non-tangent bearing North 11°44'34" West a distance of 116.79 feet more or less; thence N01°10'30" West, 53.79 feet more or less; thence South 83°30'27" East, 24.97 feet more or less, thence North 6°38'45" West, 780.38 feet more or less; thence North 89°51'00" West, 410.00 feet more or less; thence North 0°09'00" East, 100.00 feet more or less; thence North 89°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°21'23" West, 351.00 feet more or less to the TRUE POINT OF BEGINNING; thence South 89°51'00" East, 388.00 feet more or less; thence South 0°09'00" West, 100.00 feet more or less; thence South 89°51'00" East, 410.00 feet more or less; thence South 6°38'45" East, 725.00 feet more or less; thence North 83°30'27" West, 25.00 feet more or less; thence South 1°10'30" East, 85.00 feet more or less; thence South 11°44'34" East, 163.00 feet more or less; thence South 13°06'13" East, 105.00 feet more or less.

END OF DESCRIPTION

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

EXHIBIT C

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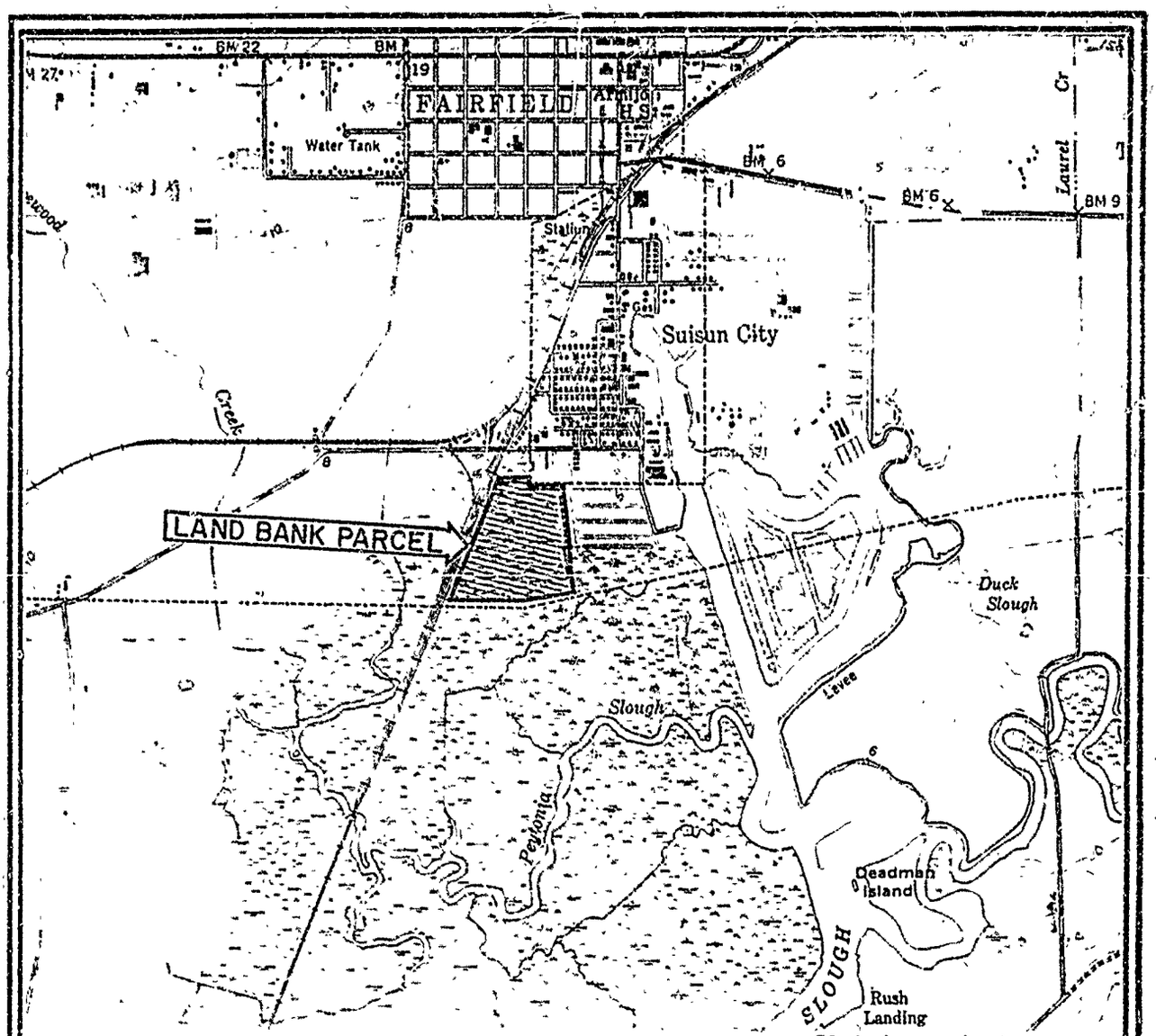
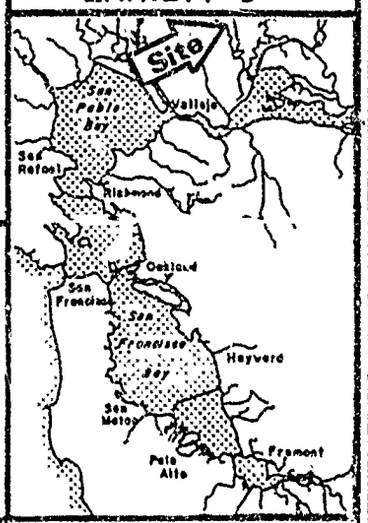


Plat Approximate
no Scale

EXHIBIT D



STATE LANDS COMMISSION

PLAT OF LAND BANK PARCEL

Prepared by: A.A. Shimonauff Date: 2/9/82 A: 4 S: 4

Title Study: TPL - Suisun W 22611

Z2 - N21 - E 198

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