

MINUTE ITEM

This Calendar Item No. 41
was approved as Minute Item
No. 41 by the State Lands
Commission by a vote of 2
to 0 at its 9-23-87
meeting.

CALENDAR ITEM

A 18

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41

09/23/87

W 23943 AD 66

Plummer

APPROVAL OF A COMPROMISE TITLE SETTLEMENT
AGREEMENT, UNION CITY, ALAMEDA COUNTY
UNDER KAPILOFF LAND BANK ACT, P.R.C. 8600, ET SEQ.

APPLICANT: Lincoln Alameda Creek, a California
Limited Partnership
Attn: John Briscoe
Washburn & Kemp
144 Second Street
P.O. Box 880130
San Francisco, California 94188

A title dispute exists between the State in its sovereign capacity and Lincoln Alameda Creek, a California Limited Partnership (Private Party), concerning ownership of approximately 12 acres located in the City of Union City, Alameda County. The property is referred to herein as the Subject Parcel and is described and depicted on the attached Exhibits "A" and "B".

The Private Party is the record owner of the Subject Parcel. It is the successor-in-interest to the patent of Rancho Potrero de los Cerritos, Rancho Arroyo de la Alameda, and to the State's swamp and overflowed patent of Survey No. 204.

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:

1. The Subject Parcel was historically traversed by Alameda Creek;
2. In a natural state, that portion of Alameda Creek where the Subject Parcel is located was a tidal and navigable waterway;

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3. That a portion of the Subject Parcel, north and south of the natural bed of Alameda Creek, was included within the perimeter descriptions of Rancho Arroyo de la Alameda and Rancho Potrero de los Cerritos;
4. That a portion of the Subject Parcel, north of the former creek bed, was included within State swamp and overflowed patent of Survey No. 204.
5. Alameda Creek has been diverted to the north, and the natural creek bed has been entirely reclaimed.
6. Discrepancies in evidence exist as to the precise location of the banks of the natural creek bed leaving substantially uncertain the precise size and location of the State's sovereign lands within the former waterway.

In view of these facts, staff has concluded that the State is the owner of that portion of the Subject Parcel which was below the ordinary high water mark of Alameda Creek as it last naturally existed.

Private Party contends that the size and location of the natural creek bed of Alameda Creek, now entirely reclaimed and filled, cannot be precisely determined, and disputes the staff's conclusion as to the nature, extent, and value of the State's interest within the Subject Parcel.

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 Compromise Title Settlement Agreement now on file with the State Lands Commission. The principle terms and conditions of the proposed settlement are as follows:

1. The Private Party will deposit \$125,000 into the Kapiloff Land Bank Trust Fund administered by the State Lands Commission as trustee pursuant to Public Resources Code Sections 8600, et seq.
2. In exchange for this deposit of monies into the Land Bank Trust Fund the State will convey to Private Party all right, title and interest in the Subject Parcel and will terminate the public trust use therein.

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3. The Agreement provides for an escrow which will be without cost to the State.
4. The Compromise Title Settlement Agreement shall become effective upon recordation.

Staff has appraised the State interest in the Subject Parcel, has evaluated the law and facts bearing on the title dispute, and has concluded that \$125,000 is equal to or greater than the value of the State's interest in the Subject Parcel.

AB 884; N/A.

EXHIBITS: A. Land Description.
B. Subject Parcel Plat.

IT IS RECOMMENDED THAT THE COMMISSION:

1. FIND THAT THE PROPOSED COMPROMISE SETTLEMENT AGREEMENT, INCLUDING THE DEPOSIT OF FUNDS IN THE LAND BANK TRUST FUND, IS IN THE BEST INTERESTS OF THE STATE, FOR THE IMPROVEMENT OF NAVIGATION, AND TO ENHANCE THE CONFIGURATION OF THE SHORELINE FOR THE IMPROVEMENT OF THE WATER AND UPLAND AND THE PROTECTION, PRESERVATION AND ENHANCEMENT OF THE TIDELANDS AND SUBMERGED LANDS AND PUBLIC ACCESS THERETO, AND THE PUBLIC TRUST; THAT IT WILL NOT SUBSTANTIALLY INTERFERE WITH THE PUBLIC'S RIGHTS OF NAVIGATION AND FISHING; AND THAT THE STATE WILL RECEIVE MONIES EQUAL TO OR GREATER IN VALUE THAN ANY LANDS OR INTERESTS IN LANDS RELINQUISHED BY THE STATE PURSUANT TO SAID COMPROMISE SETTLEMENT AGREEMENT.
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 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.

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3. FIND AND DECLARE THAT UPON THE DELIVERY OF THE PATENT AND ITS RECORDATION IN ALAMEDA COUNTY, THE SUBJECT PARCEL 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 MAY BE FREED FROM THE PUBLIC TRUST FOR NAVIGATION AND FISHING.
4. FIND THIS TRANSACTION EXEMPT FROM THE REQUIREMENTS OF CEQA PURSUANT TO P.R.C 12080.11 AS A SETTLEMENT OF A TITLE AND BOUNDARY DISPUTE.
5. APPROVE AND AUTHORIZE THE EXECUTION, ACKNOWLEDGEMENT AND RECORDATION ON BEHALF OF THE COMMISSION OF THE FOLLOWING DOCUMENTS:
 - A. THE COMPROMISE TITLE SETTLEMENT IN SUBSTANTIALLY THE FORM OF THE COPY OF SUCH AGREEMENT ON FILE WITH THE COMMISSION.
 - B. A PATENT OF THE SUBJECT PARCEL IN ALAMEDA COUNTY, CALIFORNIA, DESCRIBED IN EXHIBIT "A" FREE OF THE PUBLIC TRUST.
6. 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, ACCEPTANCE, AND RECORDATION OF ALL DOCUMENTS AND PAYMENTS AS MAY BE NECESSARY OR CONVENIENT TO CARRY OUT THE COMPROMISE SETTLEMENT AGREEMENT; 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"

LAND DESCRIPTION

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

Parcels 1 and 2 in the deed from Tara Development Company, a California Corporation, to Lincoln Alameda Creek, a California Limited Partnership, recorded February 27, 1987, Instrument No. 87-057872, Official Records of Alameda County.

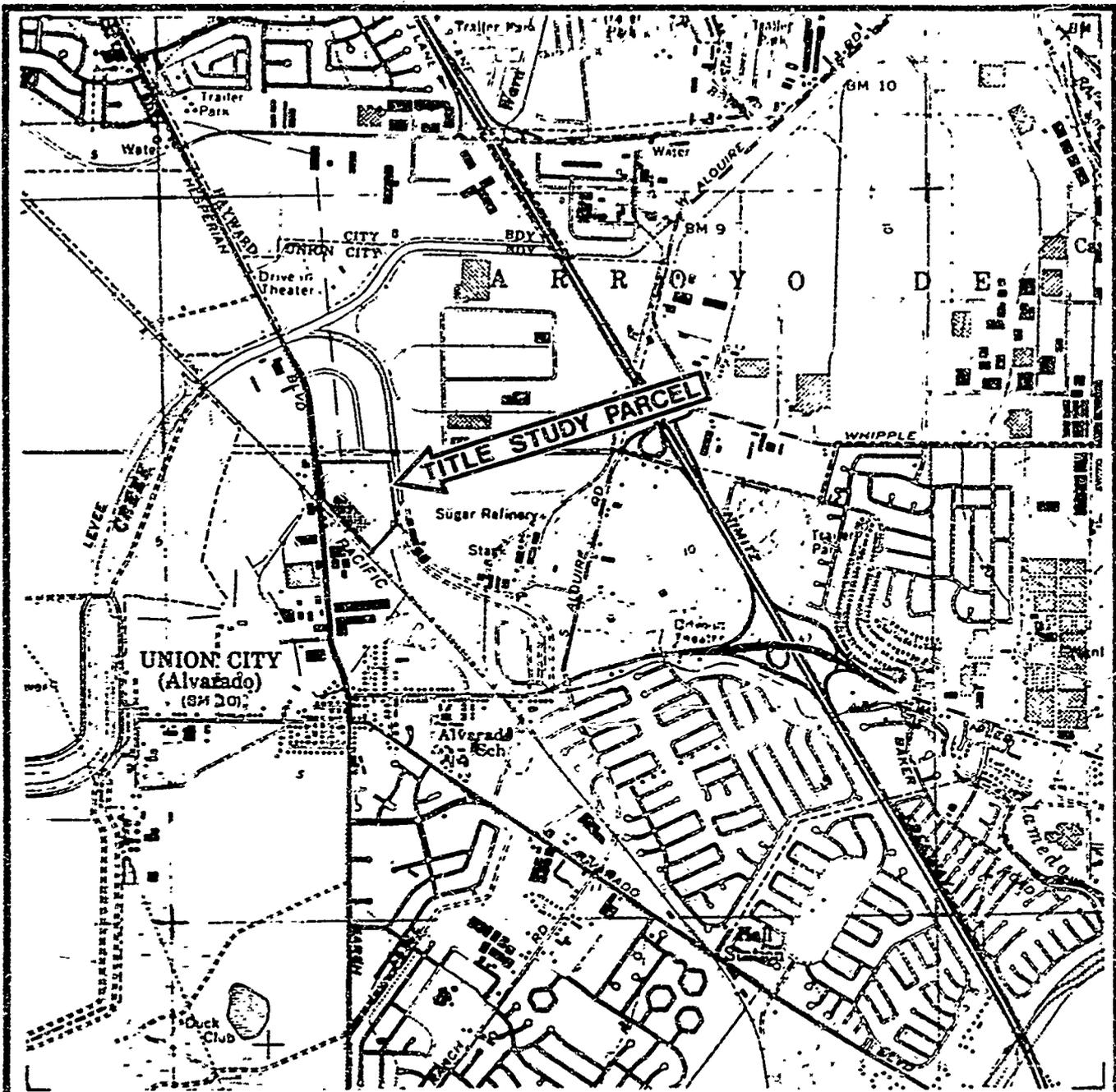
The parcel described in Exhibit "A" in the deed from Mary Orsetti, Individually and as Executrix of the Estate of Amerigo Orsetti, pursuant to a Court Order of the Alameda County Superior Court Action No. H-12830-0, to Lincoln Alameda Creek, a California Limited Partnership, recorded February 25, 1987, Instrument No. 87-054246, Official Records of Alameda County.

Parcels 1 and 2 in the deed from Edison International, Inc., a Delaware Corporation, to Lincoln Alameda Creek, a California Limited Partnership, recorded April 13, 1987, Instrument No. 87-100179, Official Records of Alameda County.

END OF DESCRIPTION

PREPARED BY BOUNDARY SERVICES UNIT 1, AUGUST 25, 1987.

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STATE LANDS COMMISSION

Settlement Plat

Portion of USGS Quadrangle NEWARK 1959 (PR 1980)



Prepared by: R.L. BELL

Date: 7-1-87

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EXHIBIT B

Title Study: LINCOLN PROPERTY - UNION CITY

W25031

Z 3-N40-E 154 267

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