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TO: Honorable Board of Supervisors,
Santa Barbara County.

FROM: John K. Dorwin,
Attorney for Applicant/Appellant, Foxen Oaks, LLC.

DATE: March 17, 2010

SUBJECT: Hearing on Appeal of Denial of Requested Certificate of Compliance by County Surveyor for APN: 133-070-035, 5th Supervisorial District.

HEARING DATE: March 23, 2010

HEARING LOCATION: Santa Maria, Lakeside Drive, BOS Hearing Room.

DISPUTED FACTUAL SUMMARY

This appeal involves an approximately 4 acre parcel lying between Los Alamos and Santa Maria. The County Surveyor's office is, in effect, trying to force a merger of this parcel with a portion of the adjacent Rancho Tinaquaic, notwithstanding it's separate ownership for many years. Staff apparently relies on a misreading of a 1919 deed and a survey which was at best ambiguous , and not even valid in that it literally fails to "close", i.e. the metes and bounds description fails to meet itself so as to enclose a parcel.

The staff's conclusion "that a reviewing court would conclude that the decision of the Court of Appeal in the Tehama case controls the issues in this case," is incorrect. Further, it presumes that reviewing court would be a State court, and that the issue of altering the pre-existing Rancho Tinaquaic line would not be seen as and issue of exclusive Federal preemption under the California Land Settlement Act of 1851 as discussed in the case of Summa Corp vs. California State Laws Commission et al 466 U.S. 198 (1984). That case holds Federal Patents may not be altered by State law so as to extinguish rights already adjudicated and granted to the Patent holder, and their successors in interest as these are federally protected property rights. Appellant asserts the County's attempt to erase the Tinaquaic Rancho line as a pre-existing subdivision in the 1919 deed implicates a federal right arising out of the two different chains of title within the context of the Summa case.

Because the Rancho Tinaquaic was such a Federal Patent, and the subject parcel was a State of California Patent, forcing merger under Tehama across a Federal Patent line violates the express provisions of both the

Contract Clause, Article I Section 10, and the Supremacy Clause, Article IV, of the Federal Constitution. This alters the Appellant's underlying settled property rights under the pre-existing Federal Patent. As a constitutional right, this case would be governed by review under 42 USC 1983 as a federal claim involving a local agency's pattern, practice, or policy of conduct under color of State law. This is a very different standard of review than what is being addressed in the staff report.

THE PERCEPTION PROBLEM

The County misconstrues State law as to Ranchos, which were granted under the California Land Settlement Act of 1851. As explained in the attached case of Summa Corporation vs. California Lands Commission 466 U.S. 198 (1984) as federal law and policy the State of California may not subsequently alter a Ranchos "bundle of property rights," to include its boundaries, by operation of State law. The patent under the subject parcel west of the Rancho line has a different source of title. It was a grant from the State of California in 1875. The State Governor, Newton Booth, signed this Grant. This was formerly section land surveyed as public land when California was admitted to the United States in 1851. Because the source of the titles are different, the County has historically recognized Rancho lines as the basis for underlying subdivision under California Government Code Section 66451.10.

This point was not raised or discussed in the Tehama case relied upon by the County Surveyor because all the Tehama patents were apparently State land patents. There was no distinction drawn as to conveyances across pre-existing Federal Subdivision lines because none were involved. The California statute that controls in this case is Government Code Section 66451.10:

> "... two or more contiguous lots or units of land which have been *created under* the provisions in this division, *or any prior law regulating the division of land,* or a local ordinance enacted pursuant thereto, or which were not subjected to those provisions a the time of their creation, shall not be deemed merged by virtue of the fact that the contiguous lots or units are held by the same owner, *and no further proceeding under the provisions of this or a local ordinance enacted pursuant thereto shall be required for the purpose of sale, lease, or financing of the contiguous lots or units, or any of them."* (Emphasis added).

Once you read the deed and understand there are two completely separate types of titles being referred to as to "as a small portion of Section 33T 9N. R. 32W. S.B.M. and a portion of the Tinaquaic Rancho, the Rancho

line does not move at all to allow for merger to occur. The conveyance falls under the express provisions of California Government Code Section 66451.10. The point being that by conveying two previously different parcels of patented land from two different title sources, one Federal and one State, parcel creation occurs as a matter of law in one deed. That's because the State can't ever alter the Rancho line as a matter of Federal law. Summa Corp requires the Surveyor to re read Tehama based upon the different kinds of patents and underlying subdivisions involved. The denial letter sent to the Appellant only referenced compliance with State law and local ordinances. The law that actually applies is the Federal Act of 3 March, 1851 referred to in the Foxen Patent of 1874.

CONCLUSION

Once the applicant shows how different Rancho land is in his deed under Summa Corp, the County must issue the requested Certificate or risk breaking both State and Federal law. The reason for providing the chain of title as part of the application process is not just to show no merger by re-subdivision, but to explain how different the underlying titles are so that the correct legal analysis may be performed to comply with all the laws which apply to the specific property described in the creation instrument. This County should follow established policy of recognizing Rancho lines as the basis for subdivision so as to follow federal law and avoid litigation over which law clearly controls here. The County of Santa Barbara may not rewrite the 1919 deed in this case so as to ignore the separate rights arising out of the Federal Rancho recognition system. Any attempt at this late date to alter the underlying title and force an involuntary merger by deed across this Rancho line would impair the Applicant's title and violate Federal law.

Respectfully Submitted,

John K. Dorwin,
Attorney for Appellant/Applicant,
Foxen Oaks, LLC

enclosures:
(1) Executive Summary,
(2) Denial Letter,
(3) Summa case copy,
(4) APN Map,
(5) Survey Map, Book 11, Page 176 of Maps, 1918 (Portion Showing Parcel),
(6) A Portion, Book 5, Page 33, 1909 Survey,
(7) 1919 Deed, Book 172, Page 211 of Deeds,
(8) Assessor's File Notes regarding sale to Foxen Oaks LLC, assuming 3 legal lots,
(9) Parcel Area Calculation by Assessor's Office

EXECUTIVE SUMMARY FOR 09CC100
HEARING DATE & PLACE: 3/23/10 at Santa Maria BOS Mtg. Rm,

1. This actual 3.897 acre parcel has a separate Assessor's Parcel Number, 133-070-035, lying West of the Rancho Tinaquaic line (calculations attached). The parcel was owned separately from the Rancho Tinaquaic for many years. It was owned by members of the Wickenden family, while Rancho Tinaquaic was owned by Benjamin Foxen, et.al. the corners of the parcel are clearly shown by surveyor's monuments.

2. The 1919 Deed clearly describes several parcels to include: "...and a small portion of Section 33 T9N R33W ...."(emphasis added), as well as the separate Rancho Tinaquaic line so as to create 2 parcels.

3. The Deed specifically refers to "...all those certain lots, pieces, or parcels of land" described so there was no intention to merge out any underlying parcels (Note: All nouns are plural).

4. The 1919 Deed complied with the then existing State law to create a subdivision of land by deed under the provisions of the Grandfather provisions of the Subdivision Map Act, Government Code Section 66451.10(copy attached). This deed cuts across the underlying Federaly recognized Rancho Tinaquaic boundary line.

5. The 2007 case, Peo.ex rel, Brown vs. Tehama County Board of Supervisors; (2007) 149 CA 4th 422 supports the landowners position in this case that the deed conveys parcels and, not just a single lot. Tehama dealt with an illegal lot line adjustment situation not Certificates of Compliance. Tehama did not involve any Federal Patent issues.

6. The interpretation of the Deed is a question of law upon the applicable law, Codes and Cases as to how to interpret a Grantor's intent in any particular transaction. This is as of the date of conveyance, not based upon retroactive application of County Subdivision Rules. Here the underlying patents are different: one Federal and the other State of California. This is reflected in the deed language as well. Section 33 remains apart from the Rancho Tinaquaic as a matter of title law forever.

7. In several previous situations involving Rancho Lines of preexisting subdivisions, the County has recognized these boundaries as the basis for separate parcel/lot creation. These have included subsequent lot line adjustments to provide for zoning conformity. Section lands and Rancho lands reflect prior Federal law regulating the division of land

under totally different rules. This prior policy was legally sound under Federal law as a matter of both preemption and due process.

8. The County as a matter of equal protection and due process may not retroactively apply parcel creation tests, which were not in place on the date the parcel was created, i.e. February 17, 1919, especially as to erase pre-existing Rancho lines as historical subdivisions under the California Land Settlement Act of 1851.

9. A merger of parcels should not be presumed absent a clearly expressed intention by the grantor as a matter of law under Government Code Section 66451.10

10. The County in at least two prior cases has forced mergers upon landowners only to have State Courts conclude that the County's interpretation of the facts and the applicable law was incorrect. Parcel Creation is not expressly defined anywhere in the Subdivision Map Act, or by separate conveyance.

11. A careful reading of the Deed, giving due consideration to the entire text, demonstrates extreme care in drafting so as to avoid any implication of a merger or that separate parcels were intended to be extinguished as to their use and enjoyment by the Grantee family members.

12. The County Assessor's Office in re-appraising the sale of this property in 2009 assumes three legal lots exist per the Assessor's file.

13. The Board of Supervisors will be asked to review this entire deed, line by line to reach an informed decision by following the rules for construing recorded documents. The County should not try to re-write the 1919 deed to achieve merger here, or any other result not clearly evident from the actual deed.

14. Appellant/ Applicant relies upon the United States Supreme Court Case of Summa Corp vs. California Lands Commission (466 U.S. 198) (1984) to show two different pre-existing subdivisions and a Rancho line which may not be altered by subsequent State legislation or law (see copy attached).

15. The denial letter of August 10, 2009 by the County Surveyor makes no reference as to compliance with Federal law, only as to State law and local ordinances. This a clear mistake because the law which controls as to California Land Settlement Act of 1851 Rancho lines is entirely Federal under Summa Corp.

COUNTY OF SANTA BARBARA
PUBLIC WORKS DEPARTMENT
123 East Anapamu Street
Santa Barbara, CA 93101
805\568-3000 FAX 805\568-3019

SCOTT D. MCGOLPIN
Director

August 10, 2009

R. Stephen Leger
Title Research Consultant
4870 Calle Real #310
Santa Barbara, CA 93111

Re: 1st Review and Final Determination
Certificate of Compliance (09CC100) (Hart)
APN 133-070-035

Dear Mr. Leger:

Our Office has performed the First Review of this project for compliance with State Law and Local Ordinances and we have made the following decision:

We have determined based on the information submitted that the subject parcel in this application does not exist on its own as a separate parcel and therefore we cannot issue the Certificate of Compliance as submitted. It is a part of other property created per Deed 172/211 recorded on 2/17/1919 called Tract D and shown on RS 11/176, which overlaps the Rancho line and adjacent Patent to make a single parcel being APN's 133-070-035 and 133-070-023.

This decision can be appealed to the Board of Supervisors under County Ordinance Section 21-71.4. Appeals must be in writing with the appropriate fee and must be filed with the Clerk of the Board within 10 calendar days of the date of this decision and must include the appropriate fee of $2000.00.

If at any time you wish to check the status of this project or have any questions, please feel free to call our office at 568-3020 during normal business hours.

Very truly yours,

Michael B. Emmons, PLS
County Surveyor

Copy: Warren Hart c/o MH Hart, 4602 Green River Drive, Corona, CA 92880
Kevin Ready, County Counsel

[466 US 198]

SUMMA CORPORATION, Petitioner

v

CALIFORNIA ex rel. STATE LANDS COMMISSION AND CITY OF LOS ANGELES

466 US 198, 80 L Ed 2d 237, 104 S Ct 1751

[No. 82–708]

Argued February 29, 1984. Decided April 17, 1984.

Decision: Lagoon whose title was confirmed by federal patent to original Mexican grantees held not subject to public trust easement.

SUMMARY

The city of Los Angeles brought a state court suit against the fee owner of the Ballona Lagoon, joining the state of California as a defendant as required by state law, and asserting an easement in the Ballona Lagoon. The state filed a cross complaint alleging that upon its admission to the union it had acquired an interest in the lagoon, that it held this interest in trust for the public, and that it had granted this interest to the city of Los Angeles. The trial court ruled in favor of the city and the state, finding that the lagoon was subject to the public trust easement claimed by them, so as to give them the right to construct improvements in the lagoon without exercising the power of eminent domain or compensating the owners. The Supreme Court of California affirmed the trial court's ruling (31 Cal 3d 288).

On certiorari, the United States Supreme Court reversed. In an opinion by REHNQUIST, J., expressing the views of BURGER, Ch.J., and BRENNAN, WHITE, BLACKMUN, POWELL, STEVENS and O'CONNOR, JJ., it was held that even assuming that Ballona Lagoon was part of tidelands subject by Mexican law to the public trust easement, the state's claim to such a servitude must have been presented in the federal patent proceeding in order to survive the issue of a fee patent to the original Mexican grantees.

MARSHALL, J., did not participate.

Briefs of Counsel, p 867, infra.

HEADNOTES

Classified to U.S. Supreme Court Digest, Lawyers' Edition

Private Land Claims § 194 — federal patents — state easement

1a–1d. A California public trust easement, which applies to all land which were tidelands when California became a state, irrespective of the present character of the land, which gives the state an overriding power to enter upon the property and possess it, to make physical changes in the property, and to control how the property is used, and which allows the landowner to retain legal title but allows him control of little more than the naked fee, since any proposed private use is subject to the right of the state or any member of the public to assert the state's public trust easement, cannot survive the patent proceedings conducted pursuant to the Act of March 3, 1851 (9 Stat 631) implementing the Treaty of Guadalupe Hidalgo and confirming title to the original Mexican grantees.

Appeal and Error § 520 — jurisdiction — federal question

2a, 2b. While questions of riparian rights under federal patents issued under the Act of March 3, 1851 (9 Stat 631) do not raise a substantial federal question merely because the conflicting claims are based on such patents, a case is within the United States Supreme Court's jurisdiction where the question presented is whether the provisions of the 1851 Act operate to preclude California from asserting a public trust easement over a lagoon patented thereunder to the original Mexican grantees.

States, Territories, and Possessions § 120 — equal footing

3. The Federal Government cannot dispose of a right possessed by the state under the equal footing doctrine of the United States Constitution.

Waters § 14 — tidelands — federal patent

4. An ordinary federal patent purporting to convey tidelands located within a state to a private individual is invalid, since the United States holds such tidelands only in trust for the state.

Waters § 31 — beds — conveyance

5a, 5b. While alienation of the beds of navigable waters will not be lightly inferred, property underlying navigable waters can be conveyed in recognition of an international duty.

TOTAL CLIENT-SERVICE LIBRARY® REFERENCE

78 Am Jur 2d, Waters § 402

US L Ed Digest, Private Land Claims § 194; Waters §§ 14, 31

L Ed Index to Annos, Waters

ALR Quick Index, Waters and Watercourses

Federal Quick Index, Waters and Watercourses

Auto-Cite®: Any case citation herein can be checked for form, parallel references, later history and annotation references through the Auto-Cite computer research system.

SYLLABUS BY REPORTER OF DECISIONS

Petitioner owns the fee title to the Ballona Lagoon, a narrow body of water connected to a manmade harbor located in the city of Los Angeles on the Pacific Ocean. The lagoon became part of the United States following the war with Mexico, which was formally ended by the Treaty of Guadalupe Hidalgo in 1848. Petitioner's predecessors-in-interest had their interest in the lagoon confirmed in federal patent proceedings pursuant to an 1851 Act that had been enacted to implement the treaty, and that provided that the validity of claims to California lands would be decided according to Mexican law. California made no claim to any interest in the lagoon at the time of the patent proceedings, and no mention was made of any such interest in the patent that was issued. Los Angeles brought suit against petitioner in a California state court, alleging that the city held an easement in the Ballona Lagoon for commerce, navigation, fishing, passage of fresh water to canals, and water recreation, such an easement having been acquired at the time California became a State. California was joined as a defendant as required by state law and filed a cross-complaint alleging that it had acquired such an easement upon its admission to the Union and had granted this interest to the city. The trial court ruled in favor of the city and State, finding that the lagoon was subject to the claimed public trust easement. The California Supreme Court affirmed, rejecting petitioner's arguments that the lagoon had never been tideland, that even if it had been, Mexican law imposed no servitude on the fee interest by reason of that fact, and that even if it were tideland and subject to servitude under Mexican law, such a servitude was forfeited by the State's failure to assert it in the federal patent proceedings.

Held: California cannot at this late date assert its public trust easement over petitioner's property, when petitioner's predecessors-in-interest had their interest confirmed without any mention of such an easement in the federal patent proceedings. The interest claimed by California is one of such substantial magnitude that regardless of the fact that the claim is asserted by the State in its sovereign capacity, this interest must have been presented in the patent proceedings or be barred. Cf. Barker v Harvey, 181 US 481, 45 L Ed 963, 21 S Ct 690; United States v Title Ins. & Trust Co., 265 US 742, 68 L Ed 2d 1110, 44 S Ct 621; United States v Coronado Beach Co., 255 US 472, 65 L Ed 736, 41 S Ct 378.

31 Cal 3d 288, 644 P2d 792, reversed and remanded.

Rehnquist, J., delivered the opinion of the Court, in which all other Members joined except Marshall, J., who took no part in the decision of the case.

APPEARANCES OF COUNSEL

Warren M. Christopher argued the cause for petitioner.

Louis F. Claiborne argued the cause for the United States as amicus curiae, by special leave of Court.

Nancy Alvarado Saggese argued the cause for respondents.

Briefs of Counsel, p 867, infra.

Justice **Rehnquist** delivered the opinion of the Court.

Petitioner owns the fee title to property known as the Ballona Lagoon, a narrow body of water connected to Marina del Rey, a man-made harbor located in a part of the city of

[466 US 200]

Los Angeles called Venice. Venice is located on the Pacific Ocean between the Los Angeles International Airport and the city of Santa Monica. The present case arises from a lawsuit brought by respondent city of Los Angeles against petitioner Summa Corp. in state court, in which the city alleged that it held an easement in the Ballona Lagoon for commerce, navigation, and fishing, for the passage of fresh waters to the Venice Canals, and for water recreation. The State of California, joined as a defendant as required by state law, filed a cross-complaint alleging that it had acquired an interest in the lagoon for commerce, navigation, and fishing upon its admission to the Union, that it held this interest in trust for the public, and that it had granted this interest to the city of Los Angeles. The city's complaint indicated that it wanted to dredge the lagoon and make other improvements without having to exercise its power of eminent domain over petitioner's property. The trial court ruled in favor of respondents, finding that the lagoon was subject to the public trust easement claimed by the city and the State, who had the right to construct improvements in the lagoon without exercising the power of eminent domain or compensating the landowners. The Supreme Court of California affirmed the ruling of the trial court. City of Los Angeles v Venice Peninsula Properties, 31 Cal 3d 288, 644 P2d 792 (1982).

[1a, 2a] In the Supreme Court of California, petitioner asserted that the Ballona Lagoon had never been tideland, that even if it had been tideland, Mexican law imposed no servitude on the fee interest by reason of that fact, and that even if it were tideland and subject to a servitude under Mexican law, such a servitude was forfeited by the failure of the State to assert it in the federal patent proceedings. The Supreme Court of California ruled against petitioner on all three of these grounds. We granted certiorari, 460 US 1036, 75 L Ed 2d 786, 103 S Ct 1425 (1983), and now reverse that judgment, holding that even if it is assumed that the Ballona Lagoon was part of tidelands subject by Mexican law to the servitude described by the Supreme

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Court of California, the State's claim to such a servitude must have been presented in the federal patent proceeding in order to survive the issue of a fee patent.[1]

1. **[2b]** Respondents argue that the decision below presents simply a question concerning an incident of title, which even though relating to a patent issued under a federal statute raises only a question of state law. They rely on cases such as Hooker v Los Angeles, 188 US 314, 47 L Ed 487, 23 S Ct 395 (1903), Los Angeles Milling Co. v Los Angeles, 217 US 217, 54 L Ed 736, 30 S Ct 452 (1910), and Boquillas Land & Cattle Co. v Curtis, 213 US 339, 53 L Ed 822, 29 S Ct 493 (1909). These cases all held, quite properly in our view, that questions of riparian water rights under patents issued under the 1851 Act did not raise a substantial federal question merely because the conflicting claims were based upon such patents. But the controversy in the present case, unlike those cases, turns on the proper construction of the Act of March 3, 1851. Were the rule otherwise, this Court's decision in Barker v Harvey, 181 US 481, 45 L Ed 963, 21 S Ct 690 (1901), would have been to dis-

[466 US 202]

Petitioner's title to the lagoon, like all the land in Marina del Rey, dates back to 1839, when the Mexican Governor of California granted to Augustin and Ignacio Machado and Felipe and Tomas Talamantes a property known as the Rancho Ballona.[2] The land comprising the Rancho Ballona became part of the United States following the war between the United States and Mexico, which was formally ended by the Treaty of Guadalupe Hidalgo in 1848. 9 Stat 922. Under the terms of the Treaty of Guadalupe Hidalgo the United States undertook to protect the property rights of Mexican landowners, Treaty of Guadalupe Hidalgo, Art VIII, 9 Stat 929, at the same time settlers were moving into California in large numbers to exploit the mineral wealth and other resources of the new territory. Mexican grants encompassed well over 10 million acres in California and included some of the best land suitable for development. HR Rep No. 1, 33d Cong, 2d Sess, 4–5 (1854). As we wrote long ago:

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"The country was new, and rich in

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miss the appeal, which was the course taken in Hooker, rather than to decide the case on the merits. See also Beard v Federy, 3 Wall 478, 18 L Ed 88 (1866). The opinion below clearly recognized as much, for the California Supreme Court wrote that "under the Act of 1851, the federal government succeeded to Mexico's right in the tidelands granted to defendants' predecessors upon annexation of California," 31 Cal 3d, at 298, 644 P2d, at 798, an interest that "was acquired by California upon its admission to statehood," id., at 302, 644 P2d, at 801. Thus, our jurisdiction is based on the need to determine whether the provisions of the 1851 Act operate to preclude California from now asserting its public trust easement.

The 1839 grant to the Machados and Talamantes contained a reservation that the grantees may enclose the property "without prejudice to the traversing roads and servitudes *[servidumbres]*." App 5. According to expert testimony at trial, under Las Siete Partidas, the law in effect at the time of the Mexican grant, this reservation in the Machados' and Talamantes' grant was intended to preserve the rights of the public in the tidelands enclosed by the boundaries of the Rancho Ballona. The California Supreme Court reasoned that this interest was similar to the common-law public trust imposed on tidelands. Petitioner and amicus United States argue, however, that this reservation was never intended to create a public trust easement of the magnitude now asserted by California. At most this reservation was inserted in the Mexican grant simply to preserve existing roads and paths for use by the public. See United States v Coronado Beach Co. 255 US 472, 485–486, 65 L Ed 736, 41 S Ct 378 (1921); Barker v Harvey, supra; cf. Jover v Insular Government, 221 US 623, 55 L Ed 884, 31 S Ct 664 (1911). While it is beyond cavil that we may take a fresh look at what Mexican law may have been in 1839, see United States v Perot, 98 US 428, 430, 25 L Ed 251 (1879); Fremont v United States, 17 How 542, 556, 15 L Ed 241 (1855), we find it unnecessary to determine whether Mexican law imposed such an expansive easement on grants of private property.

2. The Rancho Ballona occupied an area of approximately 14,000 acres and included a tidelands area of about 2,000 acres within its boundaries. The present-day Ballona Lagoon is virtually all that remains of the former tidelands, with filling and development or natural conditions transforming most of much larger lagoon area into dry land. Although respondent Los Angeles claims that the present controversy involves only what remains of the old lagoon, a fair reading of California law suggests that the State's claimed public trust servitude can be extended over land no longer subject to the tides if the land was tidelands when California became a State. See City of Long Beach v Mansell, 3 Cal 3d 462, 476 P2d 423 (1970).

The Mexican grantees acquired title through a formal process that began with a petition to the Mexican Governor of California. Their petition was forwarded to the City Council of Los Angeles, whose committee on vacant lands approved the request. Formal vesting of title took place after the Rancho had been inspected, a Mexican judge had completed "walking the boundaries," App 213, and the conveyance duly registered. See generally id., at 1–13; United States v Pico, 5 Wall 536, 539, 18 L Ed 695 (1867).

mineral wealth, and attracted settlers, whose industry and enterprise produced an unparalleled state of prosperity. The enhanced value given to the whole surface of the country by the discovery of gold, made it necessary to ascertain and settle all private land claims, so that the real estate belonging to individuals could be separated from the public domain." Peralta v United States, 3 Wall 434, 439, 18 L Ed 221 (1866). See also Botiller v Dominguez, 130 US 238, 244, 32 L Ed 926, 9 S Ct 525 (1889).

To fulfill its obligations under the Treaty of Guadalupe Hidalgo and to provide for an orderly settlement of Mexican land claims, Congress passed the Act of March 3, 1851, setting up a comprehensive claims settlement procedure. Under the terms of the Act, a Board of Land Commissioners was established with the power to decide the rights of "each and every person claiming lands in California by virtue of any right or title derived from the Spanish or Mexican government . . . ." Act of Mar. 3, 1851, § 8, ch 41, 9 Stat 632. The Board was to decide the validity of any claim according to "the laws, usages, and customs" of Mexico, § 11, while parties before the Board had the right to appeal to the District Court for a de novo determination of their rights, § 9; Grisar v McDowell, 6 Wall 363, 375, 18 L Ed 863 (1868), and to appeal to this Court, § 10. Claimants were required to present their claims within two years, however, or have their claims barred. § 13; see Botiller v Dominguez, 130 US 238, 32 L Ed 926, 9 S Ct 525 (1889). The final decree of the Board, or any patent issued under the Act, was also a conclusive adjudication of the rights of the claimant as against the United States, but not against the interests of third parties with superior titles. § 15.

In 1852 the Machados and the Talamantes petitioned the Board for confirmation of their title under the Act. Following a hearing, the petition was granted by the Board, App 21, and affirmed by the United States District Court on appeal,

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id., at 22–23. Before a patent could issue, however, a survey of the property had to be approved by the Surveyor General of California. The survey for this purpose was completed in 1858, and although it was approved by the Surveyor General of California, it was rejected upon submission to the General Land Office of the Department of the Interior. Id., at 32–34.

In the confirmation proceedings that followed, the proposed survey was readvertised and interested parties informed of their right to participate in the proceedings.[3] The prop-

3. It is plain that the State had the right to participate in the patent proceedings leading to confirmation of the Machados' and Talamantes' grant. The State asserts that as a "practice" it did not participate in confirmation proceedings under the 1851 Act. Brief for Respondent California 16, n 17. In point of fact, however, the State and the city of Los Angeles participated in just such a proceeding involving a rancho near the Rancho Ballona. See In re Sausal Redundo and Other Cases, Brief for General Rosecrans and State of California et al., and Resolutions of City Council of Los Angeles, Dec. 24, 1968, found in National Archives, RC 49, California Land Claims, Docket 414. Moreover, before the Mexican grant was confirmed, Congress passed a statute specially conferring a right on all parties claiming an interest in any tract embraced by a published survey to file objections to the survey. Act of July 1, 1864, § 1, ch 194, 13 Stat 332.

erty owners immediately north of the Rancho Ballona protested the proposed survey of Rancho Ballona; the Machados and Talamantes, the original grantees, filed affidavits in support of their claim. As a result of these submissions, as well as a consideration of the surveyor's field notes and underlying Mexican documents, the General Land Office withdrew its objection to the proposed ocean boundary. The Secretary of the Interior subsequently approved the survey and in 1873 a patent was issued confirming title in the Rancho Ballona to the original Mexican grantees. Id., at 101–109. Significantly, the federal patent issued to the Machados and Talamantes made no mention of any public trust interest such as the one asserted by California in the present proceedings.

The public trust easement claimed by California in this lawsuit has been interpreted to apply to all lands which were

[466 US 205]

tidelands at the time California became a State, irrespective of the present character of the land. See City of Long Beach v Mansell, 3 Cal 3d 462, 486–487, 476 P2d 423, 440-441 (1970). Through this easement, the State has an overriding power to enter upon the property and possess it, to make physical changes in the property, and to control how the property is used. See Marks v Whitney, 6 Cal 3d 251, 259–260, 491 P2d 374, 380-381 (1971); People v California Fish Co. 166 Cal 576, 596–599, 138 p 79, 87-89 (1913). Although the landowner retains legal title to the property, he controls little more than the naked fee, for any proposed private use remains subject to the right of the State or any member of the public to assert the State's public trust easement. See Marks v Whitney, supra.

[1b, 3, 4] The question we face is whether a property interest so substantially in derogation of the fee interest patented to petitioner's predecessors can survive the patent proceedings conducted pursuant to the statute implementing the Treaty of Guadalupe Hidalgo. We think it cannot. The Federal Government, of course, cannot dispose of a right possessed by the State under the equal-footing doctrine of the United States Constitution. Pollard's Lessee v Hagan, 3 How 212, 11 L Ed 565 (1845). Thus, an ordinary federal patent purporting to convey tidelands located within a State to a private individual is invalid, since the United States holds such tidelands only in trust for the State. Borax, Ltd. v Los Angeles, 296 US 10, 15–16, 80 L Ed 9, 56 S Ct 23 (1935). But the Court in Borax recognized that a different result would follow if the private lands had been patented under the 1851 Act. Id., at 19, 80 L Ed 9, 56 S Ct 23. Patents confirmed under the authority of the 1851 Act were issued "pursuant to the authority reserved to the United States to enable it to discharge its international duty with respect to land which, although tideland, had not passed to the State." Id., at 21, 80 L Ed 9, 56 S Ct 23. See also Oregon ex rel. State Land Board v Corvallis Sand & Gravel Co. 429 US 363, 375, 50 L Ed 2d 550, 97 S Ct 582 (1977); Knight v United States Land Assn., 142 US 161, 35 L Ed 974, 12 S Ct 258 (1891).

[466 US 206]

This fundamental distinction reflects an important aspect of the 1851 Act enacted by Congress. While the 1851 Act was intended to implement this country's obligations under the Treaty of Guadalupe Hidalgo, the 1851 Act also served an overriding purpose of providing re-

pose to land titles that originated with Mexican grants. As the Court noted in Peralta v United States, 3 Wall 434, 18 L Ed 221 (1866), the territory in California was undergoing a period of rapid development and exploitation, primarily as a result of the finding of gold at Sutter's Mill in 1848. See generally J. Caughey, California 238–255 (2d ed 1953). It was essential to determine which lands were private property and which lands were in the public domain in order that interested parties could determine what land was available from the Government. The 1851 Act was intended "to place the titles to land in California upon a stable foundation, and to give the parties who possess them an opportunity of placing them on the records of this country, in a manner and form that will prevent future controversy." Fremont v United States, 17 How 542, 553–554, 15 L Ed 241 (1855); accord, Thompson v Los Angeles Farming Co. 180 US 72, 77, 45 L Ed 432, 21 S Ct 289 (1901).

[5a] California argues that since its public trust servitude is a sovereign right, the interest did not have to be reserved expressly on the federal patent to survive the confirmation proceedings.[4] Patents issued pursuant to the 1851 Act were,

[466 US 207]

of course, confirmatory patents that did not expand the title of the original Mexican grantee. Beard v Federy, 3 Wall 478, 18 L Ed 88 (1866). But our decisions in a line of cases beginning with Barker v Harvey, 181 US 481, 45 L Ed 963, 21 S Ct 690 (1901), effectively dispose of California's

4. **[5b]** In support of this argument the State cites to Montana v United States, 450 US 544, 67 L Ed 2d 493, 101 S Ct 1245 (1981), and Illinois Central R. Co. v Illinois, 146 US 387, 36 L Ed 1018, 13 S Ct 110 (1892), in support of its proposition that its public trust servitude survived the 1851 Act confirmation proceedings. While Montana v United States and Illinois Central R. Co. v Illinois support the proposition that alienation of the beds of navigable waters will not be lightly inferred, property underlying navigable waters can be conveyed in recognition of an "international duty." Montana v United States, supra, at 552, 67 L Ed 2d 493, 101 S Ct 1245. Whether the Ballona Lagoon was navigable under federal law in 1850 is open to speculation. The trial court found only that the present-day lagoon was navigable, App to Pet for Cert A-52, while respondent Los Angeles concedes that the lagoon was not navigable in 1850, Brief for Respondent Los Angeles 29. The obligation of the United States to respect the property rights of Mexican citizens was, of course, just such an international obligation, made express by the Treaty of Guadalupe Hidalgo and inherent in the law of nations, see United States v Moreno, 1 Wall 400, 404, 17 L Ed 633 (1864); United States v Fossatt, 21 How 445, 448, 16 L Ed 185 (1859).

The State also argues that the Court has previously recognized that sovereign interests need not be asserted during proceedings confirming private titles. The State's reliance on New Orleans v United States, 10 Pet 662, 9 L Ed 573 (1836), and Eldridge v Trezevant, 160 US 452, 40 L Ed 490, 16 S Ct 345 (1896), in support of its argument is misplaced, however. Neither of these cases involved titles confirmed under the 1851 Act. In New Orleans v United States, for example, the Board of Commissioners in that case could only make recommendations to Congress, in contrast to the binding effect of a decree issued by the Board under the 1851 Act. Thus, we held in that case that the city of New Orleans could assert public rights over riverfront property which were previously rejected by the Board of Commissioners. New Orleans v United States, supra, at 733–734, 9 L Ed 573. The decision in Eldridge v Trezevant, supra, did not even involve a confirmatory patent, but simply the question whether an outright federal grant was exempt from longstanding local law permitting construction of a levee on private property for public safety purposes. While the Court held that the federal patent did not extinguish the servitude, the interest asserted in that case was not a "right of permanent occupancy," Barker v Harvey, 181 US, at 491, 45 L Ed 963, 21 S Ct 690, such as that asserted by the State in this case.

claim that it did not have to assert its interest during the confirmation proceedings. In Barker the Court was presented with a claim brought on behalf of certain Mission Indians for a permanent right of occupancy on property derived from grants from Mexico. The Indians' claim to a right of occupancy was derived from a reservation placed on the original Mexican grants permitting the grantees to fence in the property without "interfering with the roads, crossroads and other usages." Id., at 494, 495, 45 L Ed 963, 21 S Ct 690. The Court rejected the Indians' claim, holding:

> "If these Indians had any claims founded on the action of the Mexican government they abandoned them by not
>
> [466 US 208]
>
> presenting them to the commission for consideration, and they could not, therefore, . . . 'resist successfully any action of the government in disposing of the property.' If it be said that the Indians do not claim the fee, but only the right of occupation, and, therefore, they do not come within the provision of section 8 as persons 'claiming lands in California by virtue of any right or title derived from the Spanish or Mexican government,' it may be replied that a claim of a right to permanent occupancy of land is one of far-reaching effect, and it could not well be said that lands which were burdened with a right of permanent occupancy were a part of the public domain and subject to the full disposal of the United States. . . . Surely a claimant would have little reason for presenting to the land commission his claim to land, and securing a confirmation of that claim, if the only result was to transfer the naked fee to him, burdened by an Indian right of permanent occupancy." Id. at 491–492, 45 L Ed 963, 21 S Ct 690.

The Court followed its holding in Barker in a subsequent case presenting a similar question, in which the Indians claimed an aboriginal right of occupancy derived from Spanish and Mexican law that could only be extinguished by some affirmative act of the sovereign. United States v Title Ins. & Trust Co. 265 US 472, 68 L Ed 1110, 44 S Ct 621 (1924). Although it was suggested to the Court that Mexican law recognized such an aboriginal right, Brief for Appellant in United States v Title Ins. & Trust Co., OT 1923, No. 358, pp 14–16; cf. Chouteau v Molony, 16 How 203, 229, 14 L Ed 905 (1854), the Court applied its decision in Barker to hold that because the Indians failed to assert their interest within the timespan established by the 1851 Act, their claimed right of occupancy was barred. The Court declined an invitation to overrule its decision in Barker because of the adverse effect of such a decision on land titles, a result that counseled adherence to a settled interpretation. 265 US, at 486, 68 L Ed 1110, 44 S Ct 621.

[466 US 209]

[1c] Finally, in United States v Coronado Beach Co. 255 US 472, 65 L Ed 736, 41 S Ct 378 (1921), the Government argued that even if the landowner had been awarded title to tidelands by reason of a Mexican grant, a condemnation award should be reduced to reflect the interest of the State in the tidelands which it acquired when it entered the Union. The Court expressly rejected the Government's argument, holding that the patent proceedings were

conclusive on this issue, and could not be collaterally attacked by the Government. Id., at 487–488, 65 L Ed 736, 41 S Ct 378. The necessary result of the Coronado Beach decision is that even "sovereign" claims such as those raised by the State of California in the present case must, like other claims, be asserted in the patent proceedings or be barred.

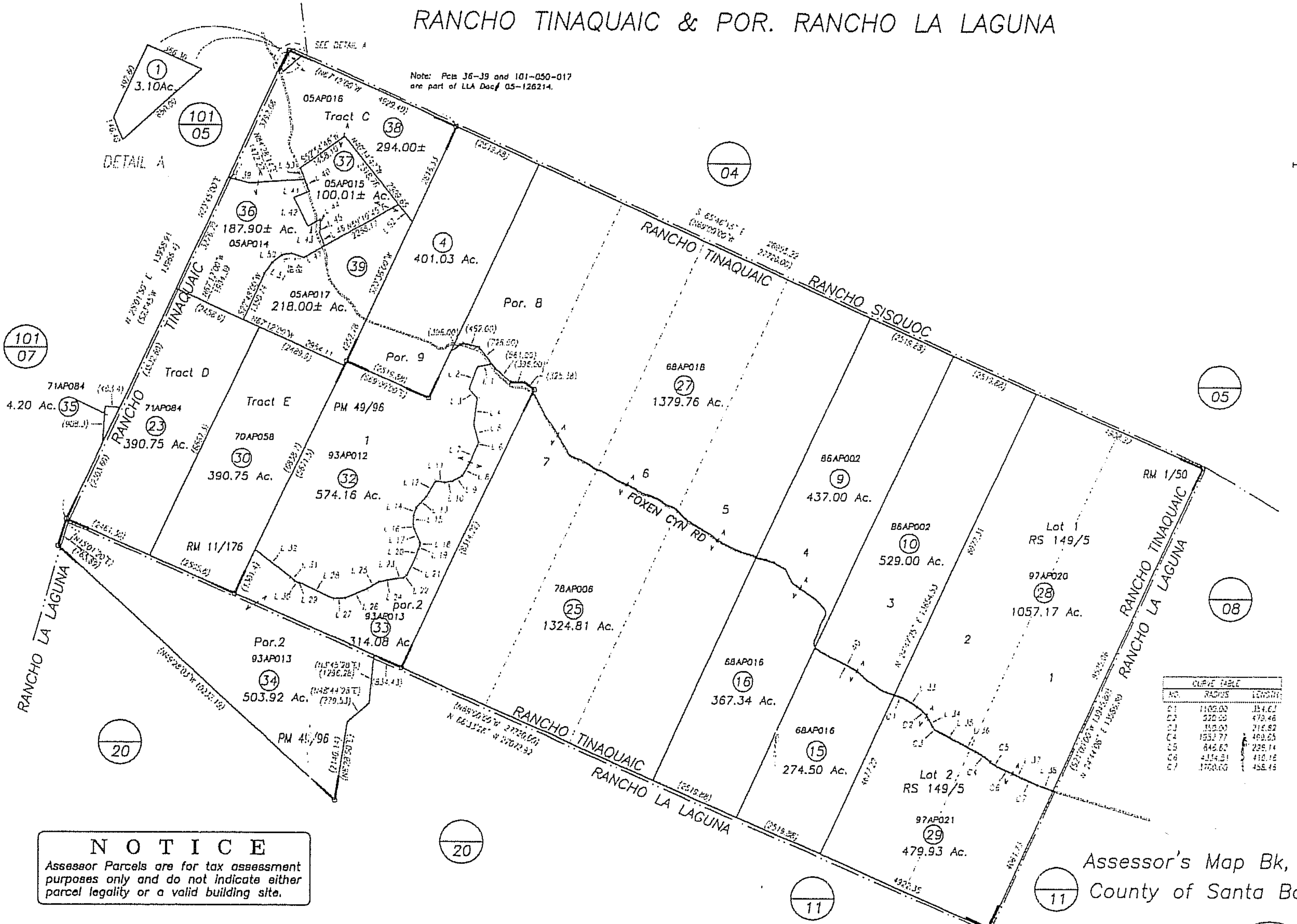
[1d] These decisions control the outcome of this case. We hold that California cannot at this late date assert its public trust easement over petitioner's property, when petitioner's predecessors-in-interest had their interest confirmed without any mention of such an easement in proceedings taken pursuant to the Act of 1851. The interest claimed by California is one of such substantial magnitude that regardless of the fact that the claim is asserted by the State in its sovereign capacity, this interest, like the Indian claims made in Barker and in United States v Title Ins. & Trust Co., must have been presented in the patent proceeding or be barred. Accordingly, the judgment of the Supreme Court of California is reversed, and the case is remanded to that court for further proceedings not inconsistent with this opinion.

It is so ordered.

Justice **Marshall** took no part in the decision of this case.

RANCHO TINAQUAIC & POR. RANCHO LA LAGUNA

133–07



LINE TABLE		
NO.	BEARING	DISTANCE
L 1	S78°07'22"W	406.30
L 2	S15°53'25"W	629.97
L 3	S44°21'54"E	119.55
L 4	S21°11'47"W	739.61
L 5	S16°20'29"E	500.60
L 6	S16°27'41"W	114.52
L 7	S19°43'17"W	568.92
L 8	S27°19'26"W	334.86
L 9	S55°06'25"W	305.68
L 10	S75°15'48"W	210.31
L 11	N84°43'11"W	242.51
L 12	S75°05'27"W	423.67
L 13	S10°54'59"W	404.35
L 14	S13°53'03"W	271.79
L 15	S20°13'47"E	234.70
L 16	S13°07'53"E	144.13
L 17	S22°53'34"E	406.21
L 18	S3°20'45"W	66.71
L 19	S21°24'24"W	111.72
L 20	S14°16'42"W	255.56
L 21	S27°40'12"W	310.67
L 22	S51°17'23"W	108.09
L 23	S16°59'05"W	211.27
L 24	S77°59'29"W	456.31
L 25	S55°20'50"W	367.19
L 26	S54°18'19"W	633.64
L 27	S85°34'11"W	105.52
L 28	N60°38'04"W	1017.06
L 29	S29°03'18"W	37.20
L 30	N81°47'33"W	129.17
L 31	N20°06'41"W	156.36
L 32	N54°50'46"W	1491.09
L 33	N58°18'11"W	330.19
L 34	N26°26'05"W	215.23
L 35	N05°56'12"W	554.05
L 36	N20°14'16"W	458.43
L 37	N03°12'14"W	244.00
L 38	N20°15'12"W	414.32
L 39	S76°51'27"E	582.76
L 40	S32°23'13"E	336.17
L 41	S66°36'41"W	440.80
L 42	S27°23'19"E	547.75
L 43	N35°03'20"E	379.16
L 44	S01°06'17"W	236.91
L 45	S05°40'27"W	421.32
L 46	S22°26'40"E	367.06
L 47	S55°15'03"W	544.07
L 48	N21°35'35"W	340.76
L 49	S78°36'39"W	263.46
L 50	S42°41'15"W	329.06
L 51	S33°26'48"W	356.74
L 52	S40°14'47"E	590.89
L 53	S22°41'44"E	339.56

CURVE TABLE		
NO.	RADIUS	LENGTH
C1	1100.00	354.62
C2	520.00	479.46
C3	350.00	216.92
C4	1532.77	409.65
C5	646.62	225.74
C6	4334.81	410.16
C7	3700.00	455.45

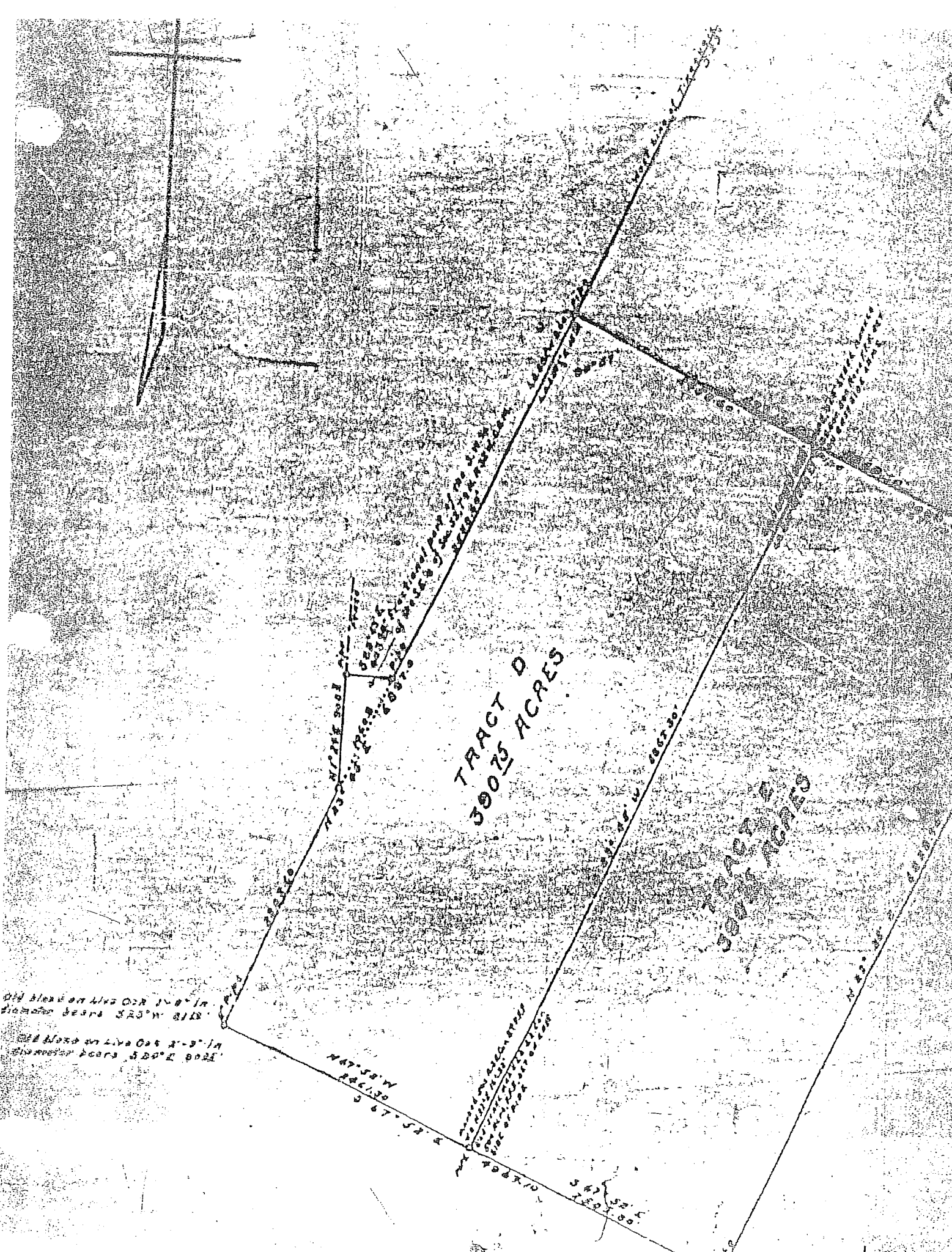
NOTICE

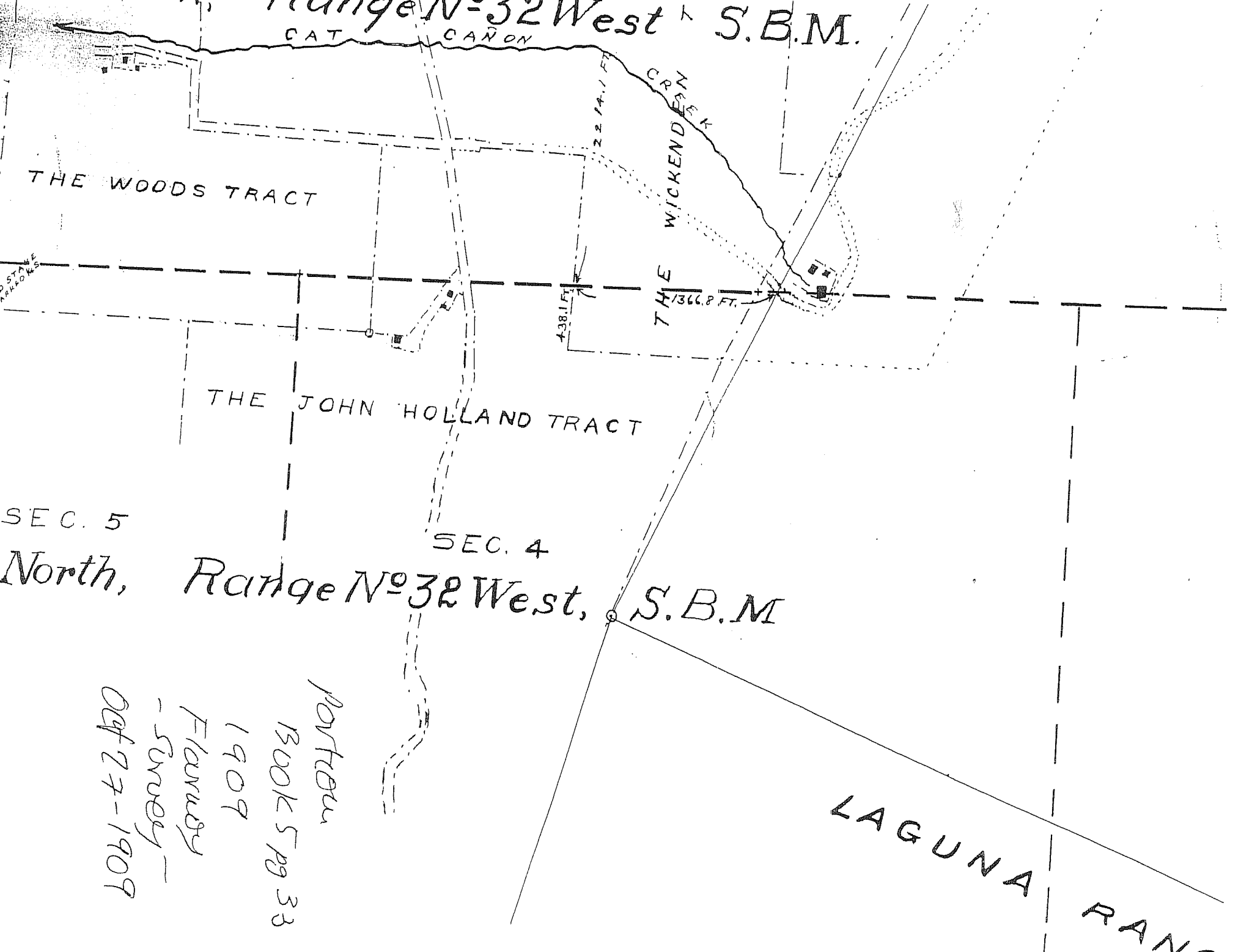
Assessor Parcels are for tax assessment purposes only and do not indicate either parcel legality or a valid building site.

Assessor's Map Bk, 133–Pg, 07
County of Santa Barbara, Calif.

11/23/1908 R.M. Bk. 11, Pg. 176, Tract "Survey Showing Division of Wickenden Rancho & Portion of Tinaquaic Rancho"
03/20/1875 R.M. Bk. "O", Pg. 209, Tract "Division of the Estate of Wm. Domingo Foxen (RM 1/50)"

LD/08 36, 37 & 39 replace Ag Preserve /


TRACT D
30.75 ACRES
30.75 ACRES


Range No. 32 West S.B.M.
CAT CANON
THE WOODS TRACT
WICKENDEN CREEK
+2214.1 FT.
+381 FT.
THE 1366.8 FT.
THE JOHN HOLLAND TRACT
SEC. 5
SEC. 4
North, Range No. 32 West, S.B.M
LAGUNA
Portion
Book 9 p 33
1904
January
Survey
Aug 27-1907

State of California } ss.
County of Santa Barbara }

On this 21st day of February 1919, before me, A. P. Redington, a Notary Public in and for said County, personally appeared E. Raymond Driver and Mable Driver, husband and wife, known to me to be the persons whose names are subscribed to the foregoing instrument and acknowledged that they executed the same.

WITNESS my hand and Official Seal.

A. P. REDINGTON, Notary Public in and for the County of Santa Barbara, State of California.

(NOTARIAL SEAL)

RECORDED at Request of Grantee at 12 min. past 4 o'clock P. M. Feb'y. 26th 1919.

MARK BRADLEY, County Recorder
By Fortunee Bianchi Deputy Recorder.

HLB

172/211 Ds

WICKENDEN CO.,
TO
MARGARET WICKENDEN, ET AL.,

THIS INDENTURE, Made the 17th day of January, 1919,

BETWEEN Wickenden Co., a corporation organized and existing under and by virtue of the laws of the State of California, party of the first part, and Margaret Wickenden, W. C. Wickenden, Erio Wickenden, Clarence Wickenden, James Wickenden, Amanda Zinsmaster and Wilhelmina Wasley, parties of the second part,

WITNESSETH: That the said party of the first part, for and in consideration of the sum of One Dollar, gold coin of the United States of America, to it in hand paid by the said parties of the second part, the receipt whereof is hereby acknowledged, does by these presents grant, bargain, sell, convey and confirm unto the said parties of the second part, and to their heirs and assigns forever, in the following proportions, to wit: To Margaret Wickenden an undivided one-third (1/3) thereof, and an undivided one-ninth (1/9) to said W. C. Wickenden, Erio Wickenden, Clarence Wickenden, James Wickenden, Amanda Zinsmaster and Wilhelmina Wasley, all those certain lots, pieces or parcels of land situate in the County of Santa Barbara, State of California, and bounded and particularly described as follows, to wit:

Commencing at a 3" pipe survey monument set in place of old Chaparral stake marked T. No. 4 LL at the most southwesterly corner of the Tinaquaic Rancho, from which the old blaze on a live oak tree one foot eight inches in diameter bears S. 23° W. 81.10 feet, and old blaze on another live oak tree two feet three inches in diameter bears S. 34° E. 90.35 feet; thence

1st. N. 23° 45' E., following the most westerly line of said Tinaquaic Rancho, as per monuments, 2303.80 feet to a point where the center line of Section 33 T. 9 N. R. 32 W., S. B. M. as fenced and projected would intersect same; thence

2nd. N. 1° 34' E., following the center line of said Section 33 in said township and range, as fenced, 908.30 feet to a pipe survey monument set at corner of fence, thence

3rd. S. 88° 43' E., 403.40 feet to a pipe survey monument set on the most westerly line of said Tinaquaic Rancho as above stated; thence

4th. N. 23° 45' E., following said westerly line of said Tinaquaic Rancho, 3532.60 feet to a pipe survey monument from which a spike in a live oak tree bears S. 81° W. 3.60 feet, and a spike in another live oak tree bears S. 27½° E. 15.89 feet; thence

5th. S. 67° 12' E., 3458.80 feet to a pipe survey monument with a 4" x 4" redwood

oak tree marked BTT bears S. 80° 31' W. 34.83 feet, and a spike in another live oak tree bears S. 10° 02' E. 18.07 feet; thence

6th: S. 23° 45' W. 8867.30 feet to a pipe survey monument set in the most southerly line of said Tinaquaic Rancho as per monuments, with a 4" x 4" redwood stake marked SE Cor. 500 acres TTT set on north side of same, from which a spike in a white oak tree marked 500 A.S.E. Cor. BTTTT bears N. 23° E. 16.33 feet; thence

7th: N. 67° 52' W. following the most southerly line of said Tinaquaic Rancho as per monuments 2481.30 feet to the place of beginning containing 390.75 acres and being the South portion of Lot 11, Tinaquaic Rancho, and a small portion of Section 33 T. 9 N. R. 32 W., S. B. M.

BEING Tract D as laid down and designated on that certain map entitled "Map of Survey made by F. F. Flournoy showing Division of the Wickenden Rancho, a portion of the Tinaquaic Rancho and a small portion of Sec. 33 T. 9 N. R. 32 W., and Sec. 15 T. 8 N. R. 32 W., S.B.M. Santa Barbara Co., Calif. December, 1918." filed in the office of the County Recorder of said County of Santa Barbara on the 3nd day of January, 1919, in Book 11 of Maps and Surveys at page 178 to which map and the field notes from which the same was compiled reference is hereby made for a more particular description of said premises.

TOGETHER with the right of way as appurtenant to the land herein granted and the right to pass and repass with all convenient vehicles and appliances from the lands herein granted to parties of the second part by the nearest practicable route over the lands this day granted by party of the first part to J. R. Wickenden to what is known as the Cat Canyon County Road and also to what is known as the Foxen Canyon County Road; subject, however, to the rights of way granted by deed bearing even date herewith to Winfield Arata and Helen Arata Mills, and also to right of way granted by deed bearing even date herewith to J. R. Wickenden.

RESERVING, however, to the party of the first part, its successors and assigns forever all minerals and mineral rights, consisting of coal, lignite, asphaltum, brea, petroleum, bitumin, mineral oil, natural gas and all other hydrocarbons, and all similar substances and all minerals that may now or hereafter exist upon, or in or under the surface of all or any thereof and of passage upon, over and across the same and egress therefrom in all such places and in any such way or manner as may be necessary, proper or convenient, save that it shall so exercise said rights, and privileges as not unnecessarily to interfere with agricultural operations on said land or with the use of the same for grazing purposes or farming and so as not to interfere with the maintenance and use of water pipes and other appliances for irrigation, watering stock and supplying water for domestic or agricultural use, nor with the permanent maintenance and use of the roads now or hereafter laid out across said lands; and that for passage to and from the site of any well or mine which may be located on said land it will utilize, so far as may be practicable, the roads already or hereafter established on said land and where necessary to make any new road or access to any well site, mine or other improvement it will construct such road by the shortest practicable route to connect with the nearest road already established and whereover it may be necessary for it to pass through a fence of any field on said land for gaining access to the site of any well, mine or other improvements, it will construct at the place so selected by it for passage through said fence, if there be no gate at such place a substantial gate of a height not less than that of the fence and keep said gate (whether constructed by it or already there constructed) closed at all times except when necessarily open to permit the passage of persons or vehicles; With the right to extract, sever, take

handle and transport the same and to deal therewith, and for those purposes or any of them to drive and sink as many wells, shafts and tunnels as may be necessary to exhaust the whole deposit and supply of said minerals and to locate, erect and maintain all proper and convenient buildings, houses, workshops, pumping stations, derricks, tanks, mixing plants and other structures and appliances and to locate and establish all necessary, proper or convenient electric lines and telephone and telegraph lines at all necessary and proper places with the exclusive use of not less that one acre of land for every well sunk by it on said premises and as much land as may be necessary, proper or convenient for sites for all other structures for its own exclusive use and advantage, for exploring, prospecting, taking, mining and drilling for same and also the right to use any water which may be hereafter developed by it on said land and the right to develop, devote, take, appropriate and use any and all waters now or hereafter flowing upon or beneath the surface of said land or any part thereof, that is not retained for livestock, agricultural or domestic use by parties of the second part on said land.

PROVIDED, however, that party of the first part shall before entry upon or occupancy or use of any parcel of the aforesaid premises, whether as the site for well or for road, or for any building, appliances or operations hereunder, (save for pipe lines, telephone and telegraph lines,) pay to parties of the second part the agricultural value at the time of the notice herein provided for of said land so occupied, used or entered, together with all damage to the tract of which it is a part occasioned by its severance from said tract. Pipe lines shall be buried and maintained not less than 18 inches under the surface of the ground when the same pass through tillable land. Said party of the first part shall in event of its intention to enter, take, occupy or use any such parcel hereunder serve written notice upon the parties of the second part, their successors or assigns, of its intention to make said entry, particularly describing the land to be entered and in the event said parties cannot agree upon the price to be paid as aforesaid said first party shall select one disinterested person and said second parties shall select one disinterested person and the two persons so selected shall select a third person and any two of said three persons shall fix the price to be paid hereunder, and said party of the first part, its successors or assigns shall pay the price so fixed to parties of the second part within 30 days after the date of the said award or decision of any two of said arbitrators and it shall be entitled to enter, occupy and use the said parcel or parcels hereunder. Said privilege shall not be exhausted by one notice and entry but shall be a continuing one running with the said interest in said premises herein reserved to party of the first part.

TOGETHER with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof.

TO HAVE AND TO HOLD, all and singular the above-mentioned and described premises, together with the appurtenances, unto the said parties of the second part, their heirs and assigns forever.

IN WITNESS WHEREOF, party of the first part hereto has caused these presents to be executed by its President and Secretary, thereunto duly authorized, the day and year first above written.

(CORPORATE SEAL OF WICKENDEN CO.)

WICKENDEN CO.

By A. P. Wickenden, President.

By R. A. Wickenden, Secretary.

State of California)
) ss.
County of San Luis Obispo)

On this 17th day of January, 1919, before me, C. P. Kaetzel, a Notary Public in and for the County of San Luis Obispo, State of California residing therein, duly commissioned and sworn, personally appeared A. P. Wickenden, personally known to me to be the President, and R. A. Wickenden, personally known to me to be the Secretary of Wickenden Co., the Corporation described in and that executed the within and foregoing instrument and personally known to me to be the persons who executed the said instrument on behalf of said corporation, and they acknowledged to me that the said Corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Official Seal the day and year first hereinabove written.

(NOTARIAL SEAL) C. P. KAETZEL, Notary Public Aforesaid

We, the undersigned owners in the aggregate of all of the Capital Stock of Wickenden Co., a corporation, and owners respectively of the number of shares of said Capital Stock set opposite our respective names hereunder, do consent to and ratify the within and foregoing conveyance to Margaret Wickenden, W. C. Wickenden, Eric Wickenden, Clarence Wickenden, James Wickenden, Amanda Zinsmaster, and Wilhelmina Wasley,

Albert P. Wickenden	1250
J. R. Wickenden	1250
Ernest Wickenden	1250
R. A. Wickenden	3750
Helen Arata Mills	625
Eric Wickenden	139
Margaret S. Wickenden	416
C. F. Wickenden	139
Winfield H. Arata	625
Wilhelmina Wasley	139
James Wickenden	139
Amanda W. Zinsmaster	139
W. C. Wickenden	139

I, R. A. Wickenden, Secretary of Wickenden Co., a corporation, do hereby certify that the total issued Capital Stock of Wickenden Co., a corporation is 10000 shares; that Ernest Wickenden, Albert P. Wickenden, J. R. Wickenden, Robert A. Wickenden, Helen Arata Mills, Winfield Arata, Margaret Wickenden, W. C. Wickenden, Eric Wickenden, Clarence Wickenden, James Wickenden, Amanda Zinsmaster and Wilhelmina Wasley, whose names are hereinabove subscribed to the foregoing ratifaction are the owners respectively of the number of shares of said Capital Stock hereinabove set opposite their respective names.

(CORPORATE SEAL OF WICKENDEN CO.) R. A. WICKENDEN, Secretary of Wickenden Co. a corporation.

(USIRS $.50 Cancelled 1-17-1919 W. Co.)

State of California)
) ss.
County of San Luis Obispo)

On this 17th day of January, 1919, before me, C. P. Kaetzel, a Notary Public in and for the County of San Luis Obispo, State of California, residing therein duly commissioned and sworn, personally appeared R. A. Wickenden, personally known to me to be the same person whose name is subscribed to the within and foregoing instrument as the Secretary of Wickenden Co., a corporation, and he acknowledged to me that he executed the same.

And year in this Certificate first above written.

(NOTARIAL SEAL) C. P. KAETZEL, Notary Public aforesaid.

"RESOLVED, that this corporation convey to Margaret Wickenden, W. C. Wickenden, Eric Wickenden, Clarence Wickenden, James Wickenden, Amanda Zinsmaster and Wilhelmina Wasley all that certain real property situate in the County of Santa Barbara, State of California, in the following proportions, to wit: To Margaret Wickenden an undivided one-third (1/3) thereof, and an undivided one-ninth (1/9) to said W. C. Wickenden, Eric Wickenden, Clarence Wickenden, James Wickenden, Amanda Zinsmaster and Wilhelmina Wasley.

Being Tract D as laid down and designated on that certain Map entitled 'Map of Survey made by F. F. Flournoy showing Division of the Wickenden Rancho, a portion of the Tinaquaic Rancho and a small portion of Sec. 33 T. 9 N. R. 32 W., and Sec. 15. T. 9 N. R. 32 W., S.B.M. Santa Barbara Co., Calif., December, 1918'".

I, R. A. Wickenden, the Secretary of Wickenden Co., a corporation do certify that the foregoing is a true copy of a Resolution passed and adopted by the stockholders of said corporation by the unanimous vote of the stockholders at a regular meeting of said stockholders held on the 16th day of December, 1918, at which meeting all the stockholders of said corporation were present.

(CORPORATE SEAL OF WICKENDEN CO.) R. A. WICKENDEN, Secretary of Wickenden Co., a corporation.

"RESOLVED, that this corporation convey to Margaret Wickenden, W. C. Wickenden, Eric Wickenden, Clarence Wickenden, James Wickenden, Amanda Zinsmaster and Wilhelmina Wasley all that certain real property situate in the County of Santa Barbara, State of California, in the following proportions, to wit: To Margaret Wickenden, an undivided one-third (1/3) thereof and an undivided one-ninth (1/9) to said W. C. Wickenden, Eric Wickenden, Clarence Wickenden, James Wickenden, Amanda Zinsmaster and Wilhelmina Wasley.

Being Tract D as laid down and designated on that certain Map entitled 'Map of Survey made by F. F. Flournoy showing division of the Wickenden Rancho, a portion of the Tinaquaic Rancho and a small portion of Sec. 33 T. 9 N.R. 32 W., and Sec. 15, T. 9 N. R. 32 W. S. B. M. Santa Barbara Co., Calif. December, 1918.'

"RESOLVED, FURTHER, that the President and Secretary of this corporation be and they are hereby authorized and empowered to sign, execute and deliver any and all such deeds, conveyances, and other instruments which may be necessary or proper in the premises or for the conveyance of the aforesaid land."

I, R. A. Wickenden, the Secretary of Wickenden Co., a corporation, do certify that the foregoing is a true copy of a Resolution passed and adopted by the Board of Directors of said Corporation by unanimous vote of all the Directors held on the 16th day of December 1918, at which meeting all the directors of said corporation were present.

(CORPORATE SEAL OF WICKENDEN CO.) R. A. WICKENDEN, Secretary of Wickenden Co., a corporation.

State of California)
) ss.
County of San Luis Obispo)

On this 17th day of January, 1919, before me, C. P. Kaetzel, a Notary Public in and for the County of San Luis Obispo, State of California, residing therein duly commissioned and sworn, personally appeared R. A. Wickenden, personally known to me to be the same person whose name is subscribed to the within and foregoing instrument as the Secretary of Wickenden Co., a corporation, and he acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Official Seal the day

and year in this Certificate first above written.
(NOTARIAL SEAL) C. P. KAETZEL, Notary Public aforesaid.

RECORDED at Request of R. A. Wickenden at 15 min. past 9 o'clock A. M. Feby. 27th 1919.
MARK BRADLEY, County Recorder
By Hortense Bianchi Deputy Recorder.

M -- HLB

WICKENDEN CO.,
TO
J. R. WICKENDEN

THIS INDENTURE, Made the 17th day of January, 1919,

BETWEEN Wickenden Co., a corporation organized and existing under and by virtue of the laws of the State of California, party of the first part, and J. R. Wickenden, of the County of Santa Barbara, State of California, party of the second part,

WITNESSETH: That the said party of the first part, for and in consideration of the sum of One Dollar, gold coin of the United States of America, to it in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, does by these presents grant, bargain, sell, convey and confirm unto the said party of the second part, and to his heirs and assigns forever, all those certain lots, pieces or parcels of land, situate in the County of Santa Barbara, State of California, and bounded and particularly described as follows, to wit:

The North portion of Lots 10 and 11 of the Rancho Tinaquaic, commencing at a 3" pipe survey monument set at the most northwesterly corner of the Tinaquaic Rancho from which Sisquoc Ranch Cor. No. 5 as fenced, bears S. 67° 12' E., 366.26 feet; thence

1st. S. 23° 45' W., following the most westerly line of said Tinaquaic Rancho, as per monuments of same, 7069.40 feet to a small pipe survey monument from which a spike in a live oak tree bears S. 81° W., 3.60 feet, and another spike in a live oak tree bears S. 37½° E., 15.69 feet; thence

2nd. S. 67° 12' E., 4948.50 feet to a small pipe survey monument from which a spike in a live oak tree marked BTFF. bears S. 31° 18' W. 40.43 feet, and another spike in a live oak tree marked B.T.F. bears S. 1° 48' E., 43.09 feet; thence

3rd. N. 23° 36' E., along general line of fence, 7089.40 feet to a small pipe survey monument set in the most northerly line of said Tinaquaic Rancho; as fenced; thence

4th N. 67° 12' W., following the northerly line of said Tinaquaic Rancho as fenced, 4939.40 feet to the place of beginning, containing 801.47 acres.

Being Tract C. as laid down and designated on that certain Map entitled "Map of Survey made by F. F. Flournoy showing division of the Wickenden Rancho, a portion of the Tinaquaic Rancho and a small portion of Sec. 33 T. 9 N. R. 33 W., and Sec. 15 T. 9 N. R. 33 W. S.B.M. Santa Barbara Co., Calif. December, 1918" filed in the office of the County Recorder of said County of Santa Barbara on the 2nd day of January, 1919 in Book 11 of Maps and Surveys at page 176 to which map and the field notes from which the same was compiled reference is hereby made for a more particular description of said premises.

TOGETHER with the right of way as appurtenant to the land herein granted and the right to pass and repass with all convenient vehicles and appliances from the land herein granted

Transfer 100%

Transaction Details	
Transfer Type	Sale
Tranfser %	100
Transfer Date	7/17/2009
Document	2009-042952
Commissions	5%
Bus Property	*No*
Per Property	*No*
Financing	*undisclosed, carried by seller*
Reported SP	$ 2,100,000

Property Characteristics	
AGP #	71-AP-084
Parcel	133-070-23/35 & 101-070-067
Acreage	386.54+4.2+14.76 = 405.5
Zoning	AGII-100
Legal Lot	3 legal lots - parcel boundary includes rancho line, Rancho Tinaquaic
Topography	Primarily Rolling Hill
Water Source	2 private wells
Land Use	HS/Graze - Surface Rights, MR owned by Wickenden
Appraiser	Vida McIsaac Report Date 21-Sep-09

Narrative Transfer Details & Property Description

The subject property consists of three assessor parcels. There appears to be 3 legal lots as each parcel has a boundary on the rancho line - Rancho Tinaquaic. The mineral rights did not transfer and were retained by Wickenden. The subject property lies to the east of the Wickenden/Dore property on Foxen Canyon and west of Long Canyon. Parcel 133-070-023 comprises the majority of the ranch with the two smaller irregular shaped parcels. The topography is primarily gently rolling hillsides. The location is secluded & private but somewhat remote.

The ranch has a recorded 30' wide easement to Foxen Canyon Road. The ranch is bisected by a creek. There appears to be two wells on the parcel that provide water. Power & telephone are developed to the property line. One is confirmed to be located by creek and is equipped with a windmill. A 3,000 SF steel pole barn was built without permits in 2008.

Property was listed for $2.9 million with Kerry Mormann for 490 days. Sale confirmed with seller, Donna Hart.

Sales Comparison Approach

	Subject	71-AP-084	17-Jul-09	IF	$ 2,100,000	405.5	$ 5,179	AG-II-100
	APN	AGP #	Date	Use	Sales Price	Acres	$/Ac	Zoning
1	099-120-019/20/21/22	01-002/003	21-Feb-08	Graze	$ 4,550,000	847.93	$ 5,366	AG-II-100
2	101-060-065/66/68	N/A	5-Dec-07	Graze	$ 6,250,000	1442.06	$ 4,334	AG-II-100
3	133-050-011/15 & 133-080-04/05	N/A	23-Apr-08	Graze	$ 5,700,000	1421.21	$ 4,011	U, 20-AG

Discussion of Sales

Sale 1: Sale of a large multi-parcel ranch with similar topography to subject. This sale is superior in location, proximity to town, ease of access, Santa Rita AVA/vineyard potential, and a developed home site improved with a good quality, habitable modular home. Overall, superior. Deducting $550,000 for improved home site indicates a residual land value at approximately $4,717 per acre.

Sale 2: The seller in this transaction had to do lot line adjustments to configure to legal lots (could not combine all due to TRA). This is the sale of the portion of the ranch with the majority of oil production remnants, home site, and swamp area. Arms length transaction, through brokers. Very similar to subject in size, rights (mineral & surface) and market conditions. This sale has superior ease of access, location near town, and topography but inferior oil remediation.

Sale 3: The listed sale of a large ranch located off Foxen Canyon near Zaca Mesa & Zaca Lake. The ranch consists of multiple parcels that appear to be 4 legal lots. The sale was of mineral & surface rights. The land has historically been used for grazing & mining. There was an unpermitted double wide on the property at time of sale. Old zoning. Topography ranges from rolling to steep. Remote location. Overall inferior.

Comparative Sales Approach Value Determination

Value Per Acre	$	5,200	x	405.5	=	$	2,108,600
					say	$	2,100,000

Value Summary & Conclusion of Value

Comparative Sales	$ 2,100,000	$ 5,179	per acre
Income	N/A		per acre
Cost	N/A		per acre

Subject Reported Sales Price

$ 2,100,000 $ 5,179 per acre

Conclusion

The property was a listed open market sale supported by market data. There is not a preponderance of evidence to suggest a different value. The purchase price appears to be the best indicator of value considering the location, topography, lack of development, and utility of land.

Allocation

Home Site		
Land	$	2,050,000
Wells	$	20,000
Improvements	$	30,000
Trees/Vines	$	-
Bus/Pers Prop.	$	-
Total	$	**2,100,000**

133-070-023	1,825,000	
133-070-023	20,000	wells
133-070-023	30,000	pole barn
133-070-035	100,000	
101-070-067	125,000	
	2,100,000	

Future HS Potential

Subject		17-Jul-09	HS		2	
APN	Address	Date	Use	Sales Price	Acres	Utilities
101-270-067	592 Foxen, LA	19-Nov-08	Lot	$ 180,000	0.194	at line
131-210-022	3055 Colson Cyn. Tepusquet	12-Mar-09	Lot	$ 145,000	8.5	at line
101-070-023	7020 Long Cyn, LA	Listing	Lot	$ 295,000	20.03	
135-051-035	0 Roblar, SY	6-Mar-09	Lot	$ 980,000	9.77	
137-070-067	2600 Baseline, SY	10-Apr-08	Lot	$ 700,000	5.43	

Location is remote - more desirable if Foxen Canyon address. Comps1 to 3 above are for a Long Canyon side address. Estimate HS at $250,000. IF Foxen Canyon address, estimate HS value at $400,000. Declining market, especially for vacant land.

STATE OF CALIFORNIA
COUNTY OF SANTA BARBARA
I DO CERTIFY THAT THIS IS A TRUE AND CORRECT COPY OF THE ORIGINAL IN THIS OFFICE.

JOSEPH E. HOLLAND
County Clerk, Recorder and Assessor

By Beverly Curran
Date 19th day of Jan 2010

SANTA BARBARA COUNTY
OFFICE OF THE CLERK–RECORDER–ASSESSOR

Kenneth Pettit, Clerk–Recorder–Assessor

INFORMATION SYSTEMS DIVISION

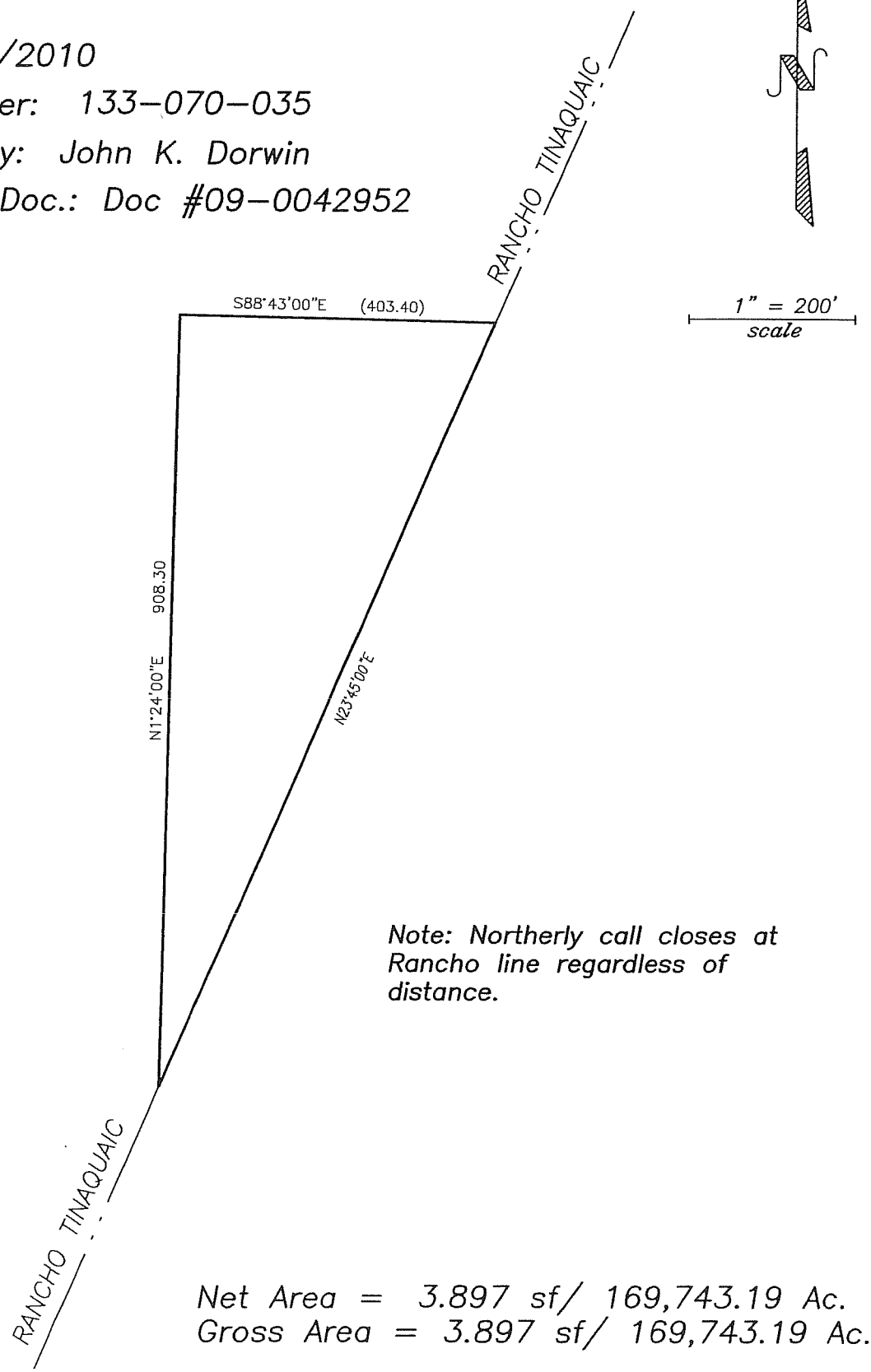
PARCEL AREA CALCULATION

Date: 03/02/2010

Parcel Number: 133–070–035

Requested By: John K. Dorwin

Source Ref. Doc.: Doc #09–0042952



Note: Northerly call closes at Rancho line regardless of distance.

Net Area = 3.897 sf/ 169,743.19 Ac.

Gross Area = 3.897 sf/ 169,743.19 Ac.

ASSESSOR MAPPING SECTION

W. O #: **11-0013**
TYPE: **M**

Mapping only, no roll change

RECTIFICATION

Eff. Date: **03/03/2010**

Map BK/PG: Tract #: Tract Name:
Rec. Date: Doc. #

[03/03/2010--] CHANGE ACREAGE ON MAP TO 3.897 AC. PER AREA CALC. SF

APN AFFECTED	NEW APN	LOT UNIT	AREA	CURRENT VESTEE	TRA
133-070-035	--		3.897 AC	FOXEN OAKS, LLC	055013

Tax Paid **NA**

Requested by: Requested date: Phone No:

W. O #: **11-0013**

Mapped	Checked	Corrected	Posted	Status Code	Action Date
				MN	**03/03/2010**