

MINUTE ITEM
This Calendar Item No. 37
was approved as Minute Item
No. 37 by the State Lands
Commission by a vote of 2
to 0 at its 3-2-88
meeting.

CALENDAR ITEM

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APPROVAL OF PROPOSED SETTLEMENT OF LAWSUIT
BETWEEN THE STATE OF CALIFORNIA,
CITY OF LOS ANGELES, AND SUMMA CORPORATION
ENTITLED CITY OF LOS ANGELES, ET AL
V. VENICE PENINSULA PROPERTIES, ET AL (LA 31422)
INVOLVING LAND IN THE CITY OF LOS ANGELES, LOS ANGELES COUNTY

In 1965 the City of Los Angeles commenced an action against Summa Corporation, hereinafter Summa (sued as Hughes Tool Company, its prior corporate name), and the predecessors in title of Venice Peninsula Properties, Byrne et al., and Southern California Gas Company in the Superior Court of Los Angeles, entitled The City of Los Angeles, a Municipal Corporation, Plaintiff v. Ethel Fraser Carman-Ryles, et al., Defendants, numbered No. C 868223. The action was for declaratory relief and to quiet title. The City alleged that the public owned an easement in Ballona Lagoon for commerce, navigation and fishing, for the passage of fresh water to the Venice Canals, and for water recreation. It further alleged that Ballona Lagoon had been dedicated by its owners for public use. The City joined that State as a defendant pursuant to Section 6308 of the California Public Resources Code. The State filed a cross-complaint, alleging that it had acquired an interest in the tidelands of Ballona Lagoon for commerce, navigation and fishing on its admission to the Union, that it held this interest in trust for the benefit of the public and that it had granted its interest in trust to the City.

On October 11, 1977, the judgment of the Superior Court was entered in favor of the City and State in Book 7302, Page 70, of the records of the court. The court found that Ballona Lagoon was subject to an easement for commerce, navigation and fishing, as well as easements for the passage of fresh water to the Venice Canals, and for water recreation. The court also found that the Private Owners' predecessors in title had dedicated Ballona Lagoon as public streets or waterways.

Summa and Southern California Gas Company appealed the trial court judgment. Venice Peninsula Properties filed a Notice of Appeal but was relieved by the Court of Appeal from the duty to prosecute the appeal on the basis that it had earlier stipulated to be bound by the outcome of an appeal taken by any other party. The predecessors in title of Byrne et al. also filed a Notice of Appeal, but abandoned the appeal by stipulation, the parties stipulating to be bound by the outcome of the appeal taken by Summa and Southern California Gas Company.

In 1981, the California Court of Appeal, Second Appellate District, reversed the judgment of the trial court in a published opinion reported at (1981) 172 Cal. Rptr. 619.

Thereafter, the California Supreme Court granted a hearing, thereby vacating the appellate court's decision. In an opinion issued under the name City of Los Angeles v. Venice Peninsula Properties (1982) 31 Cal.3d 288, the court affirmed the trial court judgment, but focused its decision only on the existence of the public trust easement for commerce, navigation and fishing. The court specifically did not discuss the trial court's findings that the public holds an easement in Ballona Lagoon for the passage of fresh water to the Venice Canals and for water recreation, and that the property had been dedicated for use as public streets or waterways because it found that all these uses were included within the public trust easement. The court also awarded the City and State costs on appeal.

In 1983, the United States Supreme Court granted Summa's petition for a writ of certiorari under the name Summa Corp. v. California. On April 17, 1984, the Court issued its opinion reversing the decision of the California Supreme Court with respect to the public trust issue, and remanding the matter to the State high court for further proceedings not inconsistent with its opinion. The Court also awarded Summa recovery for costs in the amount of \$26,811.53. Summa Corp. v. California (1984) 466 U.S. 198.

Jurisdiction over the matter is in the California Supreme Court.

A dispute exists between the City and the State, on the one hand, and Summa, Venice Peninsula Properties, Byrne et al., on the other hand, as to the nature and extent of title to Ballona Lagoon in that:

(CALENDAR ITEM NO. 37 CONT'D)

1. The City and State contend that, notwithstanding the decision of the United States Supreme Court which dealt only with the public trust issue, Ballona Lagoon remains subject to an easement held in trust for the people of the State of California arising out of implied dedication for public recreational purposes, an easement for the passage of sea water from the Pacific Ocean through the Ballona Lagoon to the Venice Canals, and an implied in fact dedication for public streets or waterways as set forth in the trial court judgment.
2. Summa contends that there is insufficient evidence in the record to support the trial court's judgment with respect to these issues.
3. The City and State have reminded the California Supreme Court that it has jurisdiction over these State issues, they having been properly raised and briefed in a Petition for Hearing, and not having been discussed by the court in its Venice Peninsula Properties decision. The City and State have urged the court to affirm the trial court's determination that these easements exist.
4. Summa urged the court not to decide these issues, but rather to reinstate the Court of Appeal decision or remand the case to the trial court.
5. Venice Peninsula Properties and Byrne et al. agreed with the position taken by Summa.

The City, State and Summa, agree that a substantial question exists as to the probable disposition of the case by the California Supreme Court.

The Parties hereto, which includes Summa but not the other private parties, consider it expedient and necessary, and in the best interests of the City, the State, the public and Summa, to resolve the controversy over title to Ballona Lagoon and to set at rest forever any and all questions relating thereto.

The public interest requires the resolution of the title problem by agreement, in part because of the expense, burden, lengthy time and unpredictable outcome of the pending litigation.

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The City, with the concurrence of the staff of the State Lands Commission and Office of the Attorney General, have found that it is prudent, expedient, and in the best interests of the City, the State and the public, that the title dispute regarding Ballona Lagoon be resolved as follows:

Summa shall execute a conveyance to the City of an Open Space Easement in the form attached hereto as Exhibit C. The parties have notified the California Supreme Court of this proposed settlement and requested approval thereof and have requested the court to further effectuate the settlement by ordering the entry of a new Judgment in the trial court. Upon the entry of the new Judgment, the Judgment, the Settlement Agreement, and the Open Space Easement Deed will be recorded in the office of the County Recorder of Los Angeles County.

The purpose of this Settlement Agreement is to resolve questions of land title between the parties and is not intended as mitigation, dedication, or the meeting of any additional requirements of Federal, other State or local agencies. The Agreement shall not affect in any manner the authority of the California Coastal Commission to require the dedication of public access of open space areas on the subject property pursuant to the California Coastal Act, PRC Section 3000 et seq. Further, the Agreement is intended to resolve completely the dispute between Summa, the State, and the City concerning the subject property. As of the effective date of the Agreement, each of the parties shall release the other parties of all claims to or concerning the subject matter of the Agreement, including monetary claims of any kind.

This Agreement is exempt from the provision of the Subdivision Map Act (Gov. Code (66412 (e)), the California Coastal Act (P.R.C. (30416 (c))), and the CEQA (P.R.C. (21080.11)).

Copies of the Settlement Agreement are on file in the office of the State Lands Commission. By this reference it is incorporated herein as if set forth in full.

This settlement proposal has been reviewed and approved in its entirety by the Commission staff and the Office of the California Attorney General as to compliance with applicable laws and rules and regulations of the State Lands Commission.

AB 884: N/A.

(CALENDAR ITEM NO. 37 CONT'D)

EXHIBITS: A. Site Map.
 B. Location Map.
 C. Open Space Easement.

IT IS RECOMMENDED THAT THE COMMISSION:

1. FIND THAT THE ACTIVITY IS EXEMPT FROM THE REQUIREMENTS OF THE CEQA PURSUANT TO 14 CAL. ADM. CODE 15061 AS A STATUTORY EXEMPT PROJECT PURSUANT TO P.R.C. 21080.11, SETTLEMENT OF TITLE AND BOUNDARY PROBLEMS.
2. FIND THAT THE SETTLEMENT AGREEMENT DESCRIBED HEREIN CONSTITUTES THE MOST APPROPRIATE MEANS OF RESOLVING THE DISPUTE EXISTING BETWEEN THE STATE, CITY OF LOS ANGELES, AND SUMMA CORPORATION, AND AUTHORIZE THE EXECUTION OF THE SETTLEMENT AGREEMENT ON BEHALF OF THE STATE SUBSTANTIALLY IN THE FORM AS ON FILE IN THE SACRAMENTO OFFICE OF THE COMMISSION.
3. AUTHORIZE AND DIRECT THE STAFF OF THE STATE LANDS COMMISSION AND/OR THE CALIFORNIA ATTORNEY GENERAL TO TAKE ALL NECESSARY OR APPROPRIATE ACTION ON BEHALF OF THE STATE LANDS COMMISSION, INCLUDING THE EXECUTION, ACKNOWLEDGEMENT, ACCEPTANCE, AND RECORDATION OF ALL DOCUMENTS AS MAY BE NECESSARY OR CONVENIENT TO CARRY OUT THE SETTLEMENT AGREEMENT; AND TO APPEAR ON BEHALF OF THE COMMISSION IN ANY LEGAL PROCEEDINGS RELATED TO THE SUBJECT MATTER OF THE AGREEMENT.

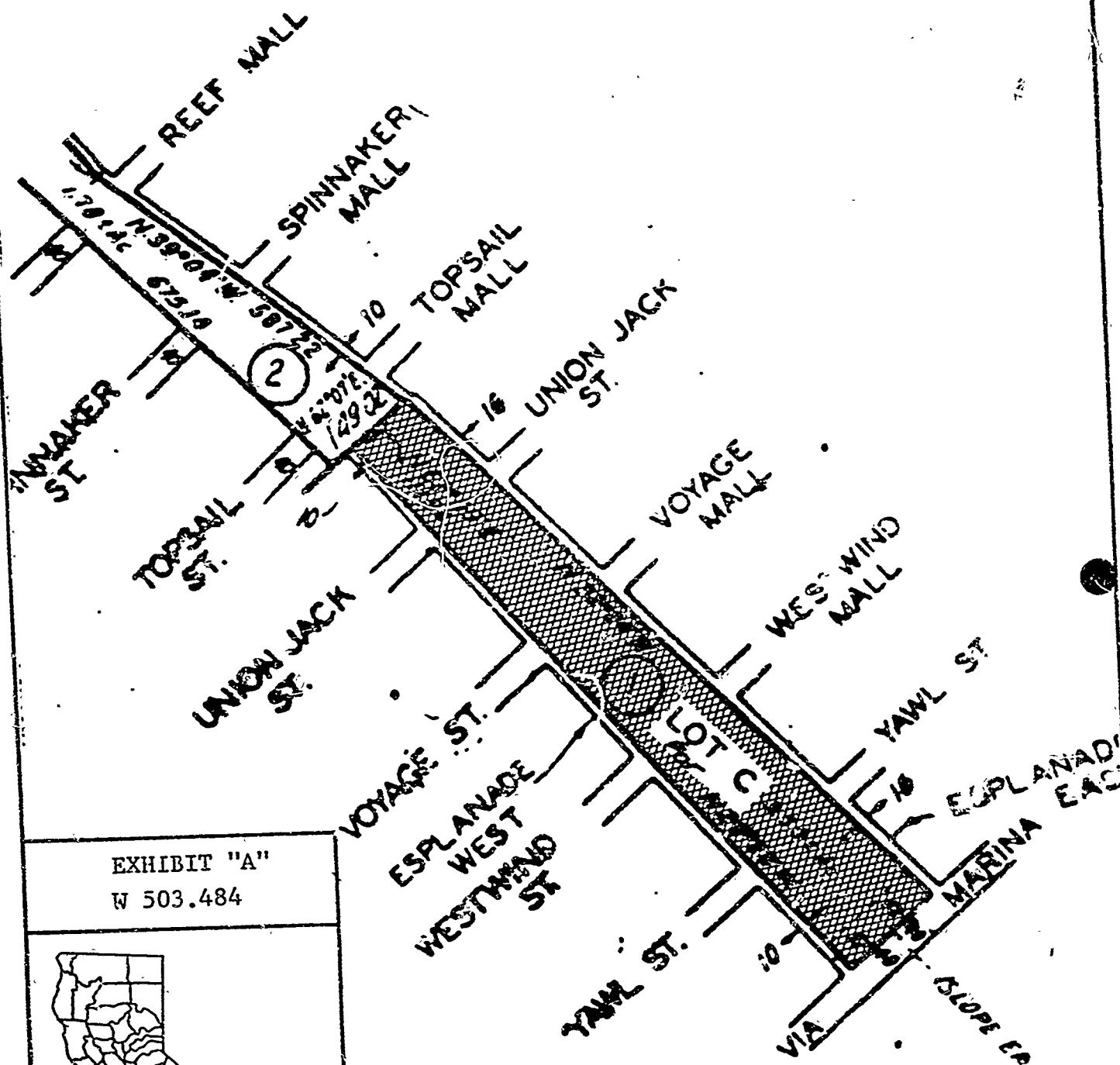


EXHIBIT "A"
W 503.484



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Recording requested By
CITY OF LOS ANGELES
Attention: Real Estate Division

OPEN SPACE EASEMENT DEED

SUMMA CORPORATION, a Delaware corporation ("Grantor"), hereby conveys to the CITY OF LOS ANGELES, a municipal corporation (the "City"), a permanent and perpetual open space easement (the "Easement") over the surface of that certain real property located in the County of Los Angeles, State of California and more particularly described in Exhibit "A" attached hereto and by this reference incorporated herein (the "Property"), for watercourse purposes, for public recreation purposes, for the passage of sea water from the Pacific Ocean to the Venice Canals and from the Venice Canals to the Pacific Ocean, for intertidal habitat, and for the maintenance and preservation of the natural and scenic character of the surface of the Property. The Property is located within that certain larger parcel of real property located in the County of Los Angeles, State of California, commonly known as the "Ballona Lagoon."

This Open Space Easement Deed (this "Deed") is made and delivered and the Easement is hereby conveyed in settlement of that certain litigation entitled The City of Los Angeles, a Municipal Corporation, Plaintiff v. Ethel Fraser Carman-

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(ADDED 03/01/88, PGS. 191-191.8)

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Ryles, et al., Defendants, Los Angeles Superior Court No. C 868223, and also pursuant to the authority of Sections 51070, 51097 of the California Government Code, it being intended that the Easement hereby conveyed shall constitute an "open-space easement" as defined in Section 51075 of said Government Code and that the rights hereby conveyed are to be consistent with and/or limited to those which will preserve for public use and enjoyment the water and water-related uses, intertidal habitat, and natural and scenic character of the open space lands subject to this Easement.

The Easement herein granted shall encumber only the surface of the Property (provided, however, that the City shall have certain rights in and to the subsurface of the Property, as hereinafter set forth). Grantor shall retain unencumbered fee simple title to all other portions of the Property. Grantor hereby expressly reserves to itself all rights of use of the Property which are not inconsistent with and which do not interfere with or impair the Easement herein conveyed, including, but not limited to: (i) all groundwater rights in the Property, including the right to drill beneath and pass through the subsurface of the Property for the development of said groundwater rights; (ii) all rights reasonably incident to the placement, maintenance and repair of subterranean private or public utility facilities

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in and under the soil of the Property as may be necessary or desirable for the use or enjoyment of other properties (the "Utility Facilities"); and (iii) all rights to the oil, gas or other hydrocarbon substances and minerals in the Property, including the right to drill beneath and to pass through the subsurface of the Property for the exploration, development and production of such oil, gas and other hydrocarbon substances.

Subject to appropriate federal, state and local laws and regulations, the City may dredge, deepen, stabilize, or otherwise improve the subsurface of the Property in order to further the purposes for which this Easement is conveyed, so long as the natural and scenic character of the Property is thereby preserved; provided, however, that if the City dredges, deepens, stabilizes, or otherwise improves the Property in a manner which requires the relocation of the Utility Facilities, the relocation of said Utility Facilities shall be done at the City's sole cost and expense, and the City shall indemnify, protect, defend and hold Grantor harmless from and against any and all claims, liabilities, losses, costs, damages or expenses, including reasonable attorneys' fees, arising out of or resulting from said relocation.

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Summa hereby covenants and agrees that, except as expressly set forth in this Deed, it shall not construct, nor shall it permit the construction of, any improvements on the surface of the Property.

By acceptance of this Deed, the City accepts all duties and obligations of maintenance of the surface of the Property (as well as any portions of the subsurface of the Property which the City has dredged, deepened, stabilized or otherwise improved, as provided herein) and/or all improvements thereon or therein, and any liability for improper maintenance or failure to maintain. Without limiting the scope of said duties and obligations, the City specifically agrees that it shall be obligated to undertake, at its sole cost and expense, any actions with respect to the lands encumbered by the Easement that may be necessary to maintain the lateral and subjacent support of all adjoining land and to prevent the erosion of such adjoining land and further agrees to undertake no excavation or improvements without appropriately protecting the adjoining land. In the event that the City fails to maintain said lateral and subjacent support or to prevent erosion of the adjoining land, the adjoining landowners, or any of them, shall have the right, but not the obligation, to take any steps reasonably necessary to protect the adjoining land, including the right to enter the Property to undertake said actions, and any.

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actions undertaken by the adjoining landowners shall be at the City's sole cost and expense and the City shall reimburse the adjoining landowners for all costs and expenses, including reasonable attorneys' fees, incurred in connection therewith.

This Deed is not intended to affect any other property which Summa owns or in which Summa has an interest.

This Easement is conveyed to the City in trust for the People of the State of California and may not be modified, terminated or abandoned without the consent of both the City and the State Lands Commission.

IN WITNESS WHEREOF, the undersigned has caused its duly authorized representatives to execute this Deed on _____, 1988.

"Grantor"

SUMMA CORPORATION,
a Delaware corporation

By: _____
Its: _____

By: _____
Its: _____

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EXHIBIT "A"

Legal Description of the Property

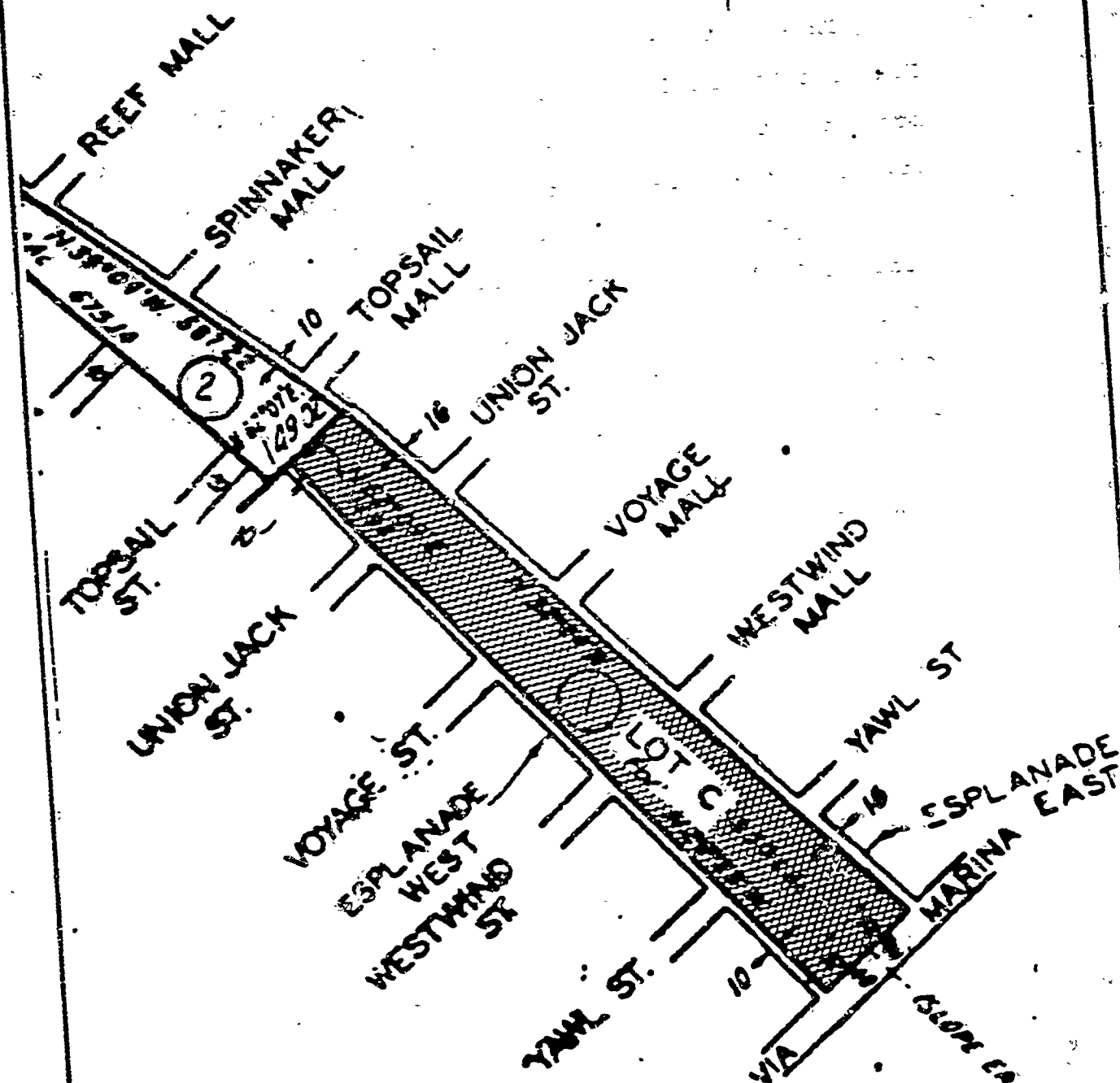
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That portion of Lot C, Del Rey Beach, per map recorded in Book 6, page 186 of Maps, in the office of the County Recorder of Los Angeles County, described as follows:

Being that portion of Lot C, northerly of the northerly right of way line of Via Marina as presently constructed.



CERTIFICATE OF ACCEPTANCE

This is to certify that the within Open Space Easement Deed and the real property interest conveyed thereby has been accepted by a resolution of the City Council of the City of Los Angeles, on behalf of the City of Los Angeles pursuant to the provisions of California Government Code Section 51083, said resolution being adopted on _____ 1988. The City of Los Angeles hereby consents to the recordation of the said Open Space Easement Deed by the duly authorized officer of the City.

Date: _____ 1988

CITY OF LOS ANGELES

By: _____

CITY CLERK

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