

MINUTE ITEM

This Calendar Item No. 28
was approved as Minute Item
No. 28 of the State Lands
Commission by a vote of 3
to 0 at its 11/30/77
meeting.

CALENDAR ITEM

28.

11/77
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BOUNDARY LINE AGREEMENT
BLA 165

The State Lands Division has negotiated a compromise settlement agreement with Florence L. Comfort, for the establishment of the Ordinary High Water Mark as the boundary of the State-owned bed of Alviso Slough, a navigable and tidal waterway, a portion of Steamboat Slough, and adjacent upland parcel, all in Santa Clara County. The proposed boundary and respective quitclaims for the parcels to be confirmed in State and private ownership are more particularly described in EXHIBITS A through D of the boundary agreement on file in the office of the State Lands Commission.

Title studies have uncovered the following facts:

1. When the area of the Town of Alviso was first settled in the middle 1800's, title was believed to derive from the Rancho Rincon de los Esteros. However, when the Rancho grant was actually confirmed by the U.S., the Alviso townsite was not included. Later, to solve the continuing title problem, the State Surveyor General issued a patent dated May 1, 1862 for the State's swamp and overflow lands within Alviso to Albanus B. Rowley and Robert Hutchinson, as Trustees of the Town of Alviso, pursuant to an Act of the Legislature passed March 22, 1862 (Ch. 84, Stats. 1862), the patent being recorded in Book S of Deeds at page 651, in the office of the County Recorder of Santa Clara County. The adjoining upland parcel above the ordinary high water mark was included within the patent.
2. The upland parcel was also included within the perimeter descriptions of the Federal swamp and overflowed lands patent to the State on June 29, 1917, numbered 175, San Francisco.

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3. Alviso Slough below the ordinary high water mark was and remains a navigable tidal waterway. Steamboat Slough has been partly filled and a portion is under lease to the County of Santa Clara for marina facilities.
4. Review of historic maps indicates no evidence of any tidelands within the upland adjacent to the historic location of the slough.
5. The upland parcel is proposed for acquisition by the U.S. Fish and Wildlife Service for inclusion in the South San Francisco Bay Wildlife Refuge, and the Service has had surveys and maps prepared at their expense. The agreed boundary constitutes a reasonable compromise location of the ordinary high water mark along Alviso and Steamboat Sloughs and is based on a recorded Record of Survey made for the U.S. Fish and Wildlife Service which has been reviewed by the State Lands Division staff.
6. The location of the ordinary high water mark along Steamboat Slough is based on a comprehensive ground and aerial survey of South San Francisco Bay made under the auspices of the U.S. Fish and Wildlife Service. This survey located a high water mark on the ground and shows the intended location of the line agreed to under Boundary Line Agreement No. 41 (BLA 41) which was based on an Amended Record of Survey provided by the County of Santa Clara in conjunction with the development of the County's marina in a portion of Steamboat Slough.

The Amended Record of Survey used for BLA 41 was compiled and not based on adequate field traverse work.

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There is a bona fide and good faith dispute between the State and the private party as to the boundary of private and State ownerships.

The State contends that it acquired title to the tidelands and submerged lands within the slough by reason of its sovereignty, and that it has been and remains the owner thereof.

The parties agree that the proposed ordinary high water mark is in a reasonable location and is the location intended by BLA 41.

The proposed agreement will contain mutual quitclaims by the State to Florence L. Comfort of the upland parcel, and Florence L. Comfort to the State of any interest in Alviso and Steamboat Sloughs, as well as a 30-foot non-motorized easement for public access along and landward of the ordinary high water mark connecting to public streets. The quitclaim by the State does not include any lands below the present mean high tide line.

The staff believes it is in the best interest of the State to enter into the proposed agreement pursuant to the provisions of Division 6 of the Public Resources Code, with particular reference to Section 6357, and to define the extent, nature, location, and area of public and private titles and boundary by a compromise settlement in order to avoid the costs and uncertainties of litigation.

EXHIBITS:

- A. Estuary Plat.
- B. Air Photo Plat.
- C. Parcel Map.

IT IS THEREFORE RECOMMENDED THAT THE COMMISSION:

1. FIND THAT THE PROPOSED BOUNDARY AGREEMENT ON FILE WITH THE STATE LANDS DIVISION IS IN THE BEST INTERESTS OF

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THE STATE; AUTHORIZE THE EXECUTION AND RECORDATION OF SAID AGREEMENT AND CONVEYANCES PURSUANT THERETO; AND ACCEPT THE CONVEYANCES TO THE STATE AS PROVIDED THEREIN.

2. FIND THAT THE AGREEMENT IS NOT SUBJECT TO THE REQUIREMENTS OF THE CALIFORNIA ENVIRONMENTAL QUALITY ACT BY REASON OF THE EXCEPTION CONTAINED IN SECTION 6371 OF THE PUBLIC RESOURCES CODE.
3. AUTHORIZE THE STATE LANDS DIVISION AND/OR THE OFFICE OF THE ATTORNEY GENERAL TO TAKE ALL STEPS NECESSARY, INCLUDING LITIGATION, IN ORDER TO IMPLEMENT AND GIVE EFFECT TO THIS AGREEMENT.