

This Calendar Item No. 26
was approved as Minute Item
No. 26 by the State Lands
Commission by a vote of 3
to 0 at its 4-28-76 CALENDAR ITEM
meeting.

26

4/76
W 21052
WC
DC
GH

BOUNDARY LINE AGREEMENT
BLA 149

The State Lands Division has negotiated a recommended compromise settlement of the common ordinary high water mark boundary with San Mateo Marina Homes, Inc., et al., between the State-owned bed of Marina Lagoon (formerly called Seal Slough), a navigable and tidal waterway in San Mateo County, California, and a number of subdivided lots claimed to be owned by the private parties. The proposed boundary for each lot, and the parcels to be confirmed in State and private ownership are more particularly described in Exhibits "A" through "I", on file in the office of the State Lands Commission.

Title studies have uncovered the following facts:

1. The entire parcels involved, including the bed of Marina Lagoon and the uplands, were included within the perimeter of the State's Swamp and Overflowed Lands Patent of Surveys No. 66 and 67 to Joseph L. Moody, which was recorded on August 17, 1892, in Volume 2 of Patents, Page 388, San Mateo County Recorder.
2. The parcels were also included within the perimeter descriptions of the Federal Swamp and Overflowed Patent to the State on October 6, 1919, Numbered 191, San Francisco.
3. The present high water line of Marina Lagoon (elevation 3.3 MLLW), is at substantially the same location as the historic (1857) edge of vegetation of the Slough.
4. The evidence of any tidolands within the uplands adjacent to these parcels is uncertain.
5. This portion of Marina Lagoon was included within the Deed of Dedication from Schilling Estate to the City of San Mateo, recorded on October 14, 1954, in Volume 2668, Official Records, Page 589, San Mateo County Recorder.
6. Marina Lagoon below the edge of vegetation was and remains a navigable-tidal waterway, except that it is now leveed and dammed at its mouth and its elevation is now controlled.
7. The lots were subdivided by map dated July 1967, and recorded on February 28, 1968, in Volume 67 Maps, Page 19, San Mateo County Recorder.
8. The lots extend into the present open waters of Marina Lagoon.

A 20

S 10

580

CALENDAR ITEM NO. 26 (CONTD)

9. The private parties' plans for improvements on these lots include portions of structures extending onto the present open waters but not beyond the waterwards boundaries of said lots as subdivided.

The State contends that it acquired title to the tidelands and submerged lands within said patent of Survey No. 66 & 67, by reason of its sovereignty, and that it remains the owner thereof.

There is a bona fide and good faith dispute between the State and the private parties as to the extent of private and State ownership of Marina lagoon within the claimed lots. The following issues are in dispute:

1. The existence of tidelands above the historic edge of vegetation.
2. The precise location of the State-private boundary.
3. The present elevation and location of the line of mean high water.
4. The private rights, if any, to construct the planned improvements.

The staff believes it is in the best interests 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; to define the extent, nature, location, and area of such public and private titles and boundary by compromise settlement in order to avoid the costs and uncertainties of litigation.

EXHIBITS: 1. Parcel Map. 2. Vicinity Map.

IT IS THEREFORE RECOMMENDED THAT THE STATE LANDS COMMISSION:

1. FIND THAT THE PROPOSED AGREEMENT, ON FILE WITH THE STATE LANDS DIVISION AND BY REFERENCE MADE A PART HEREOF, IS IN THE BEST INTERESTS OF THE STATE, AND AUTHORIZE THE EXECUTION OF THE AGREEMENT ON BEHALF OF THE COMMISSION TO PROVIDE:

A) THE LOCATION OF THE ORDINARY HIGH WATER MARK FIXED AND PERMANENT BOUNDARY FOR SAID LOTS BE ESTABLISHED AS DESCRIBED IN EXHIBITS "A" THROUGH "G".

CALENDAR ITEM NO. 26 (CONTD)

- B) THE ACCEPTANCE OF THE PRIVATE PARTIES' QUITCLAIM TO THE STATE OF THE PORTIONS OF THE LOTS LYING WATERWARD OF THE AGREED BOUNDARY AS DESCRIBED IN EXHIBIT "I", SUBJECT TO THE EXCEPTION AND THE RESERVATION TO THE PRIVATE PARTIES OF AN UNDERGROUND UTILITY EASEMENT AND AN EASEMENT TO CONSTRUCT, RECONSTRUCT, USE, MAINTAIN AND REPAIR THE PROPOSED STRUCTURES EXTENDING INTO THE PARCELS SO QUITCLAIMED TO THE STATE, SUBJECT TO ALL LAWFUL REQUIREMENTS OF ANY OTHER PUBLIC AGENCY HAVING JURISDICTION OF THE PARCELS IN THE FORM AND AT THE LOCATION SHOWN ON EXHIBIT "J".
 - C) THE STATE'S QUITCLAIM OR PATENT OF ALL RIGHT, TITLE, AND INTEREST OF THE STATE IN THE PORTIONS OF THE LOTS LYING LANDWARD OF THE AGREED BOUNDARY AS DESCRIBED IN EXHIBIT "H".
 - D) THE AGREEMENT TO BE SUBJECT TO ANY CLAIMS OF THE CITY OF SAN MATEO.
 - E) THE AGREEMENT IS FOR THE SOLE PURPOSE OF COMPROMISING AND SETTling A BONA FIDE DISPUTE IN LIEU OF LITIGATION WITH RESPECT TO THE SPECIFIC REAL PROPERTY INVOLVED, AND IT SHALL NOT CONSTITUTE ANY EXPRESSION ON THE PART OF THE STATE AS TO THE EXTENT OR LOCATION OF ANY RIGHT, TITLE, OR INTEREST OF THE STATE IN REAL PROPERTY, THE TITLE OF WHICH IS NOT RESOLVED BY THE AGREEMENT.
 - F) SAID EXHIBITS "A", "B", "C", "D", "E", "F", "G", "H", "I", & "J" ARE ON FILE IN THE OFFICE OF THE STATE LANDS DIVISION AND BY REFERENCE MADE A PART HEREOF.
2. FIND THAT THE AGREEMENT IS NOT SUBJECT TO THE REQUIREMENTS OF CALIFORNIA ENVIRONMENTAL QUALITY ACT BY REASON OF THE EXEMPTION CONTAINED IN SECTION 6371 OF THE PUBLIC RESOURCES CODE.
 3. FIND THAT THE WITHIN ACTION DOES NOT CONSTITUTE A SUBDIVISION, BUT RATHER A RECOGNITION OF PRE-EXISTING TITLES AND THE ESTABLISHMENT OF THE BOUNDARY THEREOF.
 4. AUTHORIZE THE STATE LANDS DIVISION AND/OR THE OFFICE OF THE ATTORNEY GENERAL TO EXECUTE ALL DOCUMENTS AND TO TAKE ALL OTHER STEPS NECESSARY INCLUDING LITIGATION, TO GIVE EFFECT TO THIS AGREEMENT.