

MINUTE ITEM

This Calendar Item No. 57
was approved as Minute Item
No. 57 by the State Lands
Commission by a vote of 3
to 0 at its 4/28/77
meeting.

CALENDAR ITEM

4/77
W. 21057
JR

57.

BOUNDARY LINE AGREEMENT
BLA 155

The State Lands Division has negotiated a compromise settlement of the Ordinary High Water Mark Boundary with Jack W. Ruby, as the boundary of the State-owned bed of Alviso Slough, a navigable and tidal waterway in Santa Clara, California, and an adjacent upland parcel. 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 Overflowed 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 Patent to the State on June 29, 1917, Numbered 175, San Francisco.
3. Alviso Slough below the ordinary high water mark was and remains a navigable tidal waterway.
4. Review of historic maps indicates no evidence of any historic tidelands within the uplands adjacent to 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 Slough and is based on a recorded Record of Survey made for the U.S.

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Fish and Wildlife Service which has been reviewed by the State Lands Division staff.

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 proposed agreement will contain mutual quitclaims by the State to Jack W. Ruby of the upland parcel and Jack W. Ruby to the State of any interest in Alviso Slough and a 15-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 tideline.

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 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 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.