

MINUTE ITEM

22. BOLINAS SANDSPIT OCEAN BOUNDARY, MARIN COUNTY, WILLIAM KENT ESTATE CO.-
W.O. 310D, W.O. 3079D.

Following presentation of Calendar Item 18 attached, the Executive Officer explained to the Commission that the basic problem is primarily of local interest in that a fence has been erected on the beach which some people are claiming is a nuisance, whereas the opposite is claimed by the William Kent Estate Co. who erected the fence. It is understood that the District Attorney of Marin County has been ordered by the Board of Supervisors to abate this fence as a public nuisance. The fence legally constitutes a trespass on State lands. Owners of the fence claim that the fence is not on publicly owned lands, but on lands belonging to the Kent Estate Co. Conferences have been held with all interested parties, and with the office of the Attorney General. As a result, it appears desirable that the State be represented in any action which may be brought by the District Attorney of Marin County, in order that the Court may be fully informed.

Mr. Bryan McCarthy, Attorney representing the Kent Estate Co., stated that he was vigorously opposed to the action recommended by the staff. He stated that the Commission was being asked to take a change of position from previous Commission intent. He claimed that there was no dispute on the facts, and submitted a written outline of his opinion, dated February 15, 1960, copy of which had previously been filed with the staff of the Commission and the office of the Attorney General.

UPON MOTION DULY MADE, SECONDED, AND UNANIMOUSLY CARRIED, ACTION WAS DEFERRED ON THE QUESTION OF THE BOUNDARY LINE BETWEEN STATE-OWNED TIDELANDS AND THE WILLIAM KENT ESTATE CO., MARIN COUNTY, UNTIL THE COMMISSIONERS CAN EXAMINE THE CORRESPONDENCE FILES, WITH THE UNDERSTANDING THAT THE REPRESENTATIVES OF THE WILLIAM KENT ESTATE CO. ARE TO BE NOTIFIED OF THE TIME WHEN THE ITEM IS RESCHEDULED ON ANY FUTURE AGENDA OF THE STATE LANDS COMMISSION.

Attachment

Calendar Item 18 (2 pages)

CALENDAR ITEM

18.

BOLINAS SANDSPIT OCEAN BOUNDARY, MARIN COUNTY, WILLIAM KENT ESTATE CO. -
W.O. 310D, W.O. 3079D.

In 1949, the State Lands Division resurveyed Tideland Surveys Nos. 77, 203, 204 and 205 (sold in 1890 and 1891) in order to establish the respective boundaries within Bolinas Lagoon. In conjunction with this resurvey, the ordinary high water mark existing at that time was also surveyed along the ocean side of the Bolinas Lagoon Sandspit.

In 1950, the Marin County Superior Court rendered a decree quieting title in the case of William Kent Estate Co. vs. State of California, Case No. 19966, fixing the boundary between the Kent property and the State of California along the shore of Bolinas Lagoon. The judgment described, in addition to the Tideland Surveys Nos. 203 and 204, the 1949 ordinary high water mark on the Pacific Ocean side of the Bolinas Lagoon Sandspit. On the basis of this court decree, the Kent Estate Co. constructed an iron rail fence on the sandspit in a direction perpendicular to the shoreline; thus the fence extended waterward approximately to the then ordinary high water mark, as described in the aforementioned judgment. In addition, "No Trespassing" signs were posted thereon. Subsequent to the erection of the fence, the ordinary high water mark shifted landward due to natural erosion, and, as a result thereof, the fence extends into the ocean past the 1949 ordinary high water mark. The fence has restricted the public from entering and walking along the beach area at certain stages of the tide.

The Kent Estate Co. contends that the decree by the Marin County Superior Court fixed the boundaries, once and for all, within the lagoon as well as on the ocean side of the sandspit. As a result of a public controversy arising in connection with the extension of the fence into the ocean, an informal opinion was requested from the office of the Attorney General as to the effect of the aforementioned decree. The office of the Attorney General issued an informal opinion on March 11, 1959, stating that the boundary established by the court decree did not permanently fix the oceanward boundary since the boundary is always at the line of the ordinary high water, and that such boundary is a natural shifting one, going landward with erosion and waterward with accretion.

A conference was held with legal representatives of the William Kent Estate Co. in an attempt to have their principals voluntarily remove the trespassing portion of the fence. Their attorneys asked that the office of the Attorney General reconsider its opinion, based on the submittal of a written set of facts and authorities to support the contention that the oceanward section of the fence should not be removed.

On March 22, 1960, the office of the Attorney General issued a supplemental informal opinion ~~readopting~~ the conclusion that the decree quieting title in the Kent Estate Co. operated to establish the then boundary along its sandspit property along the ordinary high water mark as it fluctuates naturally from time to time. This opinion also stated that the fence erected

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by the Kent Estate Co., currently extending waterward of the ordinary high water mark, could be considered an obstruction to navigation in violation of the provisions of Article XV, Section 2, of the California Constitution if it prevents the public from using such waters and tidelands for the purposes of navigation, and this would be the case even if the title to the soil underneath navigable waters, including tidelands, had been conveyed to a private person or entity. In general, the rights of the public to the incidents of navigation are boating, bathing, fishing and recreation. The opinion concludes that if the fence in fact obstructs or interferes with such public rights, then the maintenance of the subject fence constitutes a public nuisance. As a result of the supplemental informal opinion, another conference was held, at which were present the District Attorney of Marin County, attorneys for the Kent Estate, the Executive Officer and Assistant Executive Officer of the State Lands Division, and a representative from the office of the Attorney General. The purpose of this conference was to attempt resolution of the controversy and to sustain the State's proposal for removal of the fence on a voluntary basis. The attorneys for the William Kent Estate Co. are still of the opinion that the fence is on property owned by their principal and does not constitute a public nuisance. The District Attorney of the County of Marin stands ready to institute whatever action is necessary to cause removal of a portion of the fence. The office of the Attorney General, in a letter to the State Lands Commission dated May 16, 1960, reports that since the controversy would concern the boundary of and therefore title to tidelands, the participation of the State Lands Commission in such litigation would appear desirable.

IT IS RECOMMENDED THAT THE COMMISSION AUTHORIZE THE EXECUTIVE OFFICER TO REQUEST THE OFFICE OF THE ATTORNEY GENERAL TO TAKE WHATEVER LEGAL ACTION IS NECESSARY TO RECONFIRM THE BOUNDARY LINE BETWEEN STATE-OWNED TIDELANDS AND THE KENT ESTATE ON THE OCEAN SIDE OF THE BOLINAS SANDSPIT AT THE ORDINARY HIGH WATER MARK IF SUCH ACTION IS NECESSARY AS THE RESULT OF THE LEGAL PROCEEDINGS PROPOSED BY THE DISTRICT ATTORNEY OF MARIN COUNTY TO HAVE THE WILLIAM KENT ESTATE CO. REMOVE THAT PORTION OF THE FENCE ERECTED WATERWARD OF THE PRESENT ORDINARY HIGH WATER MARK.