

29. BOUNDARY AGREEMENT AND LAND EXCHANGE WITH SONOMA RANCH COMPANY, RECLAMATION DISTRICT NO. 2061, WILLIAM H. NOBLE, ROBERT L. SMITH, L. M. CUBETIA, WILLIAM A. MCKEE, STATE OF CALIFORNIA DEPARTMENT OF PUBLIC WORKS (STATE HIGHWAYS), AND OTHER AFFECTED PARTIES; SONOMA COUNTY - N 0188, PRC 4677.9, BLA 130.

During consideration of Calendar Item 28 attached, William Bisso, representing Bisso Bros. & Community Realty Co., appeared in opposition to the staff recommendation.

After consideration of Calendar Item 28, and upon motion duly made and carried, the following resolution was adopted:

THE COMMISSION:

1. FINDS THAT THE EXCHANGE OF LANDS AND RIGHTS SET FORTH IN THE AGREEMENT REFERRED TO IN PARAGRAPH 2 BELOW IS IN THE BEST INTERESTS OF THE STATE FOR THE IMPROVEMENT OF NAVIGATION AND TO ENHANCE THE CONFIGURATION OF THE SHORE LINE OF SAN PABLO BAY, SONOMA CREEK, TOLAY CREEK (A.K.A. MIDSHIPMAN SLOUGH) AND EAST BRANCH OF TOLAY CREEK FOR THE IMPROVEMENT OF THE WATERS THEREOF AND THE ADJACENT UPLANDS, AND THAT IT WILL NOT SUBSTANTIALLY INTERFERE WITH THE RIGHTS OF NAVIGATION AND FISHING IN THE WATERS INVOLVED AND IN FACT WILL ENHANCE AND ENLARGE PUBLIC RIGHTS AND UTILIZATION OF SAID WATERWAYS.
2. AUTHORIZES THE EXECUTION OF THE BOUNDARY LINE AND EXCHANGE AGREEMENT BETWEEN THE COMMISSION AND SONOMA RANCH COMPANY; RECLAMATION DISTRICT NO. 2061; DEPARTMENT OF PUBLIC WORKS, DIVISION OF HIGHWAYS; AND THOSE OTHER PARTIES WHICH EXECUTE SAID AGREEMENT, SAID AGREEMENT BEING ON FILE IN THE OFFICE OF THE STATE LANDS COMMISSION AND BY REFERENCE MADE A PART HEREOF.
3. AUTHORIZES THE EXECUTION OF A STATE PATENT WITHOUT THE RESERVATION OF MINERAL INTERESTS TO SONOMA RANCH COMPANY, RECLAMATION DISTRICT NO. 2061 AND OTHER PRIVATE PARTIES TO SAID AGREEMENT AS THEIR INTEREST MAY APPEAR OF RECORD IN THE OFFICE OF THE COUNTY RECORDER OF SONOMA COUNTY TO THE PARCELS OF REAL PROPERTY DESCRIBED IN SAID AGREEMENT REFERRED TO IN PARAGRAPH 2 ABOVE, PURSUANT TO THE TERMS OF SAID AGREEMENT.
4. AUTHORIZES THE ACCEPTANCE AND RECORDATION OF CONVEYANCES TO THE STATE PROVIDED IN SAID BOUNDARY AGREEMENT AND LAND EXCHANGE.
5. FINDS THAT UPON THE DELIVERY OF THE PATENT TO THE PARTIES REFERRED TO IN PARAGRAPH 3 ABOVE, AND THE RECORDATION THEREOF IN THE OFFICE OF THE COUNTY RECORDER OF SONOMA COUNTY, THAT THE REAL PROPERTY DESCRIBED IN SAID PATENT, EXCEPTING THEREFROM THE PARCELS OF REAL PROPERTY AND EASEMENT DESCRIBED IN EXHIBIT "E" TO THE AGREEMENT REFERRED TO IN PARAGRAPH 2 ABOVE:
  - A. HAS BEEN IMPROVED, FILLED, AND RECLAIMED BY SAID RECLAMATION DISTRICT NO. 2061, AND THE PRIVATE PARTIES REFERRED TO IN SAID PATENT;

- B. HAS THEREBY BEEN SEVERED FROM THE PUBLIC CHANNELS AND WATERWAYS, AND IS NO LONGER AVAILABLE OR USEFUL OR SUSCEPTIBLE OF BEING USED FOR COMMERCE, NAVIGATION AND FISHING, AND IS NO LONGER IN FACT TIDELANDS OR SUBMERGED LANDS AND THEREFORE SHALL BE FREED FROM SUCH PUBLIC TRUST.
6. FINDS THAT THE ISSUANCE OF A 66-YEAR PERMIT TO RECLAMATION DISTRICT NO. 2061 FOR THE MAINTENANCE AND OPERATION OF THE EXISTING LEVEES ALONG THE PERIMETER OF THE LANDS TO BE RECEIVED BY THE STATE IS IN THE BEST INTERESTS OF THE STATE IN THAT THE LEVEES ARE NECESSARY FOR THE PROTECTION AND PRESERVATION OF SAID STATE LAND, AND AUTHORIZE THE ISSUANCE OF SAID 66-YEAR PERMIT.
7. AUTHORIZES THE EXECUTIVE OFFICER OF THE STATE LANDS COMMISSION AND OFFICE OF THE ATTORNEY GENERAL TO TAKE ALL FURTHER STEPS NECESSARY TO IMPLEMENT THE ABOVE TRANSACTION INCLUDING, BUT NOT LIMITED TO, APPEARANCES IN ANY LEGAL PROCEEDINGS BROUGHT CONCERNING THE ABOVE TRANSACTION.

Attachment:

Calendar Item 28 (4 pages)

## CALENDAR ITEM

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N 0188

28.

BOUNDARY AGREEMENT AND LAND EXCHANGE WITH SONOMA RANCH COMPANY, RECLAMATION DISTRICT NO. 2061, WILLIAM H. NOBLE, ROBERT L. SMITH, L. M. GUBETTA, WILLIAM A. McKEE, STATE OF CALIFORNIA DEPARTMENT OF PUBLIC WORKS (STATE HIGHWAYS), AND OTHER AFFECTED PARTIES; SONOMA COUNTY

For the past several years, the State Lands Division has been conducting studies and negotiations concerning the extent and nature of State ownership and interests in lands in the vicinity of North San Pablo Bay. A primary purpose of this work has been to enable the Federal government to be in a position to acquire outstanding private rights within a proposed San Pablo Bay National Wildlife Refuge.

The proposed transaction, affecting most of Tubbs Island, is a part of this effort. It will serve to fix and resolve any boundary problems along a 10½ mile reach of the shores of San Pablo Bay, Sonoma Creek, Tolay Creek (A.K.A. Midshipman Slough) and east branch of Tolay Creek. It will also provide for the acquisition of two parcels of land into State ownership totaling 80 acres within the island itself.

The parties to the above transaction are the State Lands Commission and the successors in interest to the private patentee of Sonoma County Swamp and Overflowed Survey No. 27a. (The State patent was issued in 1883.) Two Federal confirmatory patents (issued pursuant to the Arkansas Swamp Land Act of September 28, 1850, as amended) conveying all of the swamp and overflowed lands located within said State patent, were issued to the State in 1896 and 1910.

The Division has contended that the waterward extent of the State patent along Tolay Creek is as surveyed by the Division in 1959, a plat of which was recorded May 26, 1960, in Book 76 of Maps, Records of Sonoma County, at page 50, and by the extension of said survey around the remaining affected portion of said Tubbs Island. By reason of alleged natural accretions and patent survey placement, the private parties to the proposed transaction have contended that the boundary of the patented lands is considerably waterward of the State's boundary claim along the waterways. The State has alleged further that the lands outside the levees, although lying above the present line of mean high tide were artificially induced and therefore belong to the State. The approximate area of such lands being preserved for the State as a result of this agreement consists of 273 acres.

The Division has contended additionally that the lands described in the swamp and overflowed lands patent were traversed by tidal sloughs within Tubbs Island which are sovereign tide and submerged lands. The position of the Division has been that said State patent conveyed only bare legal fee title to the included tidelands subject to a retained easement of commerce, navigation and fisheries in the State, and conveyed no title to the included submerged lands. The private parties have disputed the State claims and have contended that the lands

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included within the patent consisted of swamp and overflowed lands and not tidelands or submerged lands and that the lands were conveyed by the State patent free and clear of any remaining State interest.

The private parties, through the creation of a reclamation district (originally Reclamation District No. 435 formed in 1883, and now Reclamation District No. 2061, formed in 1922) reclaimed the portion of Tubbs Island affected by this agreement which is to be confirmed in private ownership. For many years, grain has been raised on the reclaimed portions of the island.

The proposed agreement fixes the ordinary high water mark around the perimeter of the affected portion of Tubbs Island in accordance with the Division survey. This recognizes and confirms the State's title waterward of the surveyed line insofar as the parties to the agreement are concerned.

The agreement also provides for an exchange of the aforementioned rights and interests asserted by the State within the affected portion of the island. The State will exchange those asserted rights and interests for two parcels of real property on the island proper having an aggregate area of 80 acres together with an appurtenance easement from the State highway thereto. This acquisition will consolidate the State's presently uncertain ownership claims into a configuration which will permit greater public use thereof and greater public utilization of the adjacent waterways thereto. The State, in exchange for these parcels, will quitclaim and terminate all asserted public rights and interests in and to the lands agreed to be in the ownership of the private parties and Reclamation District No. 2061.

Reclamation District No. 2061 and the Sonoma Ranch Company also agree to grant the State an easement for access across their lands from the existing State highway to the State lands within its agreed boundary and which the State receives by exchange in this transaction.

The exchange is being made pursuant to Section 6307 of the Public Resources Code and the boundary is being established pursuant to Section 6357 of the Public Resources Code.

The State will acquire all rights to the minerals in the lands it is to receive; therefore, pursuant to said Section 6307, no mineral interests will be retained in State lands to be exchanged to the private parties in Reclamation District No. 2061.

The State will give Reclamation District No. 2061 a 66-year permit to maintain the existing levees along the perimeter of the lands to be acquired by the State. This permit with the 66-year term is considered necessary for the protection of the lands to be received by the State.

An evaluation has been made by the Division which indicates that the State will receive equal or greater value of lands compared with the claims to be surrendered as a result of the exchange.

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It is anticipated that the parcels to be received by the State together with the lands agreed to be in State ownership by the boundary agreement provisions will become part of the San Pablo Bay National Wildlife Refuge, or at least be put to public use compatible with the management of the refuge.

The Department of Public Works, Division of Highways, is a party to this agreement for two reasons. First, it is joining in the boundary agreement as a real party in interest fixing the ordinary high water mark around Tubbs Island to determine the waterward extent of lands and rights acquired, as successor in interest of the original State patentee of Tubbs Island, in lands presently utilized for the State highway traversing Tubbs Island, Sonoma Creek and Tolay Creek. This will also serve as a basis for clarifying those interests within the highway right-of-way waterward of the agreed boundary which the Division of Highways holds by reason of inter-agency agreements with the State Lands Commission. The second reason for the joinder of the Division of Highways is to agree to the common boundary of the highway right-of-way across Tubbs Island with the abutting lands of the private parties and Reclamation District No. 2061. Prior to this time there has been no precise resolution of those common boundaries insofar as the relation between the outstanding record title and the true boundaries as located and relocated by survey on the ground.

This matter has been reviewed and approved by the Office of the Attorney General. The 66-year levee maintenance permit is exempt from the provisions of Section 6371 of the Public Resources Code relating to Environmental Impact Reports.

IT IS RECOMMENDED THAT THE COMMISSION:

1. FIND THAT THE EXCHANGE OF LANDS AND RIGHTS SET FORTH IN THE AGREEMENT REFERRED TO IN PARAGRAPH 2 BELOW, IS IN THE BEST INTERESTS OF THE STATE FOR THE IMPROVEMENT OF NAVIGATION AND TO ENHANCE THE CONFIGURATION OF THE SHORE LINE OF SAN PABLO BAY, SONOMA CREEK, TOLAY CREEK (A.K.A. MIDSHIPMAN SLOUGH) AND EAST BRANCH OF TOLAY CREEK FOR THE IMPROVEMENT OF THE WATERS THEREOF AND THE ADJACENT UPLANDS, AND THAT IT WILL NOT SUBSTANTIALLY INTERFERE WITH THE RIGHTS OF NAVIGATION AND FISHING IN THE WATERS INVOLVED AND IN FACT WILL ENHANCE AND ENLARGE PUBLIC RIGHTS AND UTILIZATION OF SAID WATERWAYS.
2. AUTHORIZE THE EXECUTION OF THE BOUNDARY LINE AND EXCHANGE AGREEMENT BETWEEN THE COMMISSION AND SONOMA RANCH COMPANY; RECLAMATION DISTRICT NO. 2061; DEPARTMENT OF PUBLIC WORKS, DIVISION OF HIGHWAYS; AND THOSE OTHER PARTIES WHICH EXECUTE SAID AGREEMENT, SAID AGREEMENT BEING ON FILE IN THE OFFICE OF THE STATE LANDS COMMISSION AND BY REFERENCE MADE A PART HEREOF.
3. AUTHORIZE THE EXECUTION OF A STATE PATENT WITHOUT THE RESERVATION OF MINERAL INTERESTS TO SONOMA RANCH COMPANY, RECLAMATION DISTRICT NO. 2061 AND OTHER PRIVATE PARTIES TO SAID AGREEMENT AS THEIR INTEREST MAY

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APPEAR OF RECORD IN THE OFFICE OF THE COUNTY RECORDER OF SONOMA COUNTY TO THE PARCELS OF REAL PROPERTY DESCRIBED IN SAID AGREEMENT REFERRED TO IN PARAGRAPH 2 ABOVE, PURSUANT TO THE TERMS OF SAID AGREEMENT.

4. AUTHORIZE THE ACCEPTANCE AND RECORDATION OF CONVEYANCES TO THE STATE PROVIDED IN SAID BOUNDARY AGREEMENT AND LAND EXCHANGE.
5. FIND THAT UPON THE DELIVERY OF THE PATENT TO THE PARTIES REFERRED TO IN PARAGRAPH 3 ABOVE, AND THE RECORDATION THEREOF IN THE OFFICE OF THE COUNTY RECORDER OF SONOMA COUNTY, THAT THE REAL PROPEPTY DESCRIBED IN SAID PATENT, EXCEPTING THEREFROM THE PARCELS OF REAL PROPERTY AND EASEMENT DESCRIBED IN EXHIBIT "E" TO THE AGREEMENT REFERRED TO IN PARAGRAPH 2 ABOVE:
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6. FIND THAT THE ISSUANCE OF A 66-YEAR PERMIT TO RECLAMATION DISTRICT NO. 2061 FOR THE MAINTENANCE AND OPERATION OF THE EXISTING LEVEES ALONG THE PERIMETER OF THE LANDS TO BE RECEIVED BY THE STATE IS IN THE BEST INTERESTS OF THE STATE IN THAT THE LEVEES ARE NECESSARY FOR THE PROTECTION AND PRESERVATION OF SAID STATE LAND, AND AUTHORIZE THE ISSUANCE OF SAID 66-YEAR PERMIT.
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