

MINUTE ITEM

This Calendar Item No. 20
was approved as Minute Item
No. 20 by the State Lands
Commission by a vote of 2 CALENDAR ITEM
to 0 at its 12/19/77
meeting.

20.

12/77
W 21043
Cook

DISCLAIMER OF STATE RIGHT, TITLE OR INTEREST
WITHIN A PARCEL IN ALAMEDA COUNTY, CALIFORNIA,
CITIES OF NEWARK AND FREMONT

A private sale of the subject parcel, described in the attached Exhibit "A", is pending with the closing of escrow delayed due to a title exception for any adverse claim based upon the assertion that some portion of said land is tide or submerged lands, or has been created by artificial means or has accreted to such portion so created.

The private claimants have requested a title investigation by the State Lands Division to determine whether any State right, title or interest, arising by reason of its sovereignty exists within the parcel.

Title review by the staff shows the following:

1. The private parent titles arose from State and Federal Swamp and Overflowed Land Patents, in part, and from the Ex Mission San Jose, in part.
2. The subject parcel was reclaimed by 1898. It is currently open farm land with no existing waterways.
3. The parcel is located at or near the line of demarcation between the historic marsh and uplands a short distance upland (north-easterly) of parcel A-11 which passed to Leslie Salt Company as part of the 1967-68 exchange.
4. Due to the location of the parcel the parties are unable to obtain title insurance free of the exception without clearing the question of State interest.
5. The known evidence is insufficient to establish that the subject parcel was ever traversed by a tidal slough or that it was ever covered by the ordinary tides.
6. The known evidence is insufficient to establish that any portion of the subject parcel was or is tide or submerged lands, or has been created by artificial means or has accreted to any such portion so created.

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7. While a part of the parcel consisted of marsh grass, and conceivably might have been covered by the ordinary tides, this is speculative in the absence of sufficient evidence of its tidal character, and in the interest of fairness and justice the titles should be cleared of State interest in the absence of such proof.

EXHIBITS: A. Description of Subject Parcel.
 B. Estuary Plat.
 C. NASA Airphoto Plat.
 D. Quad Sheet Plat.

IT IS RECOMMENDED THAT THE COMMISSION:

1. FIND THAT THE SUBJECT PARCEL NEITHER WAS, NOR IS, TIDELANDS OR SUBMERGED LANDS OF THE STATE OF CALIFORNIA.
2. DISCLAIM, ON BEHALF OF THE STATE OF CALIFORNIA, ANY RIGHT, TITLE OR INTEREST WITHIN THE SUBJECT PARCEL.
3. AUTHORIZE THE STATE LANDS DIVISION AND/OR THE ATTORNEY GENERAL TO EXECUTE, HAVE ACKNOWLEDGED AND DELIVER A QUIT CLAIM DEED TO THE OWNERS OF RECORD OF THE SUBJECT PARCEL OF ANY STATE RIGHT, TITLE OR INTEREST THEREIN; TO FILE A DISCLAIMER OF STATE INTEREST IN ANY LITIGATION IN WHICH THE STATE'S TITLE TO THE SUBJECT PARCEL IS IN ISSUE; AND TO TAKE SUCH OTHER ACTION, INCLUDING THE EXECUTION, ACKNOWLEDGEMENT AND DELIVERY OF DOCUMENTS OF TITLE, AS MAY BE DEEMED REASONABLY NECESSARY OR CONVENIENT TO EFFECTUATE THE DISCLAIMER HEREIN MADE.

Attachment: Exhibit "A"

DESCRIPTION:

THE LAND REFERRED TO HEREIN IS SITUATED IN THE STATE OF CALIFORNIA, COUNTY OF ALAMEDA, PARTLY IN THE CITY OF NEWARK, AND PARTLY IN THE CITY OF FREMONT, DESCRIBED AS FOLLOWS:

ALL OF PARCEL 7 AS SAID PARCEL IS SHOWN ON THE "RECORD OF SURVEY OF THE PORTION OF THE LAND OF ROGERS AND HEATH", FILED AUGUST 21, 1961, IN BOOK 4 OF RECORDS OF SURVEY, PAGES 23 TO 25, INCLUSIVE, ALAMEDA COUNTY RECORDS, DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST NORTHERN CORNER OF SAID PARCEL, BEING ALSO A POINT OF INTERSECTION OF THE EASTERN BOUNDARY LINE OF MOWRY AVENUE, COUNTY ROAD 49, 50 FEET WIDE, WITH THE SOUTHERN BOUNDARY LINE OF THE SOUTH PACIFIC COAST RAILROAD COMPANY RIGHT-OF-WAY, 100 FEET WIDE, RUNNING THENCE ALONG THE LAST NAMED LINE, BEING ALSO THE EXTERIOR BOUNDARY LINE OF SAID PARCEL 7, THE FOLLOWING COURSES: SOUTH $59^{\circ} 47' 05''$ EAST, 594.36 FEET THENCE SOUTHEASTERLY, AND TO THE RIGHT, ON THE ARC OF A CURVE HAVING A RADIUS OF 2825.84 FEET AN ARC DISTANCE OF 972.98 FEET, THENCE SOUTH $40^{\circ} 03' 25''$ EAST 982.56 FEET TO THE NORTHWESTERN BOUNDARY LINE OF THE ALAMEDA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT CHANNEL, ACQUIRED BY A FINAL JUDGEMENT IN CONDEMNATION CASE NO. 287131, IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF ALAMEDA, A CERTIFIED COPY OF WHICH WAS RECORDED AUGUST 27, 1959 IN BOOK 9134 AT PAGE 245, SERIES NO. AQ/102029, OFFICIAL RECORDS, ALAMEDA COUNTY, THENCE ALONG THE LAST NAMED LINE, SOUTH $50^{\circ} 57' 47''$ WEST 124.81 FEET, THENCE, SOUTH $51^{\circ} 22' 29''$ WEST 1670.34 FEET, THENCE WESTERLY, ON THE ARC OF A CURVE TO THE RIGHT, HAVING A RADIUS OF 133 FEET, THROUGH A CENTRAL ANGLE OF $13^{\circ} 33' 10''$, AN ARC DISTANCE OF 31.46 FEET, THENCE SOUTH $64^{\circ} 55' 39''$ WEST 495.91 FEET, THENCE SOUTH $78^{\circ} 40' 15''$ WEST 62.69 FEET, THENCE ALONG SAID FLOOD CONTROL CHANNEL, AND CONTINUING ALONG THE EXTERIOR BOUNDARY LINE OF SAID PARCEL 7, NORTH $34^{\circ} 31' 12''$ WEST 300.92 FEET, THENCE NORTH $40^{\circ} 28' 15''$ WEST 181.52 FEET, THENCE NORTH $36^{\circ} 20' 42''$ EAST 189.53 FEET, THENCE SOUTH $41^{\circ} 32' 18''$ EAST 473.38 FEET, THENCE NORTH $31^{\circ} 06' 42''$ EAST 365.85 FEET, THENCE NORTH $03^{\circ} 49' 18''$ WEST 720.72 FEET, THENCE NORTH $00^{\circ} 55' 42''$ EAST 110.22 FEET, THENCE NORTH $09^{\circ} 30' 18''$ WEST 170.79 FEET, THENCE NORTH $05^{\circ} 43' 18''$ WEST 121.51 FEET, THENCE NORTH $76^{\circ} 56' 42''$ EAST 273.24 FEET, THENCE NORTH $27^{\circ} 00' 18''$ WEST 1556.94 FEET, TO SAID EASTERN BOUNDARY LINE OF MOWRY AVENUE, AND THENCE ALONG THE LAST NAMED LINE, NORTH $19^{\circ} 28' 07''$ EAST 240.50 FEET TO THE POINT OF BEGINNING.