

MINUTE ITEM

29. APPROVAL OF BOUNDARY AGREEMENT, BY AND BETWEEN THE CITY OF OAKLAND AND THE STATE OF CALIFORNIA, FIXING THE BOUNDARY LINE BETWEEN STATE TIDE AND SUBMERGED LANDS AND CITY OF OAKLAND LANDS BETWEEN BROADWAY AND WASHINGTON STREETS, CITY OF OAKLAND, ALAMEDA COUNTY, CALIFORNIA, AND APPLYING LEGISLATIVE TRUST TERMS AND CONDITIONS TO THE LANDS NORTHERLY OF THE ORDINARY LOW WATER MARK - W.O. 4097.

Mr. J. Kerwin Rooney, Port Attorney of the City of Oakland, informed the Commission that he approved of the staff recommendation in Calendar Item 31 attached.

UPON MOTION DULY MADE AND UNANIMOUSLY CARRIED, THE FOLLOWING RESOLUTION WAS ADOPTED:

THE COMMISSION APPROVES, AND AUTHORIZES THE EXECUTIVE OFFICER TO EXECUTE, AN AGREEMENT WITH THE CITY OF OAKLAND, ACTING BY AND THROUGH ITS BOARD OF PORT COMMISSIONERS, PURSUANT TO CHAPTER 720, STATUTES OF 1941, AND TO SECTION 6357 OF THE PUBLIC RESOURCES CODE (1) FIXING THE UNITED STATES PIERHEAD LINE OF 1913, AS DESCRIBED IN THE AGREEMENT (A COPY OF WHICH IS ATTACHED AS EXHIBIT "A" AND HEREBY MADE A PART HEREOF), AS THE ORDINARY LOW WATER MARK LINE AND PERMANENT BOUNDARY LINE BETWEEN STATE TIDE AND SUBMERGED LANDS AND CITY OF OAKLAND LANDS BETWEEN BROADWAY AND WASHINGTON STREETS, CITY OF OAKLAND, ALAMEDA COUNTY, CALIFORNIA, AND (2) APPLYING LEGISLATIVE TRUST TERMS AND CONDITIONS OF CHAPTER 720, STATUTES OF 1941, TO LANDS NORTHERLY OF THE ORDINARY LOW WATER MARK PREVIOUSLY ACQUIRED BY THE CITY OF OAKLAND WITH TIDE LAND TRUST FUNDS.

Attachment

Calendar Item 31 (5 pages)

CALENDAR ITEM

31.

APPROVAL OF BOUNDARY AGREEMENT, BY AND BETWEEN THE CITY OF OAKLAND AND THE STATE OF CALIFORNIA, FIXING THE BOUNDARY LINE BETWEEN STATE TIDE AND SUBMERGED LANDS AND CITY OF OAKLAND LANDS BETWEEN BROADWAY AND WASHINGTON STREETS, CITY OF OAKLAND, ALAMEDA COUNTY, CALIFORNIA, AND APPLYING LEGISLATIVE TRUST TERMS AND CONDITIONS TO THE LANDS NORTHERLY OF THE ORDINARY LOW WATER MARK - W.O. 4097.

Chapter 720, Statutes of 1941, granted to the City of Oakland a surface easement in certain tidelands lying southerly of the low tide line, for the purpose of harbor construction, development, and improvement. Section 2 of Chapter 720, recognizing that portions of the low tide line in the subject area had not been identified on the ground, empowered the City to fix the boundary line by agreement with abutting land owners.

The area lying between Broadway and Washington Streets and northerly of the United States Government Pierhead Line of 1913 was the subject of dispute in the Matter of Southern Pacific Golden Gate Ferries, Ltd., a corporation, Bankrupt No. 32664-G. The United States District Court held in effect that the line of ordinary low tide bounding the subject area on the south was located at the United States Government Pierhead Line of 1913, and that the State had no interest northerly of said Pierhead Line.

Pursuant to the District Court's holding, the City of Oakland acquired title from the Trustee in Bankruptcy to real property between Broadway and Washington Streets lying northerly of the United States Pierhead Line of 1913. The moneys used by the Port of Oakland from the Harbor Maintenance and Improvement Fund in acquiring said title were derived, in substantial part, from lands granted to the City in trust by the Legislature. Thus, such acquired lands are themselves subject to the terms and conditions of the legislative trust although located outside of said legislative grant.

The Board of Port Commissioners of the City of Oakland is now developing, and proposes to undertake further development for the promotion and accommodation of commerce and navigation, the lands northerly of the United States Pierhead Line of 1913.

The true and correct location of the ordinary low water mark in this area, as it may have existed in nature, is not known. The attorney for the Port of Oakland has reviewed the proposed agreement between the City of Oakland and the State of California fixing the location of the ordinary low water mark between Broadway and Washington Streets at the United States Pierhead Line of 1913, and is in accord with its provisions. The office of the Attorney General has reviewed and has no objection to the proposed agreement or its form. Staff Counsel has determined this agreement to be legally sufficient.

IT IS RECOMMENDED THAT THE COMMISSION APPROVE, AND AUTHORIZE THE EXECUTIVE OFFICER TO EXECUTE AN AGREEMENT WITH THE CITY OF OAKLAND, ACTING BY AND THROUGH ITS BOARD OF PORT COMMISSIONERS, PURSUANT TO CHAPTER 720, STATUTES OF 1941, AND TO SECTION 6357 OF THE PUBLIC RESOURCES CODE (J) FIXING THE UNITED STATES PIERHEAD LINE OF 1913, AS DESCRIBED IN THE AGREEMENT (A COPY OF WHICH IS ATTACHED AS EXHIBIT "A" AND HEREBY MADE A PART HEREOF), AS THE

CALENDAR ITEM 31. (CONTD.)

ORDINARY LOW WATER MARK LINE AND PERMANENT BOUNDARY LINE BETWEEN STATE TIDE AND SUBMERGED LANDS AND CITY OF OAKLAND LANDS BETWEEN BROADWAY AND WASHINGTON STREETS, CITY OF OAKLAND, ALAMEDA COUNTY, CALIFORNIA, AND (2) APPLYING LEGISLATIVE TRUST TERMS AND CONDITIONS OF CHAPTER 720, STATUTES OF 1941, TO LANDS NORTHERLY OF THE ORDINARY LOW WATER MARK PREVIOUSLY ACQUIRED BY THE CITY OF OAKLAND WITH TIDELAND TRUST FUNDS.

Attachment  
Exhibit "A"

## EXHIBIT "A"

AGREEMENT FIXING LOCATION OF ORDINARY LOW WATER MARK  
 BETWEEN BROADWAY AND WASHINGTON STREETS IN THE CITY  
 OF OAKLAND AND APPLYING LEGISLATIVE TRUST TERMS AND  
 CONDITIONS OF CHAPTER 720, STATUTES OF 1941, TO LAND  
 NORTHERLY OF THE ORDINARY LOW WATER MARK.

THIS AGREEMENT made and entered into this \_\_\_\_\_ day of April, 1962,  
 by and between the STATE OF CALIFORNIA, acting by and through its State Lands  
 Commission, hereinafter referred to as the "State", and the CITY OF OAKLAND,  
 a municipal corporation, acting by and through its Board of Port Commissioners,  
 hereinafter referred to as the "City",

W I T N E S S E T H:

WHEREAS, the State is the owner of certain tide and submerged lands  
 between Broadway and Washington Streets in the City of Oakland, County of  
 Alameda, State of California, the northerly boundary of which is the line of  
 ordinary low tide as said line may have come to rest under natural conditions;  
 and

WHEREAS, the City is the owner of certain real property in the said City,  
 County and State between Broadway and Washington Streets, the southerly  
 boundary of which is the said line of ordinary low tide; and

WHEREAS, said low tide line between Broadway and Washington Streets has  
 never been located on the ground and City and State desire to fix the location  
 of the same by agreement; and

WHEREAS, the State, acting through the State Lands Commission, is authorized  
 by Section 6357 of the Public Resources Code to establish by agreement the  
 ordinary high water mark or the ordinary low water mark of the swamp, over-  
 flowed, marsh, tide or submerged lands of this State, whenever it is deemed  
 expedient or necessary; and

WHEREAS, the City is empowered by the Statutes of 1941, Chapter 720, to  
 fix the location of the said low tide line by agreement with abutting owners  
 or by other appropriate means; and

WHEREAS, the Board of Port Commissioners of said City is empowered by,  
 and it is its duty for and on behalf of the City, under the law to provide pro-  
 vision for the needs of commerce, shipping and navigation of the Port of  
 Oakland and to take charge of, control and supervise the Port of Oakland, in-  
 cluding all the waterfront properties, and lands adjacent thereto, or under

water, structures thereon, approaches thereto, and all rights and interests belonging thereto, which are now or may hereafter be owned or possessed by the City, including all salt marsh or tidelands and structures thereon granted to City in trust by State for the promotion and accommodation of commerce and navigation; and

WHEREAS, said Board of Port Commissioners is empowered by law to cooperate with State in carrying out its powers; and

WHEREAS, in the Matter of Southern Pacific Golden Gate Ferries, Ltd., a corporation, Bankrupt, No. 32664-G In Bankruptcy, in the Southern Division of the United States District Court for the Northern District of California, the Referee in bankruptcy, in 1943, in passing upon disputed claims to rent of real property at that time owned by said Bankrupt and later acquired by City, held, in effect, that said line of ordinary low tide was located at the northerly United States Government Pierhead Line of 1913 and accordingly decided adversely to the claim of the State that said low tide line was located at a point northerly thereof; and

WHEREAS, said holding was approved and affirmed on the 10th day of June, 1943, by the United States District Court on petition for review of said Referee's order; and

WHEREAS, thereafter by deed dated the 8th day of September, 1943 and recorded the 24th day of September, 1943 in Liber 4421 Official Records of Alameda County, at page 320, from the Trustee in Bankruptcy of said Bankrupt, the City acquired title to the real property lying northerly of the said Pierhead Line of 1913 between Broadway and Washington Streets; and

WHEREAS, the said Board of Port Commissioners, in carrying out its power and duty to make provision for the needs of commerce and navigation, used its funds to acquire said real property; and

WHEREAS, City proposes to lease said real property located northerly of said low tide line for the construction, establishment, maintenance and operation of a yacht harbor for the transient berthing of pleasure boats and for a hotel for the transient accommodation of persons mooring pleasure boats in the Port Area of said City; and

WHEREAS, the lands as described in the aforesaid Deed from the Trustee in Bankruptcy and the revenues to be derived by City therefrom will be devoted to the promotion and accommodation of commerce and navigation pursuant to and in compliance with the provisions of Statutes of 1941, Chapter 720; and

WHEREAS, the foregoing will carry out the directives set forth in said Statutes of 1941, Chapter 720;

NOW, THEREFORE;

IT IS HEREBY AGREED by and between State and City as follows:

I. To locate, describe and permanently establish the line of ordinary low tide between Broadway and Washington Streets in the City of Oakland,

County of Alameda, State of California, as said line may have come to rest under natural conditions; that the true and correct location of said line of low tide is and shall be located at the northerly Pierhead Line of Oakland Harbor as established by the United States Government in 1913, as shown on Port of Oakland Drawing BR-774 entitled "Location of Low Tide Line Between Broadway and Washington Streets" hereto attached, marked Exhibit "A", and by this reference made a part hereof, and the same is hereby described as follows:

Commencing at the City Monument set in the intersection of Second and Washington Streets in the City of Oakland, County of Alameda, State of California; thence southerly along the monument line of Washington Street South 26° 15' 30" West 308.25 feet to a point on the southerly boundary line of First Street; thence along said southerly boundary line South 63° 44' 30" East 27.25 feet to a point on the easterly boundary line of Washington Street; thence southerly along the said easterly boundary line of Washington Street South 26° 15' 30" West 521.46 feet to the TRUE POINT OF BEGINNING of a line agreed to be the low tide line, said line being also the United States Pierhead Line approved January 20, 1913; thence along said line South 64° 47' 03" East 300.05 feet to a point on the westerly boundary line of Broadway said point being South 26° 15' 30" West 516.00 feet southerly from the southwesterly boundary of First and Broadway Streets.

II. That City shall devote the lands, and revenues therefrom, described in the Deed from the Trustee in Bankruptcy, dated September 8, 1943, and recorded September 24, 1943 in Liber 4421 Official Records of Alameda County, at page 320, to the purposes and uses and in compliance with the provisions of Statutes 1941, Chapter 720.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed the day and year first above written.

STATE OF CALIFORNIA  
State Lands Commission

\_\_\_\_\_  
Executive Officer

CITY OF OAKLAND, a municipal corporation,  
acting by and through its Board of  
Port Commissioners.

By \_\_\_\_\_  
President

Attest \_\_\_\_\_  
Secretary

Approved as to form and  
legality this \_\_\_\_\_ day of  
\_\_\_\_\_, 1962

\_\_\_\_\_  
Port Attorney

Port Ordinance No. \_\_\_\_\_

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