

**STAFF REPORT
C77**

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J. Frey

**CONSIDER A BOUNDARY LINE AGREEMENT BETWEEN
THE CALIFORNIA STATE LANDS COMMISSION AND
THE CITY OF SACRAMENTO TO ESTABLISH A COMMON BOUNDARY LINE
BETWEEN STATE-OWNED SOVEREIGN LAND AND CITY-OWNED LAND
AT MILLER PARK IN SACRAMENTO, SACRAMENTO COUNTY**

PARTIES:

City of Sacramento

State of California, acting by and through the State Lands Commission

IDENTIFICATION OF PROPERTIES AFFECTED BY THIS AGREEMENT:

This proposed boundary line agreement (BLA) involves the permanent fixing and establishment of a common boundary line between State-owned sovereign land within the bed of the Sacramento River and two parcels of land owned by the City of Sacramento (City): a small riparian parcel referred to as the North Parcel in the Agreement located north of the projection of Broadway on the left bank (east side) of the Sacramento River, and a larger parcel known as the Miller Park Parcel, located south of the projection of Broadway on the left bank (east side) of the Sacramento River (Subject Property). The BLA confirms a legislative grant of sovereign land in trust to the City at Miller Park.

BACKGROUND AND THE PROPOSED SETTLEMENT:

In the late 1960s, the City and Commission staff disputed the nature and extent of the State's sovereign interest at Miller Park. In 1970 and 1973, the Legislature enacted statutes which granted any State interest at Miller Park to the City, the vesting of which was conditioned upon the City and the Commission first entering into an agreement resolving their property dispute. The dispute was not resolved at that time and the matter remained dormant until 2007, when the City requested the Commission enter into a boundary line agreement covering a project area that would extend from "R" Street to the south end of Miller Park. Subsequently the project area was divided into two segments. The City and the Commission entered into an agreement for the northern segment from "R" Street to the U.S. Highway 50 bridge over the Sacramento River that was approved by the Commission at its August 9, 2016 meeting ([Item C54, August 9, 2016](#)). This BLA currently before the Commission covers the area from the U.S. Highway 50

STAFF REPORT NO. C77 (CONT'D)

bridge to the south end of Miller Park. In broad terms the BLA provides for the following:

1. Establishment of a fixed boundary defining the location of the real property interests of the City and the State. The proposed boundary line generally runs along the top of bank of the affected parcels.
2. Quitclaims by each of the Parties of any right, title, and interest in the lands of the other. The North Parcel and Miller Park Parcel above the top of bank would be confirmed in the City and the lands below the top of bank and in the Sacramento River would be confirmed in the State. The City will reserve an easement over each of the parcels for pedestrian access, erosion control, bank stabilization, vegetation removal, and landscaping.
3. Confirmation of vesting in the City of lands granted to it in trust under Chapter 1266, Statutes of 1970, and Chapter 625, Statutes of 1973.

STAFF ANALYSIS AND RECOMMENDATION:

Authority:

Public Resources Code sections 6005, 6107, 6216, 6301, 6341, and 6357.

Public Trust and State's Best Interests Analysis:

Upon its admission to the United States of America on September 9, 1850, the State of California received, in trust for the people of California, title to the beds of all navigable waterways and submerged lands in the State pursuant to the Equal Footing Doctrine. These lands are impressed with the common law Public Trust for uses including, but not limited to, commerce, navigation, and fisheries.

Portions of the Subject Property, including the North Parcel and the eastern portion of Miller Park Parcel, are located within the historic boundaries of Rancho New Helvetia while others are waterward of it. The west line of Rancho New Helvetia is the historic boundary between the sovereign land of the State of California and upland property owners.

The Sacramento River as it flows through the City and the area affected by this title settlement, is tidal and navigable. Since very early in its history the City has been subject to periodic flooding combated by its citizens constructing levees and ultimately raising the level of the City adjacent to the River. Additionally, the River has been subject to dredging and the construction of wing dams on both sides of the River at Miller Park.

STAFF REPORT NO. **C77** (CONT'D)

Finally, there has been accretion, both natural and artificial, and fill at Miller Park.

In the mid 1960s, Commission staff claimed a state sovereign interest in what is known as Miller Park and the City strongly objected. Although City and Commission staff were unable to resolve the issue among themselves, they elected not to commence litigation. A lease was offered by the Commission but was rejected by the City.

Subsequently, the Legislature enacted Chapter 1266, Statutes of 1970, granting Miller Park to the City. Commission staff objected to the description of the lands in the bill. A second bill (Chapter 625, Statutes of 1973) was enacted correcting the error. Importantly, the grants were effective only upon the City and the Commission resolving their dispute and only to the extent that the Parties agreed on the extent of State and City ownership. Thus, it was envisioned that the City take title to all of the lands at Miller Park either in fee simple absolute or as granted lands or as a combination of both. Negotiations between the Commission and the City lapsed after passage of the legislation.

Each of the statutes referenced above describes two parcels of land: Parcel 1 – the bulk of Miller Park – about 55 acres and; Parcel 2 – a narrow strip on the waterward side of the Park – about 5 acres. Combined the parcels comprise about 60 acres. There is little firm evidence of these lands being sovereign in character. Older mapping is not available until about 1910. A plotting of the western boundary of Lot 1 of Rancho New Helvetia shows the western line of the rancho, on a north-south axis, going down the center of today's river channel and turning easterly at the north end of Miller Park and proceeding through the interior of the park. The plat, however, was surveyed in September and October 1859, a period of low water. Commission boundary staff believes the line surveyed was the low-water line and not the high-water line. In fact, there are deeds in the Docks and Miller Park areas that have calls to the low-water line. Further, there is a levee dating back to the turn of the 20th century on the back side of Miller Park. This suggests that Miller Park most likely consisted of low lying lands but does not confirm their elevation as being below the ordinary high-water line. This area has been subject to much dredging, wing dams, levee construction, fill and natural and artificial accretion especially from the hydraulic mining era. Finding the location of the last natural bank is impossible.

STAFF REPORT NO. C77 (CONT'D)

The North Parcel is wholly within Rancho New Helvetia as shown on the plat for the Rancho. The historic rancho boundary is in front of and in the center of the Sacramento River at this location.

The proposed agreed common boundary is placed on the top of the bank beginning at the U.S. Highway 50 right-of-way and running along the left (east) bank of the River across the North Parcel down to and along the top of bank of the Miller Park Parcel finishing at the south end of the Miller Park Parcel.

Under the proposed boundary line and title settlement the City will receive clear title to the North Parcel and to the bulk of the lands at the Miller Park Parcel (approximately 55 acres) leaving just a few acres of the disputed area in either granted or ungranted lands status. The State will receive clear title to all lands below the agreed common boundary line. Finally, the City is reserving a 100-foot-wide easement along the top of the bank and down the waterside of the levee bank for purposes of pedestrian access, erosion control, bank stabilization, vegetation removal, and landscaping.

After approval of the proposed BLA and its execution by the Commission and the Governor and its recordation, the City proposes to seek repeal of the 1970 and 1973 statutory grants because there will be very little land subject to them. Commission staff does not see any detriment to the State in this approach.

Regarding the North Parcel there has been no dispute to date over the location of the common boundary. This parcel has been included in this BLA to preclude future controversy over its western boundary and the extent of state sovereign interest in it.

There are five privately owned parcels south of U.S. Highway 50 and north of the Miller Park Parcel. The parties have drawn and agreed to the placement of the common boundary as it crosses these lands and the effectiveness of this Agreement if and when the City acquires title to them.

Legal Requirements:

Pursuant to Public Resources Code section 6357, the Commission may establish the ordinary high-water mark by agreement whenever it is deemed expedient or necessary. The boundary between State sovereign lands and City and/or private uplands within the Subject Property has not been fixed by a court or an agreement but has been subject to significant artificial influences. At various times since 1850, the City's lands and the reach of the Sacramento River adjacent to them have been subject to

STAFF REPORT NO. **C77** (CONT'D)

flooding, accretions, erosion, avulsion, fillings, the construction of levees, docks, dredging, and regulated flows. The sole issue of contention between the parties is the location of the last natural bed of the Sacramento River within the Subject Property. Staff believes the boundary is susceptible to being permanently fixed and established through an agreement pursuant to Public Resources Code section 6357.

The Parties acknowledge that the Sacramento River has been subject to various natural and artificial influences over the years. Accurate maps and descriptions showing the location of the levees relative to the Sacramento River and the ordinary high-water mark prior to 1900 cannot be found despite the best efforts of the Parties. The Parties are proposing to establish a fixed common boundary along the boundary of Rancho New Helvetia. Staff believes there is no sovereign interest within Rancho New Helvetia at this location because there is no evidence that the State made an appearance at the Rancho's confirmation proceedings in 1865-1866 and, under *Summa Corporation v. California* (1984) 466 U.S. 198, the Commission is precluded from asserting a sovereign interest under those circumstances. The location of the common boundary is consistent with earlier boundary line agreements north of the Subject Property.

Recommendation:

The BLA contains the following major provisions:

1. The establishment of a fixed common boundary line that is the extension of the common boundary line established in the Commission's boundary line agreement with the City for the area known as The Docks (approved by the Commission at its meeting on August 9, 2016) immediately north of the Subject Property.
2. Quitclaim by the City of any interest it may have waterward of the proposed common boundary. This will give the State clear title to lands within the bed of the Sacramento River free of any claim of the City. The City has recorded deeds that describe lands extending into the bed of the River. The quitclaim will also remove any unrecorded City interest or claim to the bed of the River waterward of the common boundary.
3. Quitclaim by the State to City of any interest the State may have landward of the proposed common boundary, i.e., Rancho New Helvetia lands within the Subject Property. Staff believes there is no sovereign interest within the Rancho New Helvetia at this location because there is no evidence that the State made an appearance at the Rancho's confirmation proceedings.

STAFF REPORT NO. **C77** (CONT'D)

4. The reservation to the City of a right to a 100-foot-wide easement for purposes of pedestrian access, erosion control, bank stabilization, vegetation removal, and landscaping waterward of the top of bank and the common boundary line. Except for the intentional or negligent acts or omissions of the Commission, its employees, agents and officers, the Commission shall incur no liability nor assume any responsibility whatsoever for damages, injuries, causes of action or otherwise, resulting now or hereafter from any defect of the river bank, including, but not limited to, its condition, state of repair, or maintenance.
5. The BLA does not provide for termination of the Public Trust over City lands landward of the common boundary because these lands are considered rancho lands and there is no record of the State asserting an interest in them in the proceedings for confirmation of Rancho New Helvetia.
6. There are a number of properties within the Subject Property north of Miller Park that are not owned by the City. The BLA provides that, should the City acquire any of these lands within the Subject Property, the City will accept the common boundary line established in this BLA as the western boundary line of such properties to the extent appropriate. The BLA provides further that the Parties shall exchange quitclaims extinguishing the interests of each in the newly acquired property of the other.
7. There are provisions in the BLA whereby the Commission confirms title to portions of Parcel No. 1 and Parcel No. 2 within the Miller Park Parcel to the City and the City accepts the grant of them.

Conclusion:

This proposed BLA is consistent with the Public Trust in that it clarifies the location and extent of sovereign lands subject to it in and along the Sacramento River within the Subject Property. No Public Trust interest is being relinquished in the upland properties because there is no evidence of State sovereign ownership in them as a result of the upland properties being part of Rancho New Helvetia. Further, execution of the proposed BLA will establish a common boundary line and clear title to the interests of each of the Parties from Old Sacramento down to the southern tip of Miller Park.

Staff believes the proposed BLA is favorable to the State overall and is a good compromise resolving the contentions of the parties. Staff recommends the approval of the proposed BLA because it eliminates the possibility of litigation

STAFF REPORT NO. **C77** (CONT'D)

with an uncertain outcome between the Parties over ownership of the various property interests. Secondly, it accomplishes a Commission goal of clarifying, defining and permanently fixing the boundaries between State interests and those of other local governmental entities. The Office of the Attorney General has reviewed the proposed BLA and concurs with staff's recommendation.

OTHER PERTINENT INFORMATION:

1. The proposed action is consistent with Strategy 1.2 of the Commission's Strategic Plan to provide that the current and future management of ungranted sovereign lands and resources and granted lands, including through strategic partnerships with trustee ports and harbor districts, is consistent with evolving Public Trust principles and values, particularly amid challenges relating to climate change, sea-level rise, public access, and complex land use planning and marine freight transportation systems; and Strategy 1.3 to protect, expand, and enhance appropriate public use and access to and along the State's inland and coastal waterways.
2. Staff recommends that the Commission find that this activity is exempt from the requirements of the California Environmental Quality Act (CEQA) as a statutorily exempt project. The project is exempt because it involves settlement of a title and boundary dispute.

Authority: Public Resources Code section 21080.11.

EXHIBIT:

- A. Site and Location Map.

RECOMMENDED ACTION:

It is recommended that the Commission:

CEQA FINDING:

Find that the activity is exempt from the requirements of CEQA pursuant to California Code of Regulations, title 14, section 15061 as a statutorily exempt project pursuant to Public Resources Code section 21080.11, settlement of a title and boundary dispute.

PUBLIC TRUST AND STATE'S BEST INTERESTS:

Find that the proposed boundary line agreement is consistent with the common law Public Trust Doctrine and in the best interests of the State.

STAFF REPORT NO. **C77** (CONT'D)

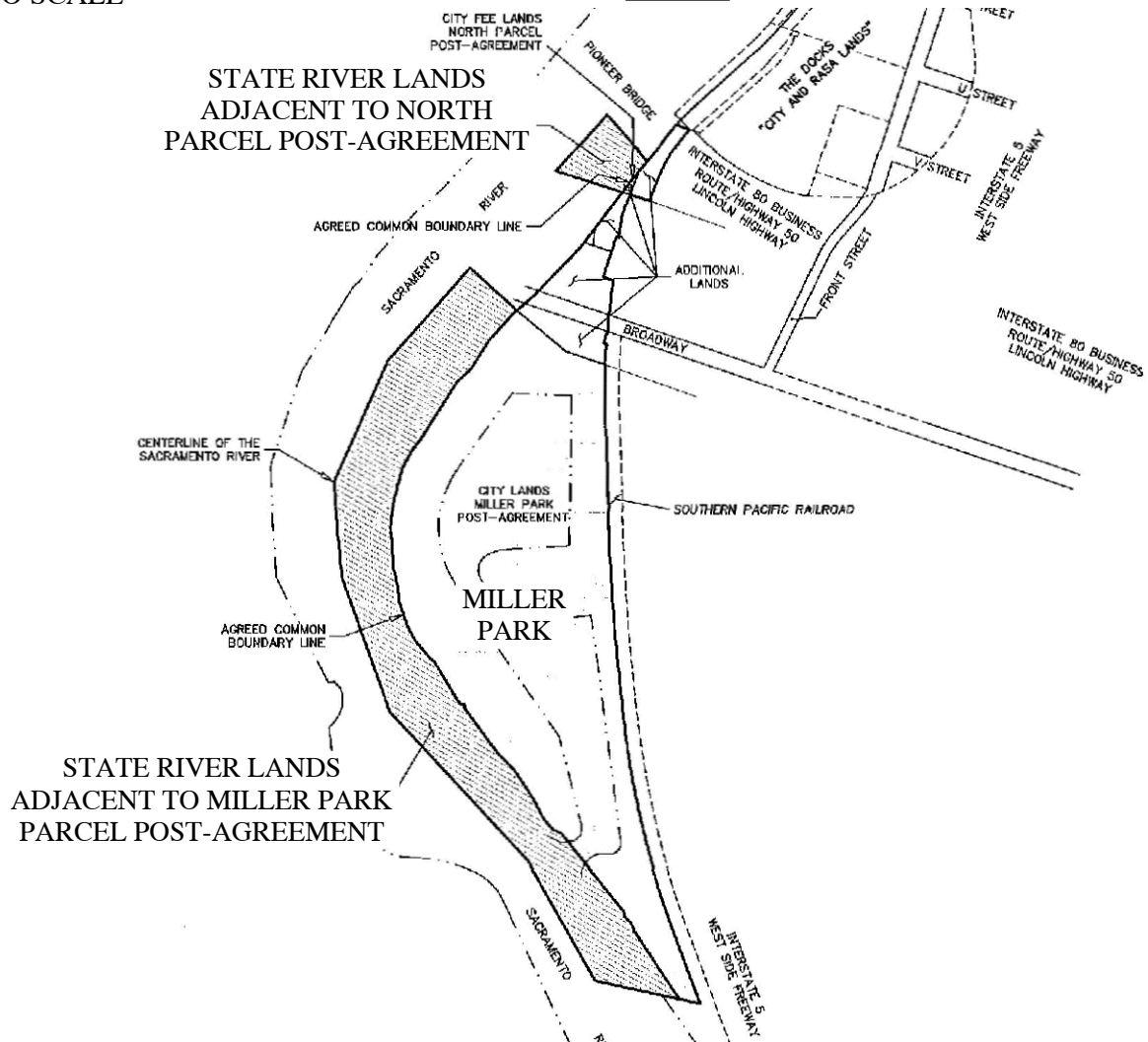
AUTHORIZATION:

1. Approve and authorize the execution, acknowledgement, acceptance, and recordation, on behalf of the Commission, of that certain agreement entitled "Agreement between the State Lands Commission and the City of Sacramento to Establish a Common Boundary Line between State Sovereign Lands and City Owned Lands at Miller Park in Sacramento, Sacramento County" pertaining to certain lands in an area bounded by the center line of the Sacramento River on the west, Pioneer Bridge on the north; lands west of the levee extending from north of Broadway to the south end of Miller Park on the east, and a line projected from the south end of Miller Park to the center of the Sacramento River on the south, in substantially the form of the agreement on file with the Commission and, including but not limited to the State's Certificate of Acceptance and Consent to Recording and all other further documents and instruments that may be necessary to fully effectuate the provisions of the agreement.

2. Authorize and direct the staff of the Commission and/or the California Attorney General to take all necessary and appropriate actions on behalf of the Commission, including the execution, acknowledgment, acceptance, and recordation of all documents as may be necessary or convenient to carry out the proposed agreement; and to appear on behalf of the Commission in any legal proceedings relating to the subject matter thereof.

NO SCALE

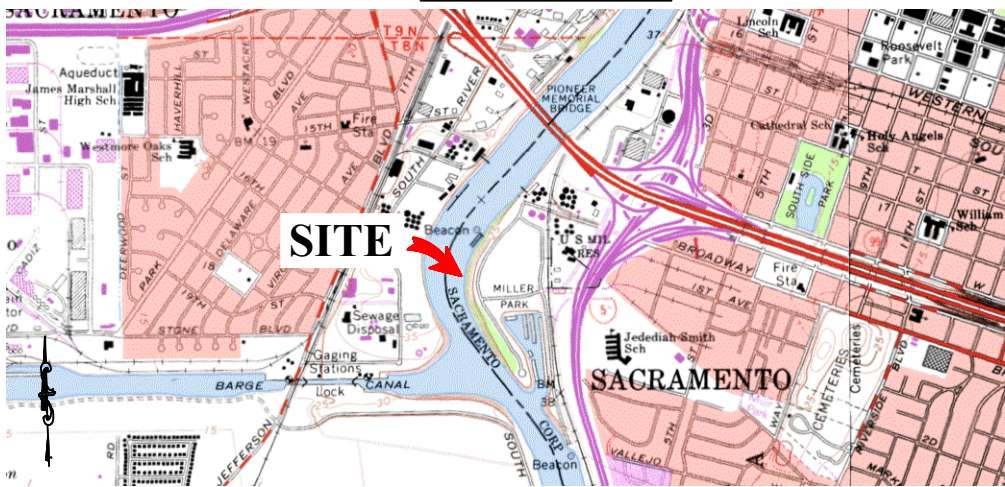
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VICINITY OF MILLER PARK, SACRAMENTO

NO SCALE

LOCATION



MAP SOURCE: USGS QUAD

Exhibit A

W 26265/ AD 666
 BLA BETWEEN SLC AND THE
 CITY OF SACRAMENTO
 BOUNDARY LINE
 AGREEMENT
 SACRAMENTO COUNTY



JWP 12/07/17

This Exhibit is solely for purposes of generally defining the boundary line agreement vicinity, is based on unverified information provided by other parties and is not intended to be, nor shall it be construed as, a waiver or limitation of any State interest in the subject or any other property.