CALENDAR ITEM
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CONSIDERATION OF A PROPOSED TITLE SETTLEMENT AND EXCHANGE AGREEMENT INVOLVING THE DOWNTOWN SACRAMENTO RAILYARDS AND CERTAIN NEARBY PARCELS ALONG THE SACRAMENTO RIVER. THE RESULT OF THE AGREEMENT WOULD BE TO TERMINATE ANY AND ALL PUBLIC TRUST AND SOVEREIGN PROPERTY RIGHTS IN THE FORMER BED OF THE AMERICAN RIVER WITHIN THE RAILYARDS, ACQUISTION OF VARIOUS PARCELS BY THE STATE, AND ISSUANCE OF A 49-YEAR LEASE OF LANDS ACQUIRED BY THE CALIFORNIA STATE LANDS COMMISSION TO THE CITY OF SACRAMENTO

PARTIES:

S. Thomas Enterprises of Sacramento LLC
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Sacramento, CA 95814
c/o: Suheil J. Totah, Vice President

City of Sacramento
730 “I” St., Suite 304
Sacramento, CA 95814
c/o: Ray Kerridge, City Manager

California Department of Parks and Recreation
1416 Ninth St.
Sacramento, CA 95814
c/o: Ruth Coleman, Director

California State Lands Commission
100 Howe Avenue, Suite 100 South
Sacramento, CA 95825-8202
c/o: Paul Thayer, Executive Officer

SUMMARY:

The present item involves a minor revision to the Title Settlement and Exchange Agreement (Agreement) approved by the Commission in 2007. As background, the Agreement provides for the exchange of property interests and termination of the State's unresolved title and boundary issues involving 24± acres of the historic bed of the American River.

Commission staff first brought the matter to the attention of the City of Sacramento in 1989. Intensive negotiations began in earnest in the fall of 2004 with the City and Thomas Enterprises' former entity, Millennia Sacramento, III, LLC. In addition to Millennia and the City, State Parks and the Union Pacific Railroad were also involved as parties to the negotiations and proposed exchange.

Negotiations reached the point that the settlement agreement was placed on the Commission's April 26, 2005 agenda. Three days before the April meeting the 3rd District Court of Appeal issued a ruling interpreting the provisions of Public Resources Code Section 6307 (as then existing) in a manner that created concerns for conducting title settlement and exchange agreements. Legislation repealing former Section 6307 and replacing it with a new Section 6307 was enacted by Chapter 585, Statutes of 2005, effective as an urgency statute on October 6, 2005. The Railyards settlement was one of several pending title settlement and exchange agreements. The settlement agreement was then placed on the October 20, 2005 meeting agenda; however, because issues pertaining to environmental insurance coverage were unresolved before the October 20th meeting, the item was removed from that agenda.

On December 3, 2007 the Commission approved Calendar Item # 37 by a vote of 2/0, with the representative of the Director of Finance supporting the State's assertion of its public trust property interest in the former bed of the American River, but abstaining on approval of the agreement at that time. The State Department of Parks and Recreation (Parks) and the California State Railroad Museum Foundation (Foundation) supported the Commission's action. Ed Manning, a representative of Thomas Enterprises (Thomas), represented that Thomas was asking the City of Sacramento (City) to condition its Subdivision Map Act approval in a manner that "would specifically prohibit" Thomas from developing any of the areas claimed by the State until settlement with the California State Lands Commission. Commission staff had interposed both written objections and alternative language as well as oral testimony to the City Council regarding approval of the subdivision map, without prior settlement of the title issues.

On December 11, 2007 the City Council approved the maps without conditioning them on formal resolution of the title dispute. The Commission subsequently authorized staff and the Attorney General's Office to take appropriate legal action. The City, Thomas, and the Commission entered into a tolling agreement regarding the State bringing a challenge to the City's approval of the subdivision maps. That tolling agreement has been extended by the parties four times and is presently set to expire on August 31, 2009.

The current calendar item as presented is substantially the same as the item approved in 2007, with minor modifications. The primary modification is that the Railshops Parcels to be transferred to State Parks from Thomas are now to be transferred in a phased process. The first phase consists of transferring the title to Railshops Parcel 1 (the Boiler Shop, Firing Line, Transfer Table, Turntable, Parcel 30A and the Track Easement) at the close of escrow on this Title Settlement and Exchange Agreement. The second phase involves Thomas's transfer of Parcel 2 (the Erecting Shop Parcel) as set forth in a separate option agreements between Thomas and State Parks.

TITLE HISTORY:

Rancho New Helvetia: When California entered the Union on September 9, 1850, title to lands within what is now downtown Sacramento were unsettled. Exhibit A is a portion of an 1850 map showing the City of Sacramento and the position of the Sacramento and American Rivers at that time. The land itself was being settled not only by those people claiming title through John Sutter and his 1841 Mexican land grant, but also by Gold Rush squatters. It was nearly 15 years after statehood, in February 1865, that Sutter's *New Helvetia Rancho* was finally confirmed to him by the United States Supreme Court. The Supreme Court had actually affirmed the existence of the grant in 1859, but the boundaries remained at issue until 1865. Part of the controversy involving Sutter's grant was the exclusion of lands overflowed by the Sacramento and American Rivers. In some years this would include nearly all of Sacramento and surrounding areas (Exhibit B) with the exception of Sutter's Fort. Ultimately the boundary was confirmed to him for lands lying southerly of the American River and easterly of the Sacramento River.

Sacramento Flooding: Because of the uncontrolled flows of both the Sacramento and American Rivers, the area that is today downtown Sacramento was susceptible to flooding annually. Exhibit B is an 1859 map showing virtually all of Sacramento subject to flooding. Floods from the Sacramento River occurred in the winters of 1849-1850 and 1852-1853. Even today, flooding threats still challenge local, state and federal decision makers in protecting the region.

Efforts to protect the City of Sacramento from floods began as early as 1850, when a levee was constructed along the Sacramento River from Sutterville to I Street and then east along China Slough (Sutter Lake). Additional efforts were conducted in 1852. By 1854 a committee had been formed, whose conclusions were that to protect the City from the American River the mouth should be physically moved north one mile to Bannon's Slough (in what is today Discovery Park near the current mouth of the American River).

In 1860 the American River cut a channel into China Slough (Sutter Lake). In 1861 a wing dam was placed on the American River near 28th Street in an effort to force the river north. During the winter of 1861-62 the city flooded four times. The Legislature entered the picture in April 1862 (in its dry, temporary facilities in San Francisco) by

authorizing the formation of a Board of City Levee Commissioners to construct and repair levees and to turn or straighten the American River away from downtown. In May of that same year the State Board of Swamp Land Commissioners submitted three recommendations including one which called for an eight mile long, one mile wide bypass channel from Brighton (near the present campus of California State University, Sacramento) to the Sacramento River at Freeport. The City Board rejected all three proposals and hired A. J. Jackson to come up with a recommendation.

Mr. Jackson proposed a new levee, which had been one of the Board of Swamp Land Commissioners proposals. It was again rejected. Mr. Jackson, in September 1862, proposed clearing and straightening bends on the American River. A contract was let in September and in November the new channel creating a new mouth to the American River was operative. Additional work was undertaken in 1864 and 1868 that culminated in the final abandonment of the old channel and current location of the new mouth of the American River. Exhibit C is a map of the City from 1873 showing the re-channeled American River, the old channel and the railroad levee. Exhibit D shows the former bed of the American River as depicted by several early surveys overlaid on the proposed Railyard development plans.

RAILYARDS AREA TITLE ISSUES:

As previously stated, confirmation of the boundaries of Sutter's *New Helvetia* grant was not settled until 1865. In the interim, the Legislature had granted, in 1857, "swamp and overflowed" lands in China Slough (Sutter Lake) to the City of Sacramento. In 1862 the City of Sacramento granted to the Central Pacific Railroad Company the same swamp and overflowed lands granted to them by the Legislature in 1857. The Legislature in 1863 directly granted the same property to the Central Pacific Railroad Company of California. These lands were determined by the 1865 United States Supreme Court decision to be within Sutter's *Rancho New Helvetia.*

In 1866 Swamp and Overflowed Lands (S&O) Survey 861 was conducted and an application to purchase the land from the State was filed. This survey involved lands easterly of the Sacramento River and northerly of Sutter's grant, but also included portions of the former American River diverted the previous year. Objections were raised and the State denied issuance of a patent for the land due to the inclusion of the former American River. The next year a modified survey (S&O #926), purporting to exclude the American River from the survey, was applied to be purchased (Exhibit D). In 1868 the Central Pacific Railroad Company objected to this application arguing that it included portions of:

1) the old channel of the American River **not** subject to entry or sale by the State;
2) *Rancho New Helvetia;*
3) lands owned in fee by Central Pacific Railroad;
4) lands granted by the federal government to the Central Pacific Railroad;
5) lands granted by the California Legislature in 1861 to Central Pacific Railroad;
6) lands not within the meaning of the Swamp Land Act.

In 1869 Central Pacific dismissed its case challenging S&O 926 and the State issued an S&O patent for the lands. S&O survey 949, situated east of S&O 926 and across the former bed of the American River to the southeast, was described as bounded by the meander of the historic American River left bank. S&O 949 was applied for in 1868 and patented in 1872 (See Exhibit D).

In 1868, when the Legislature enacted Chapter 519, granting portions of the original bed of the American River from its mouth to 31st Street to the City, for purposes of furnishing sand, earth and gravel to fill or raise the streets, alleys and levees (including the 24± acres of riverbed within the Railyards), it also authorized the sale of tidelands throughout the state (Chapter 415, Statutes of 1868). The California Supreme Court has ruled that neither the conveyance of tidelands pursuant to Chapter 415, nor reclamation or filling of such lands extinguish the State's property interest in the Public Trust Easement attached to these lands (*People v. California Fish Company*, 166 Cal 576 (1913).

The means that the Legislature has provided for clearing title to former tide and submerged lands and beds of navigable waterways are through a title settlement agreement or litigation (see Chapter 585, Statutes of 2005, partially codified as Public Resources Code Section 6307). In 1941 the Legislature enacted Chapter 581, Statutes of 1941 authorizing the California State Lands Commission to sell portions of the former bed of the American River (west of 31st Street and east of 17th Street), which involved lands that had been the subject of the prior legislative grant to the City (Chapter 519, Statutes of 1868). This is indicative of the State's continuing jurisdiction and control involving the former bed of the American River in spite of the 1868 statute.

During the 1930s the Sacramento Abstract and Title Company created maps showing a compilation of the Sutter grant, S&O 926 and 949 and the old channel of the American River. As stated above, in 1941 the Legislature enacted Chapter 581 authorizing the California State Lands Commission to sell portions of the abandoned channel of the American River. No sales were conducted under that statute. The foregoing factual and legal history lays out some of the complexity surrounding title issues regarding the former bed of the American River within the Downtown Sacramento Railyards.

In 1989 the City submitted a Notice of Preparation of a Draft Environmental Impact Report for a project involving the closure and redevelopment of the Railyard area. The staff of the Commission commented to the City on this notice and offered to assist in resolving title issues relating to the former bed of the American River. Subsequent correspondence to the City regarding the need to clear title to the former riverbed was sent in 1990 and 1991. Commission staff met with city and developer representatives at that time. In 2004 Commission staff again notified the City of the importance of clearing title claims before redevelopment and offered assistance. Commission staff then began a series of meetings with the City, Union Pacific Corporation, Millennia Sacramento, III, LLC (an entity controlled by Thomas Enterprises, Inc., and the California Department of Parks and Recreation to seek resolution of title issues within

the Railyards. Those negotiations resulted in the Settlement Agreement proposed by this calendar item. The Commission staff placed the approval of the proposed Settlement Agreement on the Commission's April 2005 agenda and again on the October 2005 agenda. As previously mentioned those agenda items were not heard at those meetings.

DOWNTOWN SACRAMENTO RAILYARDS REDEVELOPMENT BACKGROUND:

The Downtown Sacramento Railyards history dates to the Civil War period. The construction of the transcontinental railroad, with its western terminus in Sacramento began in 1863 and culminated with the driving of the Golden Spike in Promontory, Utah in 1869. Sacramento was the headquarters of the Central Pacific Railroad and Omaha (the eastern end of the line) was Union Pacific's headquarters. The Railyards expanded from 20 acres of filled slough in 1863 to over 200 acres by the 1930s. Starting with 15 workers in 1863, by 1898, 3,000 workers were employed in the Railyard Shops.

For much of the Nineteenth Century the Central Pacific Railroad was not only the largest employer in the Sacramento region, but together with the Southern Pacific Railroad, which it took control of in 1884, controlled much of California's economy and politics. The peak of employment in the Shops was during World War II when nearly 7,000 workers (including many women, minorities, and Mexican nationals who were employed to fill positions opened by military service) worked in the yard. The Shops after the war were converted to more maintenance facilities and eventually most jobs were phased out to other locations. The Southern Pacific and Union Pacific Railroad companies merged in 1996 and the Railyard shops were closed permanently in 1999. In 1995 the US Environmental Protection Agency had identified the Railyards as a "Brownfields" site and selected it to serve as a cleanup pilot project. The cleanup has been progressing since that time, but remains unfinished. Thomas closed escrow with Union Pacific on their purchase and sale agreement in December 2006 and obtained a package of environmental insurance policies for completing the environmental remediation of the Railyards, with the goal being to the standard required by applicable government agencies, to permit the intended use of the property and to protect owners of the Railyards property from residual environmental liabilities.

The redevelopment of the 240± acres of the Railyards has been a well-publicized goal of the City of Sacramento for two decades. The City of Sacramento's expressed intent for this transaction is its desire to accomplish several important public benefits. According to the City the public benefits of the Railyards Specific Plan are as follows: preserve historic structures within the Railyards for use as a California Rail Technology Museum, preserve the historic depot and create a state-of-the-art intermodal center to improve transportation throughout the region, create additional parks and open space for public use, provide public access to and along the Sacramento River for bicycling, jogging, fishing, swimming, and sightseeing. Additional potential benefits include generation of approximately 10,000-12,000 jobs relating to office, retail, cultural and hotel uses.

While the City and Thomas continue to work on various aspects of the future of the Railyards property, the previously stated goals include:

► rebirth of the downtown;
► creation of a 24 hours a day, 7 days a week environment;
► establish a pedestrian connection to the downtown;
► incorporate in an effective manner the historic Alkali Flats neighborhood;
► enlarge the downtown;
► establish a critical mass (including development of approximately 10,000-12,100 residential units);
► establish a live/work hub;
► develop underutilized industrial area to a transit oriented mixed use;
► renovate the area to acknowledge its historical significance.

It is important to note that the necessary infrastructure costs may reach approximately $1 billion (including roads, lights and utilities). The City and Thomas are seeking federal funds and State bond funds (including State 1C bonds passed by state voters in 2006) in the hundreds of millions of dollars to facilitate the development of the Railyards.

PROPOSED TITLE SETTLEMENT AND EXCHANGE AGREEMENT:

In order to resolve the dispute involving title issues relating to the former American River channel, which might otherwise delay the redevelopment of the area, the staff of the Commission is proposing that the Commission exercise the authority delegated to it by the Legislature as found in Public Resources Code Section 6307. This section authorizes the Commission to exchange interests in trust lands no longer needed for public trust purposes for lands having greater utility to the trust and of equal or greater value and to extinguish the public trust interest in the former trust lands. To accomplish this, the Commission must obtain a quitclaim of the City of Sacramento's remaining interest, if any, in the Former American River Parcel, as trustee of those lands held pursuant to the 1868 legislative grant, and thereafter the Commission may conduct the exchange authorized by Section 6307.

The proposed Agreement involves parcels of land within the City of Sacramento including the Downtown Sacramento Railyards and nearby parcels in and along the Sacramento River. For purpose of identification the parcel are labeled as follows: Former American River Parcel, Railyards Parcel, Waterfront Parcel, Sand Cove Parcels, and Central Railshops Parcels (all shown for reference purposes on Exhibit F).

The Agreement provides for the following:

1. The City of Sacramento will quitclaim any interest in and to the public trust tidelands and submerged lands, within the former channel of the American River within the Railyards to the Commission and to help in meeting the equal value test of Public Resources Code Section 6307 will also convey the Sand Cove Parcels to the Commission. The Sand Cove Parcels, together with the

Waterfront Parcel, which will be conveyed to the Commission by State Parks, will be leased by the Commission to the City to be utilized for public trust purposes.

2. The California State Lands Commission's role will be to accept quitclaims of sovereign property rights within the Former American River Parcel and Railyards Parcel from the City of Sacramento and the Sand Cove Parcels also from the City and the Waterfront Parcel from State Parks. The Commission will lease the Waterfront Parcel and Sand Cove Parcels to the City of Sacramento to be used for public trust purposes. The transfer of all sovereign public trust right, title and interest by the City to the Commission, of the above-described parcels, will allow the Commission to terminate any sovereign public trust title claims to the Former American River Parcel (24.85± acres) and issue a quitclaim of any such interest in that parcel and the Railyards Parcel to Thomas. While the City and State Lands Commission assert no sovereign property interests are held in the Railyards Parcel, except for the 24.85± acres in the Former American River Parcel, both areas will receive a quitclaim deed to assure resolution of the entire property from any sovereign interest claims. The findings the Commission is being requested to make are described in the proposed findings below, but include a finding that the Commission, on behalf of the State, will be receiving value equal to or greater in the Waterfront Parcel (4.12± acres) and Sand Cove Parcels (10.3± acres) than the value of the interest it is conveying in the Former American River Parcel and Railyards Parcel. The quitclaim of any sovereign public trust interest in the Railyards Parcel is being done to clarify that no additional public trust rights exist within the Railyards, outside of the Former American River Parcel. Staff conducted land appraisals of the above described parcels and an evaluation of the claims of state sovereign public trust interest within those properties and have reached the conclusion that the Commission will receive equal or greater value in the lands acquired than the interests it will quitclaim and terminate.

3. The California Department of Parks and Recreation will transfer its title to the Waterfront Parcel to the Commission pursuant to Government Code Section 14673 to be held as public trust lands and will in exchange be receiving title to the Central Railshops Parcel 1 (Boiler Shop, Firing Line, Transfer Table, Turntable, Parcel 30 A, and the Track Easement) from Thomas upon close of escrow. Parks will release, hold harmless, defend and indemnify the Commission from any claims arising from the Waterfront Parcel.

4. Thomas will convey the Central Railshops Parcel 1 to the Department of Parks and Recreation and will receive a termination of any public trust claims and quitclaim of state sovereign interest within the Former American River Parcel and Railyards Parcel. Thomas additionally agrees to provide the Commission and State Parks (as agreed to in the separate Railroad Museum Transfer Agreement between Parks and Thomas) with liability insurance coverage for claims related to the existence of hazardous substances within the Railyards Parcel, Former American River Parcel and Thomas agrees to release, hold harmless and not

seek contribution or cost recovery from the California State Lands Commission for any and all claims and liability that might arise from the lands involved in the transaction (other than the Sand Cove Parcels), including, but not limited to toxic or hazardous material contamination.

LEGAL REQUIREMENTS:

Because the City does not have the legal authority to terminate the State's public trust interest on trust property, the Commission must alsoaccept a quitclaim form the City for the Former American River Parcel and as part of that exchange terminate the public trust interest on those filled tide and submerged lands. The Commission, in order to approve the proposed exchange, will have to make the following requisite findings provided for in Public Resources Code Section 6307 (Exhibit E):

(1) The exchange is for one or more of the purposes listed in subdivision (c).
(2) The lands or interests in lands to be acquired in the exchange will provide a significant benefit to the public trust.
(3) The exchange shall not substantially interfere with public rights of navigation and fishing.
(4) The monetary value of the lands or interests in lands received by the trust in exchange shall be equal to or greater than that of the lands or interests in lands given by the trust in exchange.
(5) The lands or interests in lands given in exchange have been cut off from water access and no longer are in fact tidelands or submerged lands or navigable waterways, by virtue of having been filled or reclaimed, and are relatively useless for trust purposes.
(6) The exchange is in the best interests of the state.

Section 6307 also provides seven alternative purposes in subsection (c) for which exchanges may be entered into, they are:

(1) to improve navigation or waterways.
(2) to aid in reclamation or flood control.
(3) to enhance the physical configuration of the shoreline or trust land ownership.
(4) to enhance public access to or along the water.
(5) to enhance waterfront and near shore development or redevelopment for public trust purposes
(6) to preserve, enhance or create wetlands, riparian or littoral habitat or open space.
(7) to resolve boundary or title disputes.

The subject agreement is being entered into for the purposes of and satisfies each of the alternatives numbered 3 through 7. Additionally, cutting off and filling of the Former American River Parcel helped accomplish alternatives 1 and 2. In addition to the above statutory required findings, the California courts have identified several other legal

requirements necessary for a conveyance of trust lands and a termination of the public trust interest in order to comply with California Constitution Article X, Section 3.

The lands must be found by the State to be:

(1) reclaimed as the result of a highly beneficial program of harbor development
(2) relatively small in area
(3) no longer useful for purposes of navigation, commerce and fisheries and the acquired lands are of such configuration that they can be used more effectively by the trustee in furtherance of public trust purposes than the filled tidelands to be conveyed

CONCLUSION AND STAFF RECOMMENDATION:

The Commission staff has conducted investigations and reviewed information submitted for the proposed exchange agreement. The Commission staff has performed appraisals and reviewed surveys, title reports, toxics reports and other studies conducted for the exchange. As described in the preceding paragraphs the facts support each of the necessary findings the Commission must make. The Former American River Parcel and Railyards Parcel were filled and reclaimed and excluded from the public channels in the 1860s as part of a highly beneficial program of waterfront development (which included elements of improving navigation, reclamation, flood control and reconfiguration of the shoreline); the Former American River Parcel and Railyards Parcel have been rendered useless for commerce, navigation and fisheries; and the Waterfront Parcel and Sand Cove Parcels may be used more effectively for public trust purposes than the Former American River and Railyards Parcels. The 24.85± acres of State claims within the Former American and Railyards Parcels are relatively small in area when compared to the hundreds of acres of filled and unfilled trust land held by the State in the American River, and the Waterfront Parcel and Sand Cove Parcels have greater public trust value and land value than the State's interest in the Former American River and Railyards Parcel. California Constitution Article XVI, Section 6 (The Gift Clause) prohibits the state from having any "power to make a gift or authorize the making of any gift, of any money or thing of value to any individual, municipal or other corporation…." This is the basis for the requirement for obtaining the *quid pro quo* of equal or greater value in an exchange.

Over the last several years the details of what Thomas and its predecessors Millennia and Union Pacific had identified they intended to convey to the Department of Parks and Recreation changed and became the focus of ongoing discussions between Thomas and Parks. Those discussions have continued to the point that the findings in this agenda item authorize an agreement reflecting the agreed to terms and thereby provide the most expeditious alternative to resolving the outstanding title and boundary issues involving the Railyards.

The staff believes and the facts support that the proposed exchange is consistent with

the public trust needs in the area. The lands, to be acquired by the Commission as trust lands (Waterfront Parcel and Sand Cove Parcels) will be managed by the City under leases from the Commission for purposes consistent with the Public Trust and the City and Commission will agree to support legislation granting these lands in trust to the City.

Commission staff and the Attorney General's Office have reviewed the proposed exchange and believe all necessary legal elements have been met for the exchange. Staff believes the indemnity, insurance and other provisions incorporated in the exchange agreement sufficiently protect the Commission from any potential liability associated with the transaction and the lands involved. Staff therefore recommends that the Commission approve the Sacramento Downtown Railyards Title Settlement and Exchange Agreement and authorize, after approval by the other parties, its execution and the execution and recordation of all documents necessary to implement it.

EXHIBITS:

A. A portion of the 1850 Chart of the Sacramento River from Susuin City to the American River California, including "Part of the River Sacramento showing the location of the cities of Sacramento and Boston".
B. 1859 Map of the City of Sacramento by John Doherty
C. 1873 Gray's Atlas Map of the City of Sacramento by J. R. Ray, City Surveyor
D. Compilation Plat of Former American River bed superimposed over the Railyard Redevelopment Area
E. Chapter 585, Statutes of 2005
F. Site Plat showing Subject Property, involving location of Former American River Parcel, Railyards Parcel, Central Railshops Parcels, Waterfront Parcel and Sand Cove Parcels

ADDITIONAL INFORMATION:

Pursuant to Public Resources Code Section 21080.11, the requirements of CEQA do not apply to agreements involving settlements of title and boundary problems by the State Lands Commission and to exchanges or leases in connection therewith.

Pursuant to Government Code Section 66412(e) the provisions of the Subdivision Map Act do not apply to boundary line or exchange agreements to which the State Lands Commission or a local agency holding a trust grant of tide and submerged lands is a party.

IT IS RECOMMENDED THAT THE COMMISSION:

CEQA FINDING:

TITLE SETTLEMENT AND LAND EXCHANGE: FIND THAT THE ACTIVITY IS EXEMPT FROM THE REQUIREMENTS OF THE CEQA PURSUANT TO 14 CALIFORNIA CODE OF REGULATIONS 15061 AS A STATUTORILY EXEMPT PROJECT PURSUANT TO PUBLIC RESOURCES CODE SECTION 21080.11, INVOLVING AN AGREEMENT SETTLING TITLE DISPUTES WITH THE CALIFORNIA STATE LANDS COMMISSION.

49-YEAR LEASE: FIND THAT THE ACTIVITY IS EXEMPT FROM THE REQUIREMENTS OF THE CEQA PURSUANT TO TITLE 14, CALIFORNIA CODE OF REGULATIONS, SECTION 15061 AS A CATEGORICALLY EXEMPT PROJECT, CLASS 1, EXISTING FACILITIES; TITLE 2, CALIFORNIA CODE OF REGULATIONS, SECTION 2905 (a)(2).

AUTHORIZATION:

1. FIND THAT THE PROPOSED SACRAMENTO DOWNTOWN RAILYARDS TITLE SETTLEMENT AND EXCHANGE AGREEMENT INCLUDES:

   A. A QUITCLAIM OF THE FORMER AMERICAN RIVER PARCEL AND RAILYARDS PARCEL, MORE PARTICULARLY DESCRIBED IN THE AGREEMENT AND SHOWN FOR REFERENCE PURPOSES ONLY ON EXHIBIT F, FROM THE CITY OF SACRAMENTOTO THE CALIFORNIA STATE LANDS COMMISSION;

   B. A QUITCLAIM OF THE SAND COVE PARCELS, AS MORE PARTICULARLY DESCRIBED IN THE AGREEMENT AND SHOWN FOR REFERENCE PURPOSES ONLY ON EXHIBIT F, FROM THE CITY OF SACRAMENTO TO THE CALIFORNIA STATE LANDS COMMISSION;

   C. A TRANSFER PURSUANT TO GOVERNMENT CODE SECTION 14673 OF JURISDICTION AND CONTROL OF THE WATERFRONT PARCEL FROM THE CALIFORNIA DEPARTMENT OF PARKS AND RECREATION TO THE CALIFORNIA STATE LANDS COMMISSION;

   D. AN ACCEPTANCE BY THE CALIFORNIA STATE LANDS COMMISSION OF THE FORMER AMERICAN RIVER PARCEL, RAILYARDS PARCEL, WATERFRONT PARCEL AND SAND COVE PARCELS AS PUBLIC TRUST LANDS;

E. A 49-YEAR LEASE OF THE WATERFRONT PARCEL AND SAND COVE PARCELS TO THE CITY OF SACRAMENTO, FOR PUBLIC TRUST PURPOSES, AND SUPPORT OF PROPOSED LEGISLATION TO GRANT THOSE PARCELS IN TRUST TO THE CITY, AS PROVIDED IN THE TITLE SETTLEMENT AND EXCHANGE AGREEMENT

F. A QUITCLAIM OF ANY AND ALL STATE SOVEREIGN PROPERTY RIGHTS, INCLUDING PUBLIC TRUST INTERESTS, IN THE FORMER AMERICAN RIVER PARCEL AND RAILYARDS PARCEL, MORE PARTICULARLY DESCRIBED IN THE AGREEMENT AND SHOWN FOR REFERENCE PURPOSES ONLY ON EXHIBIT F, TO S. THOMAS ENTERPRISES OF SACRAMENTO, LLC.

G. CONVEYANCE BY S. THOMAS ENTERPRISES OF SACRAMENTO, LLC TO THE CALIFORNIA DEPARTMENT OF PARKS AND RECREATION OF TITLE TO THE BOILER SHOP AND ASSOCIATED PROPERTY (CENTRAL RAILSHOPS PARCEL I) AT CLOSE OF ESCROW; AND ALSO PROVIDING FOR AN OPTION FOR TRANSFERRING TITLE TO THE ERECTING SHOP (CENTRAL RAILSHOPS PARCEL 2) UPON CERTAIN AGREED TO CONDITIONS.

2. FIND THAT, WITH RESPECT TO THE PROPOSED TITLE SETTLEMENT AND LAND EXCHANGE AGREEMENT, WHICH FINDINGS SHALL BE EFFECTIVE ON CLOSE OF ESCROW AS PROVIDED IN THE AGREEMENT:

A. THE EXCHANGE WILL PROVIDE A SIGNIFICANT BENEFIT TO THE PUBLIC TRUST;

B. THE EXCHANGE WILL NOT INTERFERE WITH BUT RATHER ENHANCE THE PUBLIC'S RIGHTS OF NAVIGATION, FISHING AND ACCESS TO THE SACRAMENTO RIVER;

C. THE MONETARY VALUE OF THE LANDS OR INTERESTS IN LANDS RECEIVED BY THE TRUST IN EXCHANGE (WATERFRONT PARCEL AND SAND COVE PARCELS) TO BE CONVEYED TO THE CALIFORNIA STATE LANDS COMMISSION AND LEASED TO THE CITY OF SACRAMENTO, FOR PUBLIC TRUST PURPOSES, AS DESCRIBED ABOVE, ARE EQUAL TO, OR GREATER THAN, THE VALUE OF THE STATE LANDS OR INTEREST IN LANDS TO BE CONVEYED BY THE STATE TO THOMAS ENTERPRISES SACRAMENTO, INC (FORMER AMERICAN RIVER PARCEL AND RAILYARDS PARCEL) IN EXCHANGE;

D. THE AREA OF LANDS OR INTERESTS IN LANDS BEING RELINQUISHED BY THE STATE, WHICH COLLECTIVELY ARE A

RELATIVELY SMALL AREA (24.85± ACRES) OF THE HUNDREDS OF ACRES OF FILLED AND UNFILLED PUBLIC TRUST LANDS OF THE STATE IN THE AMERICAN RIVER, HAVE BEEN EVALUATED AS TO THEIR CURRENT PHYSICAL CHARACTER AND TRUST UTILITY; THE TRUST TERMINATION PARCELS (FORMER AMERICAN RIVER PARCEL AND RAILYARDS PARCEL) HAVE BEEN CUT OFF FROM WATER ACCESS AND ARE NO LONGER IN FACT TIDELANDS OR SUBMERGED LANDS OR NAVIGABLE WATERWAYS, BY VIRTUE OF HAVING BEEN FILLED OR RECLAIMED, AS THE RESULT OF A HIGHLY BENEFICIAL PROGRAM OF FLOOD CONTROL, RECLAMATION AND HARBOR DEVELOPMENT, AND FOR 140 YEARS HAVE BEEN EXCLUDED FROM THE PUBLIC CHANNELS, AND ARE NO LONGER IN FACT TIDE OR SUBMERGED LANDS AND ARE RELATIVELY USELESS FOR PUBLIC TRUST PURPOSES;

E. THE LANDS TO BE ACQUIRED BY THE CALIFORNIA STATE LANDS COMMISSION (WATERFRONT PARCEL AND SAND COVE PARCELS) ARE OF SUCH A CONFIGURATION AND LOCATION THAT THEY CAN BE USED MORE EFFICIENTLY BY THE COMMISSION IN FURTHERANCE OF PUBLIC TRUST PURPOSES THAN THE STATE INTERESTS IN THE FILLED LANDS (FORMER AMERICAN RIVER PARCEL AND RAILYARDS PARCEL) AND UPON CLOSE OF ESCROW THE WATERFRONT PARCEL AND SAND COVE PARCELS WILL TAKE ON THE LEGAL STATUS AS PUBLIC TRUST LANDS;

F. THE EXCHANGE IS IN THE BEST INTERESTS OF THE STATE;

G. THE EXCHANGE IS BEING ENTERED INTO FOR THE EACH OF THE SEVERAL FOLLOWING PURPOSES:
1) TO ENHANCE TRUST LAND OWNERSHIP ALONG THE SHORELINE;
2) TO ENHANCE PUBLIC ACCESS TO AND ALONG THE SHORELINE;
3) TO ENHANCE WATERFRONT AND NEARSHORE DEVELOPMENT OR REDEVELOPMENT FOR PUBLIC TRUST PURPOSES;
4) TO PRESERVE, ENHANCE OR CREATE RIPARIAN HABITAT AND OPEN SPACE;
5) TO RESOLVE A BOUNDARY AND TITLE DISPUTE;

H. ON THE DATE PROVIDED FOR IN THE EXCHANGE AGREEMENT AND CONSISTENT WITH ITS TERMS, THE TRUST TERMINATION PARCELS (FORMER AMERICAN RIVER PARCEL AND RAILYARDS PARCEL) WILL BE FOUND TO NO LONGER BE NECESSARY OR USEFUL FOR THE PURPOSES OF THE PUBLIC TRUST AND ANY AND ALL PUBLIC TRUST INTEREST OR STATE SOVEREIGN TITLE THEREIN WILL BE TERMINATED.

3. FIND THAT THE LANDS TO BE CONVEYED TO THE CALIFORNIA STATE LANDS COMMISSION ARE TO BE ACCEPTED AS PUBLIC TRUST LANDS FOR THE BENEFIT OF THE PEOPLE OF THE STATE OF CALIFORNIA, TO BE HELD BY THE STATE OF CALIFORNIA FOR PUBLIC TRUST PURPOSES.

4. APPROVE AND AUTHORIZE THE EXECUTION, ACKNOWLEDGMENT, AND RECORDATION OF THE SACRAMENTO DOWNTOWN RAILYARDS TITLE SETTLEMENT AND EXCHANGE AGREEMENT AND ASSOCIATED DEEDS AND ACCEPTANCES ON BEHALF OF THE COMMISSION, IN SUBSTANTIALLY THE FORM OF THE COPY OF SUCH AGREEMENT ON FILE WITH THE COMMISSION, CONSISTENT WITH TERMS AND PROVISIONS SET FORTH IN THE AGREEMENT.

5. APPROVE AND AUTHORIZE THE ISSUANCE OF A 49-YEAR LEASE OF THE WATERFRONT PARCEL AND SAND COVE PARCELS, ACQUIRED BY THE CALIFORNIA STATE LANDS COMMISSION PURSUANT TO THE SACRAMENTO DOWNTOWN RAILYARDS TITLE SETTLEMENT AND EXCHANGE AGREEMENT, TO THE CITY OF SACRAMENTO, FOR PUBLIC TRUST PURPOSES, AS PROVIDED IN THE TITLE SETTLEMENT AND EXCHANGE AGREEMENT.

6. AUTHORIZE THE STAFF OF THE CALIFORNIA STATE LANDS COMMISSION AND/OR THE CALIFORNIA ATTORNEY GENERAL TO TAKE ALL NECESSARY OR APPROPRIATE ACTION 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 TITLE SETTLEMENT AND EXCHANGE AGREEMENT.

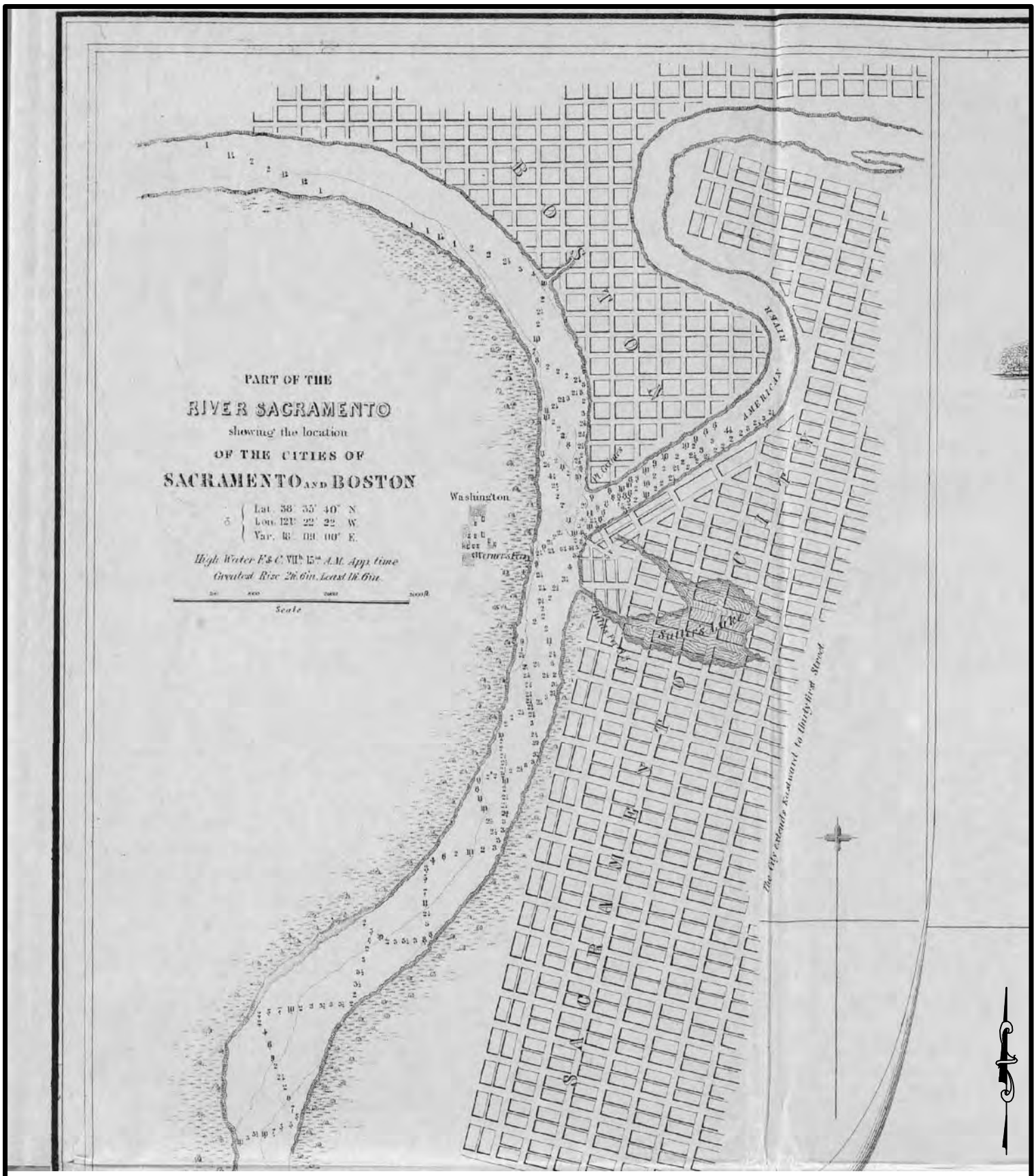


Exhibit A

CALIFORNIA STATE LANDS COMMISSION _____	A portion of the 1850 Chart of the Sacramento River from Suisun City to the American River California, including "Part of the River Sacramento showing the location of the Cities of Sacramento and Boston

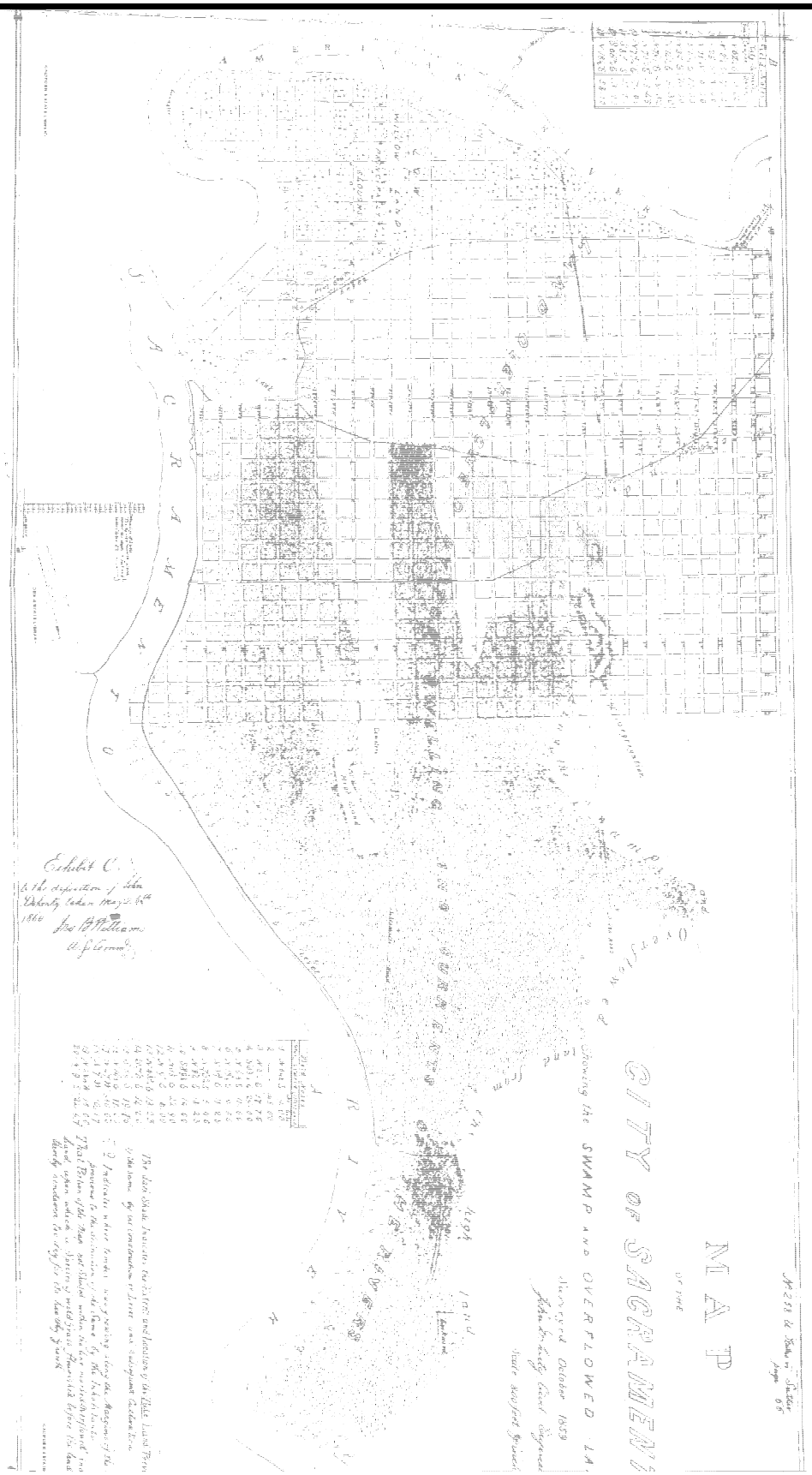


Exhibit B

CALIFORNIA STATE LANDS COMMISSION _____	1859 Map of the City of Sacramento by John Doherty

Exhibit C

CALIFORNIA STATE LANDS COMMISSION _____	1873 Gray's Atlas Map of the City of Sacramento by J. R. Ray, City Surveyor

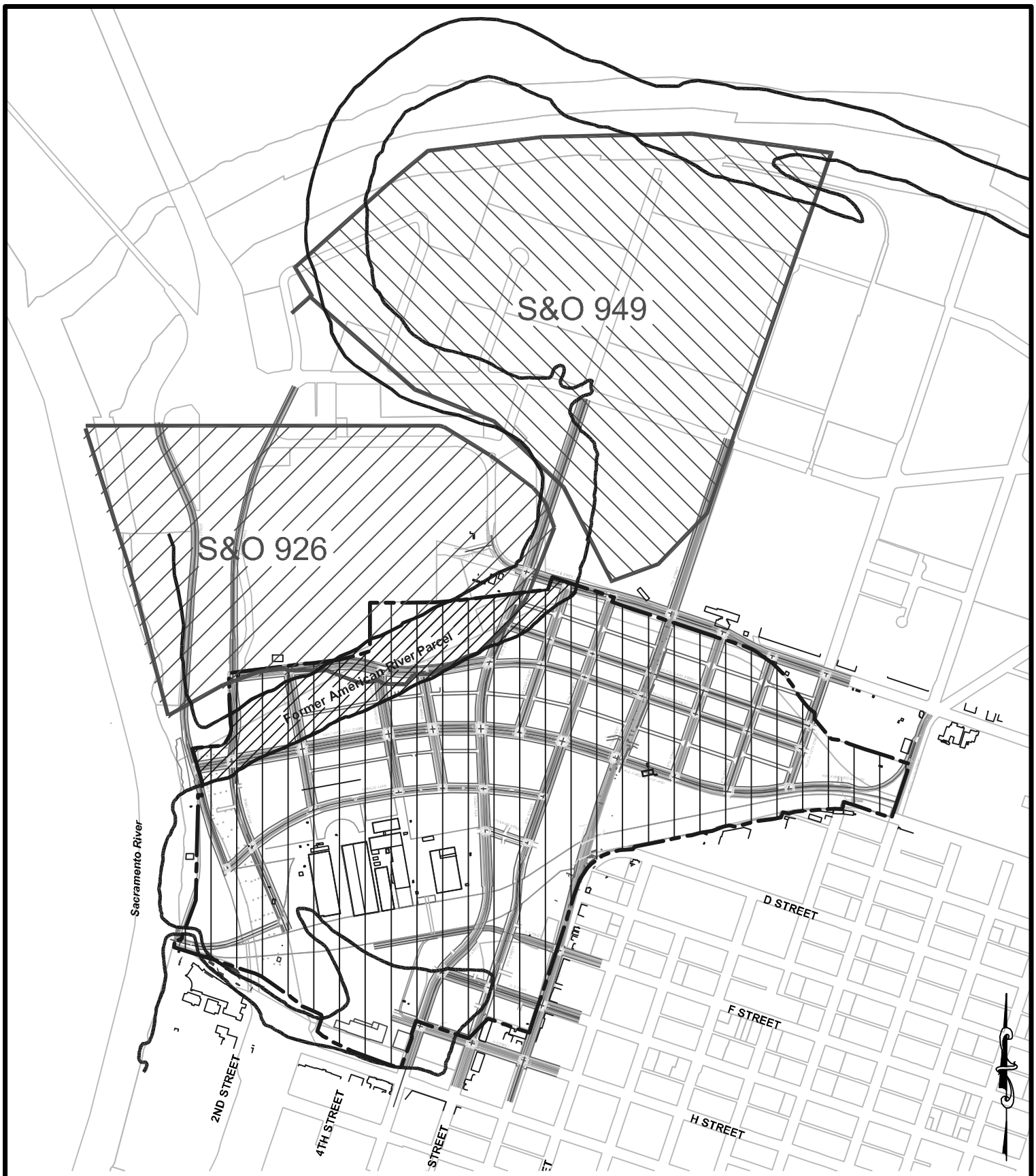


Exhibit D

CALIFORNIA STATE LANDS COMMISSION	Compliation Plat of Former American River bed superimposed over the Railyard Redevelopment Area

STATE LANDS—EXCHANGE OF PROPERTY—FILLED OR RECLAIMED TIDE AND SUBMERGED LANDS OR BEDS OF NAVIGABLE WATERWAYS

CHAPTER 585

S.B. No. 365

AN ACT to repeal and add Section 6307 of the Public Resources Code, relating to tidelands and submerged lands, and declaring the urgency thereof, to take effect immediately.

[Filed with Secretary of State October 6, 2005.]

LEGISLATIVE COUNSEL'S DIGEST

SB 365, Ducheny. Tidelands and submerged lands.

(1) Existing law authorizes the State Lands Commission, whenever it appears to the commission to be in the best interests of the state, for the improvement of navigation, to aid in reclamation, for flood control protection, or to enhance the configuration of the shoreline, and that it will not substantially interfere with the right of navigation and fishing in the waters involved, to exchange filled or unfilled lands of equal value, as specified. Existing law provides that the lands exchanged may be released from the public trust for navigation and fishing, as specified.

This bill, instead, would allow the commission to enter into an exchange, with any person or any private or public entity, of filled or reclaimed tidelands and submerged lands or beds of navigable waterways, or interests in those lands, if the commission finds that specified conditions are met.

(2) This bill would declare that it is to take effect immediately as an urgency statute.

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares all of the following:

(a) Section 25 of Article I and Sections 3 and 4 of Article X of the California Constitution were adopted to protect and promote public access to the state's waterways.

(b) The state's sovereign interests in tidelands, submerged lands, and the beds of nontidal navigable waters, whether filled or unfilled, are entrusted to the State Lands Commission to be protected as public trust lands pursuant to the California Constitution and the common law public trust doctrine.

(c) As trustee of public trust lands, the commission has a duty to protect and promote the public's access to and use of these lands for trust purposes, including commerce, navigation, and fishing.

Exhibit E

(d) As trustee of public trust lands, the commission also has a duty to protect and promote other public trust values, such as preserving waterways and adjacent lands in their natural state as open space and as environments that provide food and habitat for wildlife.

(e) Since 1850, many of the lands in and along the state's waterways have been altered by natural or human actions changing the location of the waterways and their shorelines. Thus, in some areas current conditions no longer reflect the ownership and boundaries of the waterways and adjacent uplands, leaving parcels of land with little or no utility for public trust purposes, while other lands can be used more effectively for public trust purposes.

(f) Waterways and lands nearby are often subject to unresolved boundary and title issues that impair the use of public lands for public trust purposes and burden other lands with a cloud on the title.

(g) In certain cases, and with appropriate findings, it will further public trust purposes to acquire lands not currently subject to the public trust or to settle title to lands subject to conflicting title claims.

(h) To provide the commission with the necessary authority to address these situations and continue to implement the authority set forth in Division 7 (commencing with Section 8600) of the Public Resources Code, without resort to protracted and costly litigation, and to promote public trust values and uses and public access to the state's waterways, the Legislature finds it necessary to reenact Section 6307 of the Public Resources Code as provided in Section 3 of this act.

SEC. 2. Section 6307 of the Public Resources Code is repealed.

SEC. 3. Section 6307 is added to the Public Resources Code, to read:

6307. (a) The commission may enter into an exchange, with any person or any private or public entity, of filled or reclaimed tide and submerged lands or beds of navigable waterways, or interests in these lands, that are subject to the public trust for commerce, navigation, and fisheries, for other lands or interests in lands, if the commission finds that all of the following conditions are met:

(1) The exchange is for one or more of the purposes listed in subdivision (c).

(2) The lands or interests in lands to be acquired in the exchange will provide a significant benefit to the public trust.

(3) The exchange does not substantially interfere with public rights of navigation and fishing.

(4) The monetary value of the lands or interests in lands received by the trust in exchange is equal to or greater than that of the lands or interests in lands given by the trust in exchange.

(5) The lands or interest in lands given in exchange have been cut off from water access and no longer are in fact tidelands or submerged lands or navigable waterways, by virtue of having been filled or reclaimed, and are relatively useless for public trust purposes.

(6) The exchange is in the best interests of the state.

(b) Pursuant to an exchange agreement, the commission may free the lands or interest in lands given in exchange from the public trust and shall impose the public trust on the lands or interests in lands received in exchange.

(c) An exchange made by the commission pursuant to subdivision (a) shall be for one or more of the following purposes, as determined by the commission:

(1) To improve navigation or waterways.

(2) To aid in reclamation or flood control.

(3) To enhance the physical configuration of the shoreline or trust land ownership.

(4) To enhance public access to or along the water.

(5) To enhance waterfront and nearshore development or redevelopment for public trust purposes.

(6) To preserve, enhance, or create wetlands, riparian or littoral habitat, or open space.

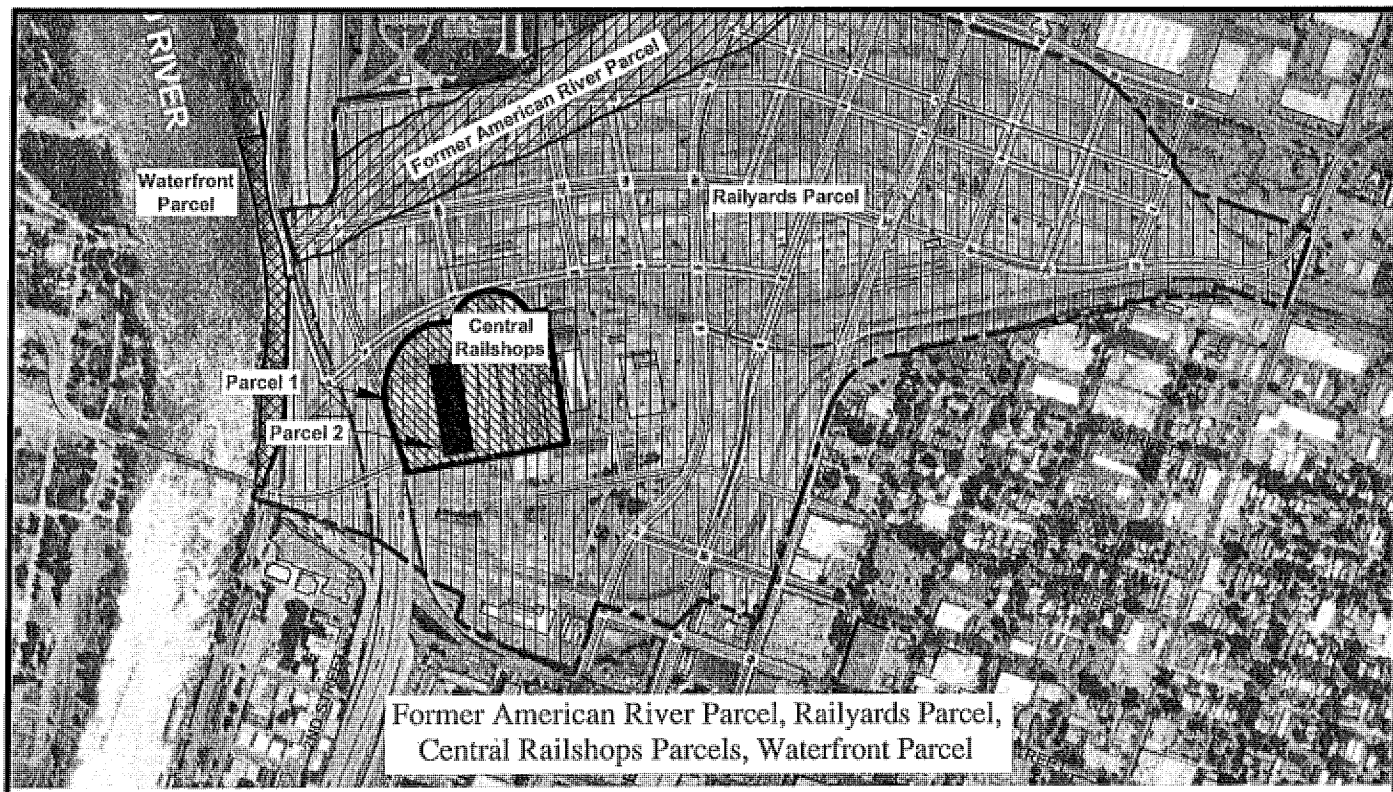
(7) To resolve boundary or title disputes.

(d) The commission may release the mineral rights in the lands or interests in lands given in exchange if it obtains the mineral rights in the lands or interests in lands received in exchange.

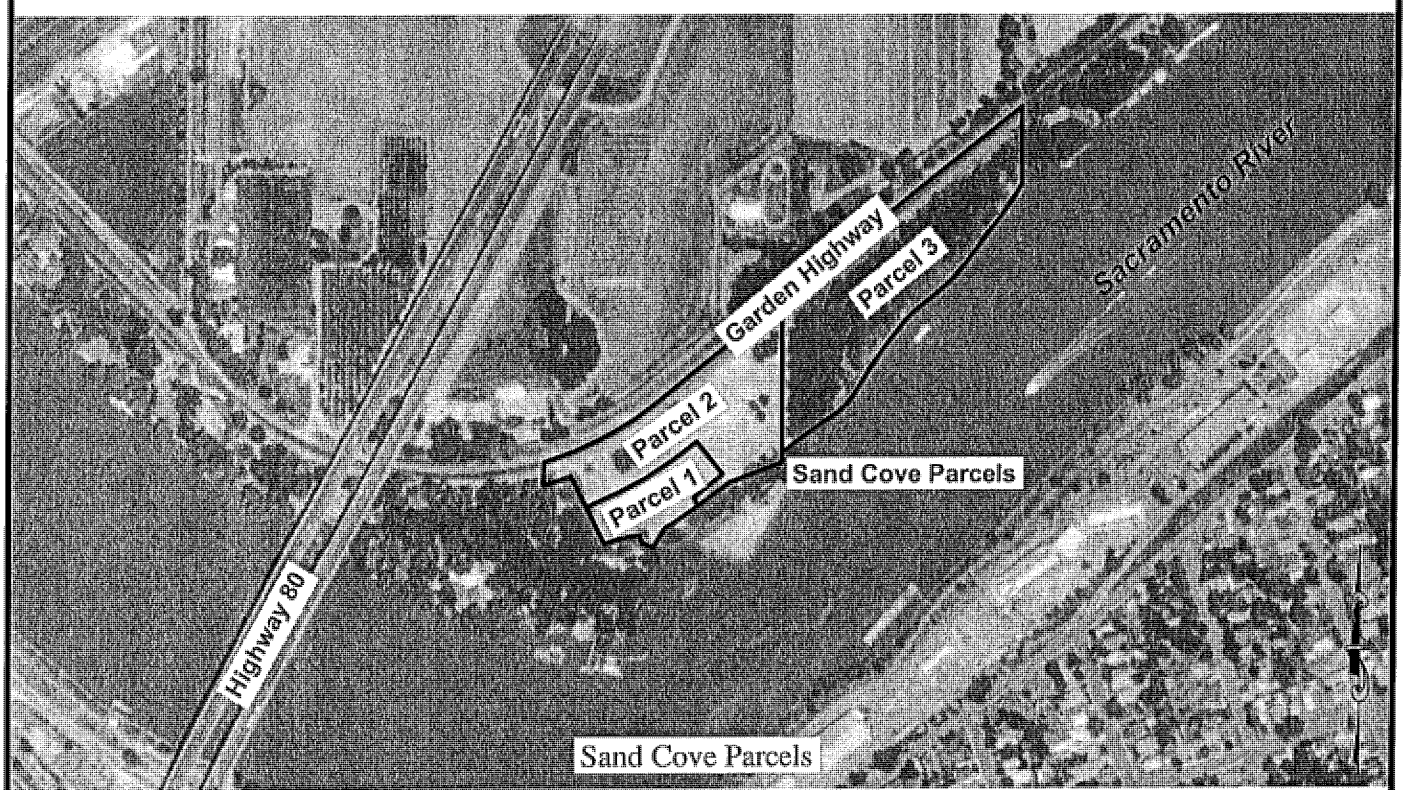
(e) The grantee of any lands or interests in lands given in exchange may bring a quiet title action under Chapter 7 (commencing with Section 6461) of Part 1 of Division 6 of this code or Chapter 4 (commencing with Section 760.010) of Title 10 of Part 2 of the Code of Civil Procedure.

SEC. 4. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to recognize the benefits to the public trust from enhancing the configuration of public ownership of and the improvement of public access to and along the shoreline for public trust uses, and to clarify the authority of the State Lands Commission to conduct exchanges involving major projects throughout the state, some of which involve hazardous waste sites, that could otherwise be mired in costly and protracted litigation or otherwise delayed, it is necessary that this act take effect immediately.



Former American River Parcel, Railyards Parcel, Central Railshops Parcels, Waterfront Parcel



Sand Cove Parcels

Exhibit F

CALIFORNIA STATE LANDS COMMISSION

Site Plan showing Subject Property, involving location of Former American River Parcel, Railyards Parcel, Central Railshops Parcel, Waterfront Parcels, and Sand Cove Parcels