

**CALENDAR ITEM  
C66**

A	10	10/16/15 W 26930 PRC 6008.1 N. Lee J. Porter
S	3	J. Garrett

**CONSIDER APPROVAL OF THE PETALUMA THEATRE DISTRICT COMPROMISE  
TITLE SETTLEMENT AGREEMENT REGARDING CERTAIN INTEREST IN LANDS  
ON THE 200 AND 300 BLOCKS OF 1<sup>ST</sup> STREET AND ADJACENT TO THE  
PETALUMA RIVER, CITY OF PETALUMA, COUNTY OF SONOMA, CALIFORNIA**

**PARTIES:**

California State Lands Commission, in its regular capacity and as Trustee of the Kapiloff Land Bank Fund (“Commission”).

Waterfront Office Building CA, LLC, Petaluma Theatre District, LLC, Petaluma Waterfront Apartments, LLC, Palo Alto Bayshore Investors, LLC, Jovian, LLC, and David Kalkbrenner as the trustee of the Kalkbrenner Family 1999 Trust dated 8/18/99 (“Owner” or collectively as “Owners”).

**PURPOSE:**

The purpose of the Compromise Title Settlement Agreement is to settle a title dispute concerning certain lands adjacent to the Petaluma River (“Subject Property”) by exchanging parcels and fixing ownership boundaries. Under the proposed Agreement the Commission will quitclaim any sovereign interest landward of the crown of the levee (“Uplands Parcels”) in exchange for the Owners quitclaiming any interest in the land waterward of the crown of the levee (“River Parcels”) and granting the Commission a six and four tenths foot (6.4’) wide public access and recreation easement on top of the levee wrapping around and cutting through the Subject Property (“Easement Parcel”).

The Subject Property includes: (1) approximately 13,088 square feet for the River Parcels; and (2) approximately 136,978 square feet for the Uplands Parcels, commonly known as Assessor’s Parcel Number (APN): 008-121-016 and APN: 008-121-018 as shown generally on Exhibit A.

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Specifically, the key terms of the proposed Agreement provide that:

- (1) Owners quitclaim any interests in the River Parcels to the Commission;
- (2) The Commission quitclaims any interests in Uplands Parcels to Owners;
- (3) Owners grant the Commission a public access and recreation easement in the Easement Parcel for the purposes of a pedestrian walkway along the levee;
- (4) Owners reserve a maintenance easement from the River Parcels for safe and nonhazardous fill and bank-protection of the Subject Property.
- (5) Owners will convey Twenty Thousand Dollars (\$20,000) to the Commission to be deposited into the Kapiloff Land Bank Fund.

**BACKGROUND:**

When California ("State") became a state on September 9, 1850, it received in trust for the people of the State all right, title, and interest in previously ungranted tidelands and submerged lands within its boundaries for certain public trust purposes including but not limited to commerce, navigation and fisheries under the Equal Footing Doctrine of the Constitution of the United States.

On September 28, 1850, the United States granted the State swamp and overflowed ("S&O") lands within its borders for the purpose of reclamation under the Arkansas Swamp Lands Act. The State of California directed the Surveyor General to sell these lands on April 28, 1855. (Chap. 151, Stat.1855.)

On September 6, 1860, the State issued a patent for the Subject Property, to a M.S. Thompson. Also, in 1860, the United States Coast and Geodetic Survey prepared a topographic map ("1860 Map") showing two submerged channels cutting through a portion of the Subject Property.

On May 14, 1861, the State enacted "An Act to provide for the Sale of the Marsh and Tide Lands of this State," which ratified and confirmed all sales of marsh and tidelands prior to the statute's effective date, subject to certain exceptions that are not applicable to the Subject Property. State and Owners disagree as to whether this statute terminated the public trust easement from any tidelands that may have been included in the patent.

In December 1865, the United States Surveyor-General approved the federal survey and mapping of Petaluma ("1865 Map"). The 1865 Map does not show

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the two channels that were present on the 1860 Map. The Parties disagree as to which mapping most accurately represents the last natural location of the State's sovereign claim.

As early as 1879, the United States Army Corps of Engineers ("Army Corps") began altering the Petaluma River ("River") by cutting off loops to straighten the River and dredging to deepen the River to improve navigability. The Army Corps continues to dredge the River for navigation purposes. As a result of the long history of this type of activity, which was undertaken to improve navigability, the Parties are in agreement that the River at this location is no longer in a natural state.

On September 26, 1966, the Commission approved two maps showing the state-owned bed of the River within the city limits of Petaluma, Sonoma County, which excluded the submerged channels shown on the 1860 Map and noted the mean high tide line ("MHTL") as waterward of the crown of the levee today. The purpose was to show the land claimed by the Commission prior to the straightening that had occurred. The Parties disagree as to whether: (1) these maps preclude the Commission from claiming an interest in the two formerly submerged channels at the Subject Property and (2) the approval fixed the boundary line at the location shown on the map, regardless of any erosion or accretion that may have occurred.

In 1974, the federal Bureau of Land Management ("BLM") denied a request by the Commission to delineate certain lands in Petaluma as "swamplands," a necessary step to perfecting title of swamplands. The request was denied because the lands were salt marsh, not swamplands, and, as such, were not granted to the State pursuant to the Arkansas Swamp Lands Act. The Subject Property is within the lands that BLM classifies as salt marsh, not swamplands. The Parties disagree about the effect this has on the extent of the Commission's claims.

In 1981, the Commission issued the owner of the Subject Property a 25-year permit to allow the owner to protect the integrity of the bank by filling a portion of the River to extend the existing bank. The Parties disagree as to the relevancy of the permit to the jurisdictional issue, and whether the fill placed in 1981 was a reclamation of property due to sudden removal of the bank pursuant to Civil Code section 1015. After the permit expired in 2006, Commission staff learned that the property had been redeveloped to a mixed-use development that includes residential units.

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The Uplands Parcels include historic tide and submerged lands currently filled and cut off from navigable waters by the proposed River Parcel. The Uplands Parcels have been filled and reclaimed for over a century. The Uplands Parcels were redeveloped in 2006 and are now improved with a mixed-use residential/commercial development. Commission staff believes such a use is incompatible with the permissible uses of sovereign lands under the common law Public Trust Doctrine. The historic fill and the non-trust compatible development on the Subject Property have rendered the property useless for public trust use purposes.

**LEGAL REQUIREMENTS:**

Pursuant to Public Resources Code section 6307, the Commission is authorized, under certain limited circumstances, to terminate the State's public trust interests and enter into a compromise title settlement agreement. Under Public Resources Code section 6307, the Commission may exchange public lands for one of the following purposes:

- (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; or
- (7) To resolve boundary or title disputes.

Additionally, Public Resources Code section 6307 requires the Commission to make the following findings before it can approve the proposed Agreement:

- (1) The purpose of the exchange is one of the seven (7) purposes listed above.
- (2) The lands or interests in lands to be acquired in the exchange will provide a significant benefit to the public trust.

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- (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.

**ANALYSIS AND STAFF RECOMMENDATION:**

Staff recommends the Commission approve the proposed Agreement for several reasons:

- (1) The purpose of the exchange is to resolve a title and boundary dispute and enhance public access to the water.**

Commission staff analyzed all the evidence available concerning the site in question, including the title history, title reports, historic use reports, surveys, survey instructions, maps, historic photographs, applicable case law and other useful information in order to determine the best evidence of the location of the boundary between State sovereign lands and privately owned uplands. Staff then relied on the best evidence of the MHTL prior to and closest in time to any artificial changes, including artificial accretions or filling. This evidence serves as the basis for the proposed compromise title settlement.

The significant historical manipulation of the riverbed by the Army Corps creates challenges and uncertainties in determining the ownership interests of the involved Parties. The variation between the 1860 map and the 1865 map creates an ambiguity with regards to the title of the land shown as channels in the 1860 map. The maps approved by the Commission in 1966 complicate the State's claim to sovereign land. The approval of this Agreement will settle a long-standing title dispute at the Subject Property.

As discussed in more detail below, the other purpose of the agreement is to enhance public access to and along the water.

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**(2) The property interests acquired by the Commission will have significant benefit to the public trust.**

The proposed Agreement involves the conveyance of two parcels to the Commission: (1) the River Parcels; and (2) the Easement Parcel. The River Parcels include some of the land waterward of the crown of the levee. It is difficult to say with certainty where the MHTL of the River was at the time of statehood due to the significant manipulation of the course of the River by the Army Corps. By acquiring a quitclaim to the land waterward of the crown of the levee, the Commission would ensure that the current waterway remains at its existing width thereby protecting the viability of the public waterway for future enjoyment.

The proposed Agreement also includes a conveyance of a recreational and access easement in the Easement Parcel to the Commission for a pedestrian path along the top of the levee in portions of Uplands Parcel 2. The Easement Parcel curves around the Uplands Parcels to connect with the public street. This will have a significant benefit to the public trust by protecting a public pathway allowing public access to and along the River.

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

The Uplands Parcels are already filled and reclaimed. Therefore, releasing the State's interest from these lands will not substantially interfere with the public rights of navigation or fishing. Further, by obtaining a quitclaim deed to the River Parcel, the Commission would be preserving the existing fishing and navigation uses in that area.

**(4) The monetary value of what the Commission will receive meets or exceeds what it is releasing.**

Under the proposed Agreement the Commission would convey its interest in the Uplands Parcels and receive fee title to the River Parcels, a public access easement in the Easement Parcel, and Twenty Thousand Dollars (\$20,000) to be deposited into the Kapiloff Land Bank Fund.

*Kapiloff Land Bank Fund*

The proposed Agreement would provide for a \$20,000 deposit into the Kapiloff Land Bank Fund, which the Commission administers as the trustee pursuant to Public Resources Code section 8600 et seq. The fund facilitates title settlements

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where exchange parcels are not readily available or are not of equal value and to potentially facilitate purchase of larger interests in land through the pooling of such acquisition money. Money acquired through a title settlement must be spent to acquire interests in land for uses that are consistent with and promote the public trust. The types of land that can be acquired with the funds include outstanding interests in tide and submerged lands, lands which may have been converted to wetlands, or adjoining or nearby lands where the public use and ownership of the land is necessary or extremely beneficial for the furtherance of public trust purposes. (Pub. Resources Code, § 8613, subd. (a).)

In the interest of settlement, the Parties have conducted independent studies and evaluations of their respective factual and legal positions relating to the disputed title and boundary claims. Appraisals and property interest evaluation studies reviewed or completed by Commission staff have shown that the monetary value of the lands and interests to be granted to the State, and the deposit of \$20,000 into the Kapiloff Land Band Fund, under this Agreement is equal to or greater than the monetary value of the lands and interests to be quitclaimed to the Owners by the State.

**(5) The lands being released have been cut off from water access and are no longer submerged lands or navigable waterways.**

The Uplands Parcels are landward of the crown of the levee. As such, no portion of the property to be conveyed by the Commission is currently submerged lands or navigable waterways. Commission staff has not found evidence of the two channels since the 1860 topographic map. It is unclear when or how these channels were filled, but it is clear that they do not exist today.

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

The proposed agreement is in the best interest of the State because it would avoid costly litigation and resolve the title dispute conclusively. Resolving the title issue ensures that the State's ownership is confirmed in the River Parcel. Additionally, this Agreement obtains: (1) a pedestrian walkway for the public along the levee, thereby enhancing public access to and along the river; and (2) twenty thousand dollars (\$20,000) for the Kapiloff Land Bank Fund.

Commission staff and the Attorney General's Office have reviewed the proposed Agreement and believe all necessary legal elements have been met. Staff therefore recommends that the Commission approve the Agreement, in substantially the form on file at the Commission's Sacramento Office, and

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authorize its execution and the execution and recordation of all documents necessary to implement it.

**STATUTORY EXEMPTION UNDER CEQA:**

Public Resources Code section 21080.11 states that the California Environmental Quality Act (CEQA) does not apply to title or boundary settlements by the Commission. As discussed above, Conflicting historical data and extensive manipulation of the waterway over time further complicate the issue.

The purpose of this exchange is to resolve a long-standing title dispute concerning the Subject Property. Staff has determined that approval of the Agreement is exempt from the requirements of CEQA as a statutorily exempt project consistent with Public Resources Code section 21080.11.

The staff recommends that the Commission find that this activity is exempt from the requirements of CEQA as a statutorily exempt project. The project is exempt because it involves settlement of title and boundary problems.

Authority: Public Resources Code section 21080.11 and California Code of Regulations, Title 14, section 15282, subdivision (f).

**SIGNIFICANT LANDS INVENTORY:**

This activity involves lands identified as possessing significant environmental values pursuant to Public Resources Code section 6370, et seq., but such activity will not affect those significant lands. Based upon the staff's consultation with the persons nominating such lands and through the CEQA review process, it is the staff's opinion that the project, as proposed, is consistent with its use classification.

**EXHIBIT:**

- A. Subject Property Location and Site Map

**AUTHORIZATION:**

It is recommended that the Commission:

**CEQA FINDINGS:**

**Compromise Title Settlement Agreement:**

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 and

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California Code of Regulations, Title 14, section 15282, subdivision (f), settlement of title and boundary problems and to exchanges or leases in connection with those settlements.

**SIGNIFICANT LANDS INVENTORY FINDING:**

Find that this activity is consistent with the use classification designated by the Commission for the land pursuant to Public Resources Code section 6370 et seq.

**AUTHORIZATION:**

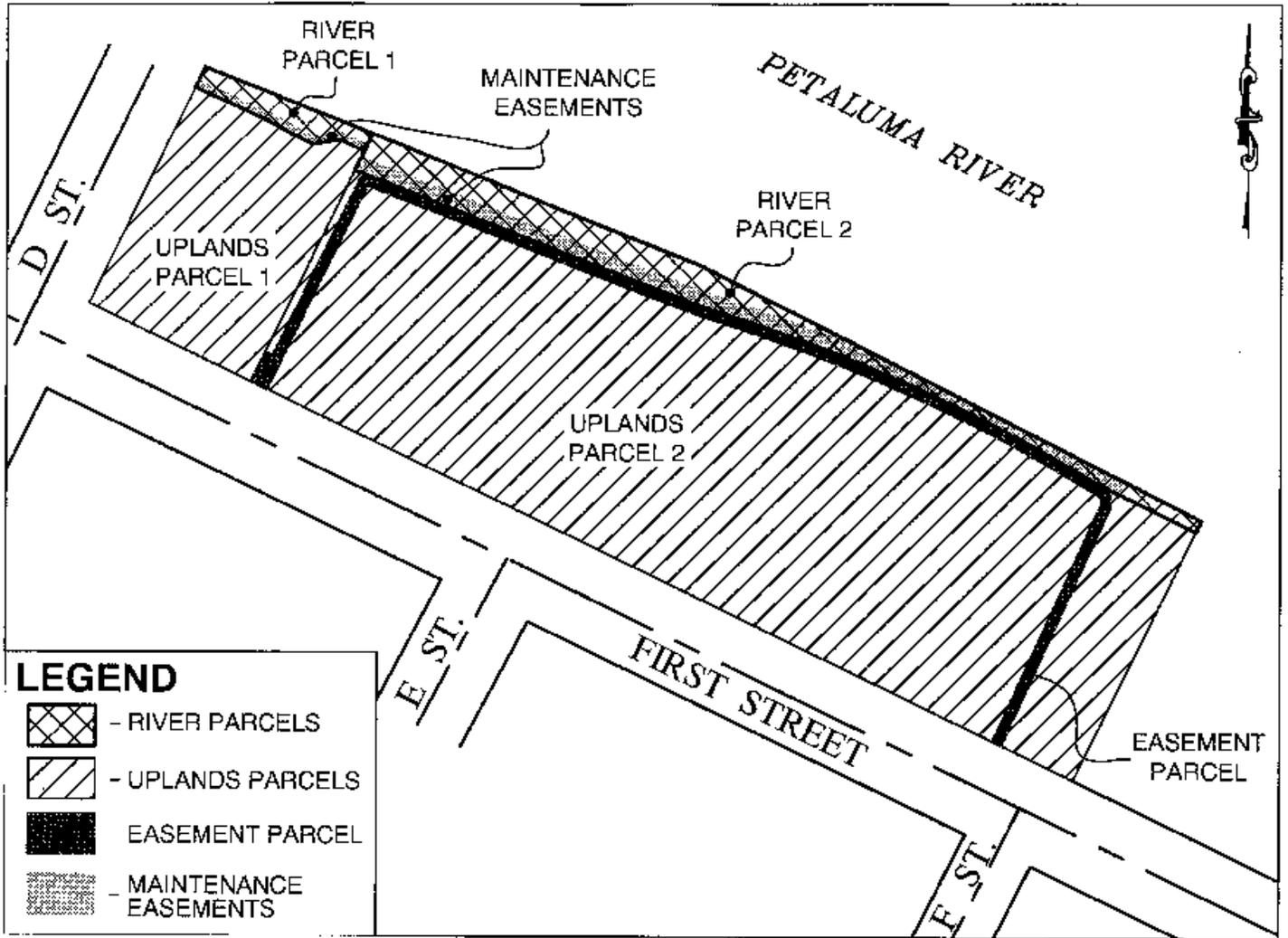
1. Find that, with respect to the proposed Compromise Title Settlement Agreement:
  - A. The River Parcels and the Easement Parcel provide significant benefits to the public trust by enhancing public access to the water through the creation of a pedestrian walkway and by protecting the State sovereign ownership over the current riverbed at this location.
  - B. The exchange provided for in this Agreement does not substantially interfere with public rights of navigation and fishing.
  - C. The monetary value of the interest in lands to be received by the Commission, including the River Parcels, Easement Parcel, and the \$20,000 to be deposited in the Kapiloff Land Bank Fund, is equal to or greater than that of the interest in lands, the Uplands Parcels, to be conveyed by the Commission.
  - D. The Uplands Parcels being relinquished by the Commission, are cut off from water access and are no longer in fact tidelands or submerged lands or the bed of a navigable waterway, by virtue of being filled or reclaimed, and are relatively useless for public trust purposes.
  - E. This Agreement is in the best interests of the state by resolving a long standing boundary and title dispute at no expense to the Commission; enhancing public access to and along the water; including a deposit of \$20,000 to the Kapiloff Land Bank Fund; and protecting the Commission's ownership in the current riverbed.

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- F. This Agreement shall extinguish any and all public trust claims in the Uplands Parcels that is being released by the Commission to the Owners and shall confirm the public trust onto the River Parcels and a public access and recreation easement on the Easement Parcel that is being received by the Commission from the Owners.
  - G. The exchange provided for in this Agreement is to enhance public access to and along the water and to resolve boundary or title disputes.
  - H. It is the intent of this Agreement that, to the extent that there are mineral rights present in either parcel, those rights shall be transferred with the corresponding surface estate.
- 2. Find that the lands to be conveyed to the State, acting by and through the Commission, are to be accepted as public trust lands for the benefit of the people of the State, to be held by the State for public trust purposes.
  - 3. Approve and authorize the execution, acknowledgment, and recordation of the Compromise Title Settlement Agreement on behalf of the Commission, in substantially the form of the copy of such agreement on file with the Commission.
  - 4. As Trustee of the Kapiloff Land Bank Fund, authorize the acceptance of \$20,000.
  - 5. Authorize and direct the staff of the 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 Compromise Title Settlement Agreement; and to appear on behalf of the Commission in any legal proceedings relating to the subject matter of the Agreement.

NO SCALE

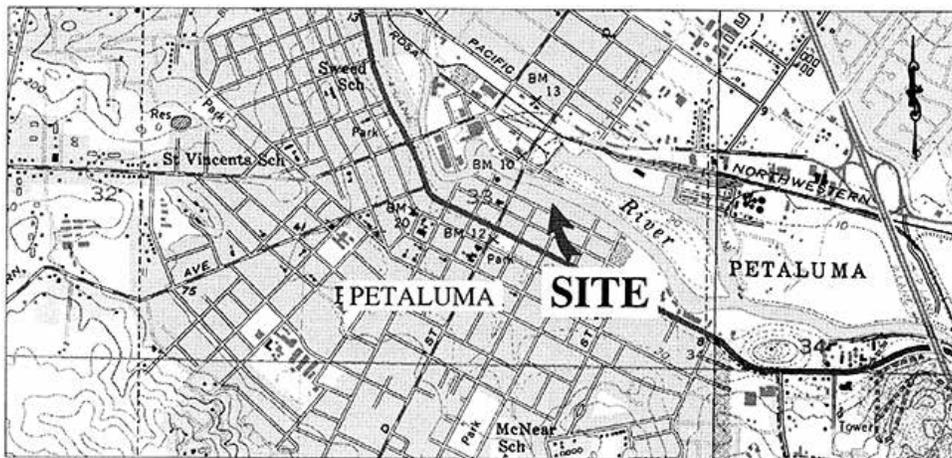
# SITE



## PETALUMA THEATRE DISTRICT

NO SCALE

# LOCATION



MAP SOURCE: USGS QUAD

# Exhibit A

W 26930  
 PETALUMA THEATRE  
 DISTRICT COMPROMISE  
 TITLE SETTLEMENT  
 SONOMA COUNTY



This Exhibit is solely for purposes of generally defining the lease premises, is based on unverified information provided by the Lessee or 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.