

**STAFF REPORT
C71**

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12/03/18

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**CONSIDER A COMPROMISE TITLE SETTLEMENT AGREEMENT INVOLVING
LANDS WITHIN AND ADJACENT TO THE HISTORIC CHANNEL OF THE
PETALUMA RIVER, CITY OF PETALUMA, SONOMA COUNTY**

PARTIES:

The Spanos Corporation

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

**PROPOSED TITLE SETTLEMENT AND TRUST TERMINATION AND PRACTICAL
IMPLICATIONS:**

This Title Settlement and Trust Termination concerns sales of historic tidal marsh and tide and submerged lands in and adjacent to the historic bed of the Petaluma River as it passes through downtown Petaluma above Washington Street (the Subject Lands of approximately 3.96 acres) and termination of the Public Trust for commerce, navigation and fishing (Public Trust) over them.

Beginning in the late 1850s, the Petaluma River (River) and adjacent lands were dredged, filled, and reclaimed to improve navigation and the flow of commerce on the River. Marsh lands were originally sold by the State Surveyor General in 1860 and the bed of the River by the Director of the Department of Finance in 1933 and 1934. The sales, however, did not terminate the Public Trust for commerce, navigation and fishing over them.

The Parties propose to enter into a Title Settlement and Trust Termination Agreement wherein the Commission: 1) will quitclaim any State interest in the Trust Termination Parcel within the Subject Lands; 2) will lift the Public Trust over the Trust Termination Parcel reserving back, however, a Public Trust Easement over a portion of lands, which will be developed into a public access trail along the River (the Public Trust Easement Parcel); and 3) and declare that the Trust Termination Parcel lands are no longer valuable for open space, fishing, and waterborne commerce because the lands have been filled, reclaimed, and cut off from the current bed of the River. The Spanos Corporation (Spanos) will thereby be allowed to construct a commercial residential complex on the Subject Lands without a cloud on title and free of State interests.

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Within the Trust Termination Parcel, the State of California (State) will retain its Public Trust Easement to and along the bank of the existing River which will be accessible to the public through an extension of Oak Street adjacent to the new proposed development. This parcel is referred to as the Public Trust Easement Parcel and is approximately 0.276 acre.

In consideration of this Commission action, Spanos 1) will convey a 0.15-acre parcel in the present channel of the River within the Subject Lands to the State (Submerged Lands Parcel); and 2) pay the State \$160,000 in compensation for terminating its Public Trust interest in the Trust Termination Parcel.

BACKGROUND:

Upon its admission to the United States of America on September 9, 1850, the State of California, by virtue of its sovereignty under the Equal Footing Doctrine of the U.S. Constitution, received in trust for the people of California all right, title, and interest in and to the tide and submerged lands and the beds of navigable waterways located within its boundaries for Public Trust purposes. Historically these Public Trust purposes referred to commerce, navigation, and fisheries. Over time the Public Trust Doctrine has broadened through caselaw and now includes swimming, boating, other forms of water recreation, open space, and preservation. The River as it passes through the city of Petaluma was and remains a navigable, tidally influenced river.

The portion of the River and adjacent lands in question here, are located between Washington Street and the Lakeville Bridge in downtown Petaluma. Historically, the River flowed in a channel that had a reverse "S" pattern forming two oxbows. The lands in the upper oxbow and the adjacent river channel itself comprise the Subject Lands. The lands in the oxbow and the bed of the river bed in the channel were sold separately as discussed below.

Sale of Marsh Lands in the Oxbow: Beginning with the passage of Chapter 151, Statutes of 1855, the State Legislature authorized the sale of swamp and overflowed lands, i.e., lands located above the line of ordinary high tide and too wet for agriculture without reclamation, but the statute excluded the sale of lands below high tide and the sale of such lands within 1 mile of an incorporated town or city.

In 1857, M.S. Thompson applied to the county surveyor for purchase of what were then considered swamp and overflowed lands within the unincorporated City of Petaluma. Pursuant to the statute, the lands, known as Swamp & Overflowed Lands Survey No. 2, were surveyed and M.S. Thompson made payments for the lands. A patent was issued to him on September 9, 1860, citing the 1855 statute as its authority.

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At the time of the sale in 1860, there was no federal list conveying these swamp and overflowed lands to the State and so the State technically did not own them. The sale went unquestioned until the early 1970s when Commission staff requested a confirmatory patent from the U.S. Bureau of Land Management (BLM) for these lands. The BLM declined to issue a patent on the grounds that it believed the lands to be "salt marsh," a type of tide and submerged lands and not swamp and overflowed lands.

The conclusion of the BLM regarding the legal character of the cut-off oxbow lands has two significant implications. First it implies that the sale was invalid because the 1855 statute did not authorize the sale of salt marsh or tide and submerged lands. Secondly, if the lands are a type of tide and submerged lands, they are sovereign and subject to the Public Trust for commerce, navigation, and fisheries.

Staff believes that any irregularities in the 1857 sale to Thompson were cured by the passage of Chapter 425, Statutes of 1872, which sought to validate the sales of swamp and overflowed lands and tidelands during the 1850s and 1860s. Nevertheless, staff believes that Chapter 425 did not terminate the Public Trust over any tidelands sold pursuant to these early land sales statutes.

Sale of the Bed of the Cut-off Channel: The River was and is a tidally influenced navigable river. Historically the head of navigation was located at the Washington Street Bridge just a short distance downstream from the Subject Lands. The head of tides, though, was considered to be upstream at least one-half mile. Navigation on the River presented a significant and continuing problem for the city from its earliest days because of its lack of depth and its sinuosity.

The City of Petaluma and the U.S. Army Corps of Engineers (USACE) were active in making navigational improvements. Beginning in 1880, dredging of existing channels began and cut-offs of large bends in the River were made. USACE activity continued into the 20th century and extended from the mouth of the River in San Pablo Bay up into the City of Petaluma.

In 1911, the City dredged, above the Washington Street Bridge, a channel 490 feet long, 50 feet wide, and 3 feet deep at mean lower low water. In 1914, the Camm & Hedges Company extended the channel a further 450 feet, 40 feet wide and 3 feet deep at mean lower low water. In addition to extending the head of navigation, this dredging cut off two large bends in the River, one of which is within the Subject Lands. In 1926, the USACE recommended the dredging of this channel upstream of the bridge "for a distance of 800 feet, 40 feet wide and 4 to 5 feet deep. The head of navigation is 935 feet above the Washington Street Bridge."

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In 1933, the Legislature enacted Chapter 762 authorizing the Director of the Department of Finance to sell the cut-off bends created by the 1911-1914 dredging. The statute identifies 17 parcels and names the intended grantees. There are no findings in the statute regarding the reasons for the sale or whether the Public Trust was to be terminated. Staff believes that the sales of the bed of the original channel did not terminate the Public Trust over them.

Spanos disagrees with and contests staff's evaluation of the sales and believes that the sales of the marsh lands and the abandoned river channel validly conveyed out all of the State's right, title, and interest including the Public Trust.

LEGAL REQUIREMENTS:

Pursuant to Public Resources Code section 6307, the Commission is authorized under certain limited circumstances to enter into a title settlement agreement and terminate the State's Public Trust interests. The Commission, in order to comply with article X, section 3 of the California Constitution and to approve the proposed title settlement and trust termination agreement must make the following requisite findings pursuant to Public Resources Code section 6307:

- (1) The exchange is for one or more of the following purposes:
 - a. To improve navigation or waterways.
 - b. To aid in reclamation or flood control.
 - c. To enhance the physical configuration of the shoreline or trust land ownership.
 - d. To enhance public access to or along the water.
 - e. To enhance waterfront and nearshore development or redevelopment for public trust purposes.
 - f. To preserve, enhance, or create wetlands, riparian or littoral habitat, or open space.
 - g. To resolve boundary or title disputes.
- (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.

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PROPOSED TITLE SETTLEMENT AND TRUST TERMINATION:

After lengthy discussions and negotiations, staff and representatives of Spanos have come to the following resolution of the subject dispute.

1. The State shall quitclaim to Spanos whatever right, title, and interest of the State that may exist in the Subject Lands.
2. The Public Trust shall be lifted from the Trust Termination Parcel; provided, however, that the Public Trust shall not be lifted from the Public Trust Easement Parcel.
3. Spanos shall quitclaim to the State all of its right, title, and interest in and to the Submerged Lands Parcel.
4. Spanos shall pay the State \$160,000 in further compensation so that the State receives equal or greater value for lifting the Public Trust from the Trust Termination Parcel; monies to be deposited in the Kapiloff Land Bank Fund.

ANALYSIS AND STAFF RECOMMENDATION:

The statutory and ownership history concerning the Subject Lands indicates the State has some form of ownership interest here. But Spanos takes the position that it has acquired the Subject Lands validly and disputes the State's interests. This dispute over the State's ownership interests is long-standing and has carried over from the previous owner of the Subject Lands. In the early 2000s, the State expended staff time and efforts in an attempt to resolve the disputed property interests with the previous owner. However, changes in market conditions halted those discussions and a settlement agreement was never completed. These ownership issues are complex with layers of competing claims and the confusion is compounded by the passage of time. This complexity and uncertainty would likely make any litigation on this matter costly and time consuming with uncertain results. For these reasons, staff recommends the proposed Title Settlement and Trust Termination Agreement as an expedient, efficient, and certain solution.

Staff recommends that the Commission authorize the Agreement and terminate the Public Trust from the Trust Termination Parcel upon making the following findings:

1. The proposed agreement will resolve a title dispute between the State and Spanos and will enhance public access to and along the waters of the River. Spanos contests the staff's assertion of the existence of the Public Trust easement within the Subject Lands. The agreement includes a quitclaim of State interest in all of the Spanos property in the Subject Lands except the Public Trust Easement Parcel and the Submerged Lands Parcel. Public access to and along the River will be enhanced by Spanos developing a

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pedestrian and bicycle path on the Public Trust Easement.

2. The lands to be acquired in exchange will provide a significant benefit to the Public Trust because of the resolution of the title dispute; the grant by Spanos to the State of the Submerged Lands Parcel in fee simple; and the cash payment. The State will hold the Submerged Lands Parcel as sovereign in character and subject to the common law Public Trust for commerce, navigation and fisheries. Further, the acquisition will increase the State's ownership of lands within the dredged channel, which is currently comprised of public and private ownership.
3. The conveyances made pursuant to the Agreement will not substantially interfere with the rights of fishing and navigation in the River because the lands being conveyed out of the State are filled and reclaimed and are cut off from the River. Pedestrians using the Public Trust Easement Parcel may be able to fish from the bank depending on water levels in the River.
4. An appraisal has been performed by a contractor of Spanos and independently reviewed by Commission staff. The parties concur in the appraisal and have negotiated a value for the Public Trust termination and the Submerged Lands Parcel. The monetary value of the Submerged Lands Parcel and the \$160,000 deposit in to the Kapiloff Land Bank Fund is equal to or greater than the value of sovereign interests in the Trust Termination Parcel being relinquished.
5. The Trust Termination Parcel has been cut off from water access and is no longer in fact tideland or submerged land or a navigable waterway by virtue of having been filled and reclaimed and is relatively useless for Public Trust purposes.
6. The proposed Agreement is in the best interests of the State because it will: enhance public access to and along the River by development of a bicycle and pedestrian path; resolve a title and boundary dispute; obtain benefits to the people of California in the acquisition of the Submerged Lands Parcel; and receipt of a cash deposit to the Kapiloff Land Bank.

OTHER PERTINENT INFORMATION:

1. The proposed action is consistent with Strategy 1.3 of the Commission's Strategic Plan to protect, expand, and enhance appropriate public use and access to and along the State's inland and coastal waterways.

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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 under Public Resources Code section 21080.11. The project is exempt because it involves settlement of title and boundary problems.

EXHIBITS:

- A. Vicinity Map
- B. Map of the Subject Lands

RECOMMENDED ACTION:

It is recommended that the Commission:

PUBLIC TRUST AND STATE'S BEST INTERESTS:

Find that the proposed title settlement and trust termination agreement is consistent with the Public Trust needs and values at this location; is consistent with the common law Public Trust Doctrine; and is in the best interests of the State.

CEQA FINDINGS:

Find that this 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.

AUTHORIZATION:

1. Terminate the Public Trust over the Trust Termination Parcel as described in that certain agreement titled "Title Settlement and Trust Termination Agreement between the Spanos Corporation and the California State Lands Commission" and shown on the attached Exhibit B based on the following:
 - a. The proposed Title Settlement and Trust Termination Agreement will resolve a title dispute between the State and Spanos and will enhance public access to and along the waters of the River. The project proponent contests the staff's assertion of the Public Trust Easement within the Subject Lands. The Agreement includes a quitclaim of State interest in all of the Subject Lands except the Public Trust Easement Parcel and the Submerged Lands Parcel. Public access to and along the River will be enhanced by the project proponent developing a pedestrian and bicycle path on the Public Trust Easement Parcel.

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- b. The lands or interest in lands to be acquired in exchange will provide a significant benefit to the Public Trust because of the resolution of the title dispute; the grant by Spanos to the State of the Submerged Lands Parcel in fee simple; and the cash payment to the Kapiloff Land Bank. The State shall hold the Submerged Lands Parcel as sovereign in character and subject to the common law Public Trust for commerce, navigation, fisheries, natural habitat protection, and water-oriented recreation. The acquisition of the Submerged Lands Parcel will increase the State's ownership of lands within the dredged channel, which is currently comprised of public and private ownership.
 - c. The conveyances made pursuant to the Agreement will not substantially interfere with the rights of fishing and navigation in the River because the lands being conveyed out of the State are filled and reclaimed and are cut off from the River. Pedestrians using the Public Trust Easement Parcel may be able to fish from the bank depending on water levels in the River.
 - d. The monetary value of the Submerged Lands Parcel and the \$160,000 deposit in to the Kapiloff Land Bank Fund is equal to or greater than the value of sovereign interests in the Trust Termination Parcel being relinquished.
 - e. The Trust Termination Parcel has been cut off from water access and is no longer in fact tideland or submerged land or a navigable waterway by virtue of having been filled and reclaimed and is relatively useless for Public Trust purposes.
 - f. The proposed Agreement is in the best interests of the State because it will enhance public access to and along the River, resolve a title and boundary dispute and will obtain significant benefits to the People of California in the acquisition of the Submerged Lands Parcel.
- 2. Find that the Public Trust termination shall not be effective until the Title Settlement and Trust Termination Agreement has been fully executed by all of the parties and the Governor of the State of California and filed in the Official Records of Sonoma County.
 - 3. Authorize the Executive Officer or her designee to approve the final drafts of all legal descriptions and exhibits and take all necessary or

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appropriate action on behalf of the Commission to execute, acknowledge, accept, and record that certain agreement titled "Title Settlement and Trust Termination Agreement between the Spanos Corporation and the California State Lands Commission" wherein 1) the Commission will quitclaim any remaining interest it has in the Trust Termination Parcel reserving back to itself the Public Trust Easement over the Public Trust Easement Parcel; 2) the Commission will terminate the Public Trust over the Trust Termination Parcel but will reserve it in the Public Trust Easement Parcel; 3) Spanos will convey and the Commission will accept a fee simple title to the Submerged Lands Parcel and hold it as sovereign in character subject to the Public Trust; and 4) Spanos will pay \$160,000 to the Commission, for deposit in the Kapiloff Land Bank.

4. Accept the conveyance of the Submerged Lands Parcel described in the Agreement and shown on Exhibit B and hold it with the character of sovereign land.
5. Authorize the deposition of \$160,000 into the Kapiloff Land Bank Fund to be used in accordance with the requirements of the Kapiloff Land Bank Act.
6. Authorize the Executive Officer or her designee and the Office of the Attorney General to take all other necessary or appropriate action on behalf of the Commission to effectuate the terms and conditions of the Agreement.

NO SCALE

VICINITY MAP

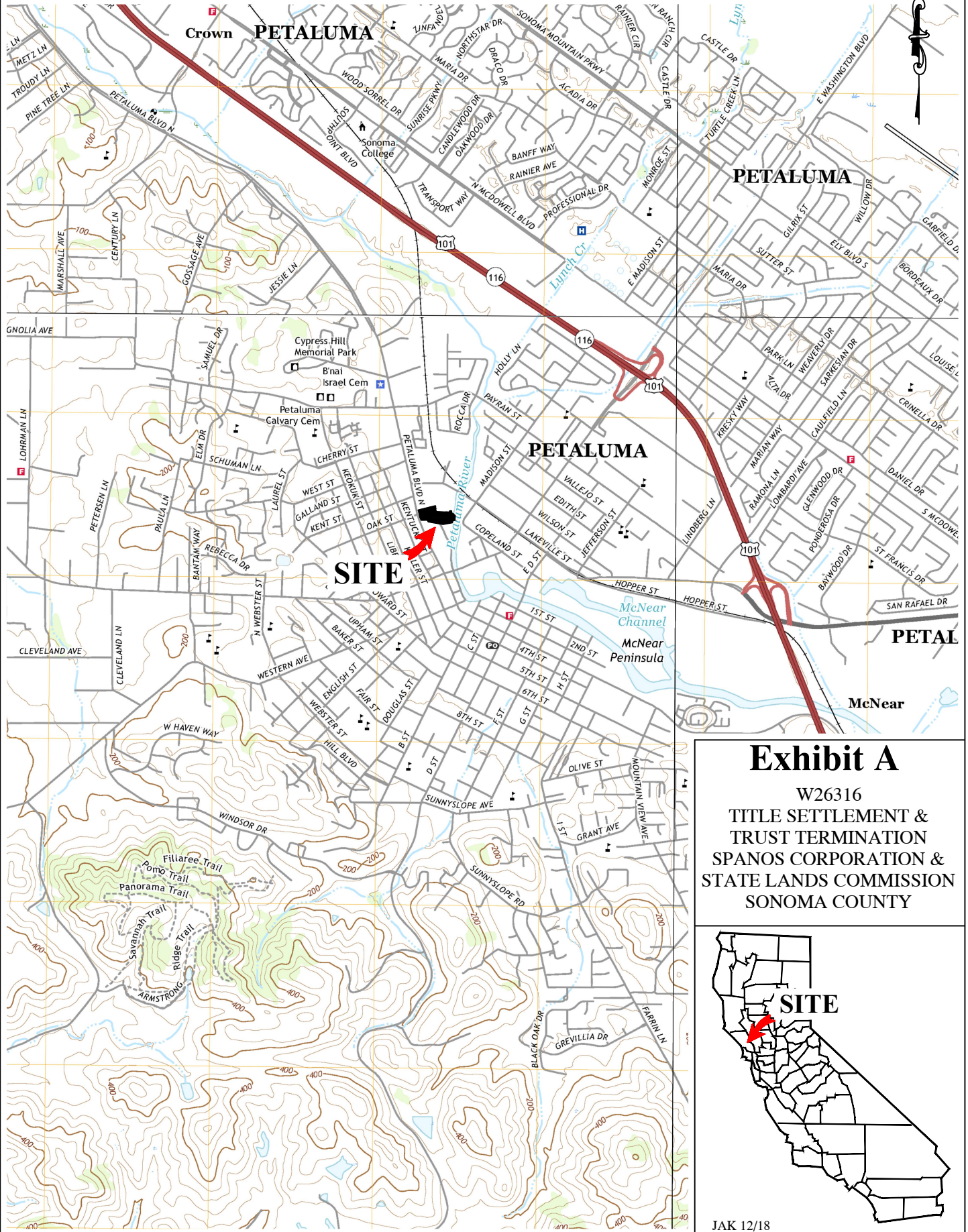





Exhibit A

W26316
 TITLE SETTLEMENT &
 TRUST TERMINATION
 SPANOS CORPORATION &
 STATE LANDS COMMISSION
 SONOMA COUNTY



NO SCALE

MAP OF SUBJECT LANDS

-  SUBMERGED LAND PARCEL
-  PUBLIC TRUST EASEMENT PARCEL
-  TRUST TERMINATION PARCEL



PETALUMA RIVER

SUBMERGED LAND PARCEL

PUBLIC TRUST EASEMENT PARCEL

TRUST TERMINATION PARCEL

LANDS OF HUNT & BEHRENS, INC.
APN 006-163-009
803 O.R. 15

LANDS OF THE SPANOS CORPORATION
APN 006-163-040
D.N. 2017-077612

FUTURE WATER STREET

LANDS OF THE SPANOS CORPORATION
APN 006-163-041
D.N. 2017-077612

LANDS OF PALM
APN 006-163-044
D.N. 2000-0094364

LANDS OF SONOMA COUNTY WATER AGENCY
APN 006-163-037
75R1817614

PETALUMA BLVD NORTH

Exhibit B

W26316
TITLE SETTLEMENT &
TRUST TERMINATION
SPANOS CORPORATION &
STATE LANDS COMMISSION
SONOMA COUNTY

