

**CALENDAR ITEM  
108**

A 72

10/14/14

W 26609

R. Collins

S 34

K. Colson

**CONSIDER A COMPROMISE TITLE SETTLEMENT AND LAND EXCHANGE  
AGREEMENT INVOLVING CERTAIN INTERESTS IN LAND LOCATED ADJACENT  
TO AND IN THE SAN GABRIEL RIVER, AND ALONG FIRST STREET AND MARINA  
DRIVE, IN THE CITY OF SEAL BEACH, COUNTY OF ORANGE, CALIFORNIA**

**PARTIES:**

Bay City Partners, LLC

California State Lands Commission

**INTRODUCTION:**

Bay City Partners, LLC (Bay City) owns the fee title to 10.9 acres of land along First Street, Marina Drive and the San Gabriel River in the City of Seal Beach (City). Bay City proposes to develop a portion of the 10.9-acre site into 32 residential lots and the rest of the site, approximately 6.4. acres, would be used for public open space and passive recreation purposes.

The 10.9-acre site, which was previously owned by the Los Angeles Department of Water and Power (DWP), is commonly known as the “former DWP property.” A 1.168-acre portion of the site where residential development is proposed is subject to a public trust easement (Trust Termination Easement Parcel). Because residential development is generally considered inconsistent with the common law Public Trust Doctrine (Public Trust Doctrine), Bay City has proposed a title settlement and land exchange that would terminate the public trust easement on the 1.168-acre Trust Termination Easement Parcel (as shown on Exhibit A). In exchange, Bay City would grant a public trust easement to the California State Lands Commission (Commission) in a 1.177-acre parcel in and along the San Gabriel River called the Public Trust Easement Parcel (as shown on Exhibit A) and contribute \$2.71 million into the Kapiloff Land Bank Fund exclusively for the acquisition of property better suited for public trust purposes. The \$2.71 million would be used to purchase outstanding interests in tidelands or lands that are nearby tidelands and beneficial for public trust purposes. The Commission and Bay City are both parties in the proposed “Compromise Title Settlement and Land Exchange

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Agreement Regarding Certain Interest in Lands in the Vicinity of the San Gabriel River, City of Seal Beach, County of Orange, California” (Agreement).

**BACKGROUND:**

*Title and Boundary History*

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 Constitution of the United States, received in trust for the people of California 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. Originally, the 10.9-acre site was located partially in Rancho Los Alamitos and partially on sovereign tidelands. The state conveyed to private parties certain sovereign land in the Alamitos Bay Area pursuant to State Tideland Location No. 137, but those lands were subject to a public trust easement for purposes of commerce, navigation and fisheries.

Several boundary line and exchange agreements involving portions of the site have fixed boundaries or relocated the public trust easement resulting in the present configuration. These agreements were fully executed and recorded with the Orange County Recorder. In 1967, Boundary Line Agreement 90 (BLA 90) was entered into between the City, DWP (the predecessors in interest to Bay City), and the Commission. BLA 90 fixed the boundary along the shore of the Pacific Ocean at the mouth of the San Gabriel River Channel. In 1968, Boundary Line Agreement 94 (BLA 94) was entered into by the Commission, the City, DWP, as well as numerous other parties that owned land adjacent to the newly-established boundary line. BLA 94 fixed the boundary between Rancho Los Alamitos and the sovereign lands of the state, certain of which were conveyed into private ownership by virtue of State Tide Land Location No. 137. BLA 94 confirmed those lands that were conveyed into private ownership pursuant to State Tide Land Location No. 137 were subject to a public trust easement for purposes of commerce, navigation and fisheries.

In 1970, a land exchange agreement which involved portions of the site, referred to as Sovereign Land Location 51 (SLL 51), was entered into between the Commission, San Gabriel River Improvement Company, Dow Chemical, and East Naples Land Company. SLL 51 terminated the public trust easement on parcels adjacent to the Public Trust Easement Parcel along the San Gabriel River in exchange for the Commission receiving fee title to certain nearby parcels. The Commission maintains that SLL 51 did not terminate the public trust easement on the Trust Termination Easement Parcel.

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Commission staff first became aware of the proposed development project in April 2012 when staff was contacted by a local community member. Commission staff sent a letter to the City's Planning Commission identifying the Commission's public trust easement interest in the Trust Termination Easement Parcel. Bay City strongly disagrees with the Commission's public trust easement claim. Commission staff and Bay City have been negotiating the proposed Agreement since 2012.

*The 10.9-Acre Site and the Proposed Development Project*

Currently, the 10.9-acre site is vacant and fenced off except for the San Gabriel River bike path improvement located along the San Gabriel River. The proposed development is for a 32-lot residential development on 4.5 acres, with another 6.4 acres to be transferred to the City for public open space. Approximately 11 of the proposed 32 lots are affected by the public trust easement on the Trust Termination Easement Parcel.

Adjacent to the southwestern end of the site is a public oceanfront recreational facility known as the River's End Staging Area (RESA) that is adjacent to both the beach and the San Gabriel River. The RESA separates the 10.9-acre site from the Pacific Ocean. It is a popular windsurfing staging area and provides parking for cyclists and pedestrians who use the San Gabriel River Trail, which connects the Pacific Ocean to the San Gabriel Mountains and runs through a portion of the site.

As a settlement of eminent domain litigation between the City and Bay City, Bay City currently leases the driveway to the RESA parking lot and the bike trail parcel to the City for \$1 a year. The settlement also provides for the conveyance of the driveway and bike trail parcels as well as the proposed 6.4-acre open space area upon the issuance of a coastal development permit (CDP) for the residential development. The lease to the City will expire on March 31, 2015, or within 30 days of a project denial by the California Coastal Commission (CCC).

The City certified the Final Environmental Impact Report (EIR) (State Clearinghouse [SCH] No. 2011061018) on June 25, 2012. The City also approved a General Plan Amendment 11-1 and Tentative Tract Map 17425 at the same meeting.

*California Coastal Commission Review of the Proposed Development Project*

Bay City applied to the CCC for a CDP for the proposed development in May 2013. The proposed development is within the Coastal Zone and there is no certified Local Coastal Program. Therefore, the CCC has original permit jurisdiction over the development project. However, the CCC's review and approval is not required for the proposed Agreement pursuant to Public Resources Code section 30416, subdivision (c).

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CCC first considered the CDP application in November 2013 and CCC staff recommended denial based on several concerns with the development project. Bay City agreed to withdraw its application and resubmit the application with the additional requested information. In August 2014, the CCC considered and voted in favor of CCC staff's determination to find the application incomplete.

The CCC has been involved in the planning for this site since the late 1970s. The CCC considered the City's proposed Land Use Plan (LUP) in 1983, which called for visitor serving development on 30 percent of the site, but the modifications suggested by CCC were never adopted by the City and the LUP was never certified. The suggested modifications included only allowing open space for parks, trails, active or passive recreation and theatre on the 70 percent of the site dedicated to open space.

The CCC staff strongly believes that higher priority uses consistent with Chapter 3 policies of the Coastal Act should be included in the development on the site. These include visitor serving commercial uses that provide accommodations, and goods and services intended to primarily serve the needs of visitors, such as hotels, as well as active or passive park use facilities. Residential use is not a high priority use under the Coastal Act. CCC staff believes that the proposed Agreement is unnecessary because the priority uses CCC staff believes are appropriate for this site, including a visitor-serving hotel, are consistent with the Public Trust Doctrine.

*Kapiloff Land Bank Fund*

The proposed Agreement would provide for a \$2.71 million deposit into the Kapiloff Land Bank Fund, which the Commission administers as the trustee pursuant to Public Resources Code section 8600 et seq. The Kapiloff Land Bank Act (Act) was introduced by Assemblyman Lawrence Kapiloff and enacted by the Legislature in 1982. The Act is an extension of the Commission's authority as set forth in Public Resources Code section 6307, enacted to facilitate settlements of title to real property with cash payments 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 and land exchange agreement and held in the Kapiloff Land Bank Fund must be spent only to acquire interest(s) in land for uses that are consistent with and promote the Public Trust Doctrine. 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).) For example, the Commission, as trustee for the Kapiloff Land Bank Fund, recently approved the acquisition of a parcel of land adjacent

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to Lake Tahoe in the city of South Lake Tahoe that provides direct public access and recreational opportunities to the lake.

**LEGAL REQUIREMENTS FOR A TITLE SETTLEMENT AND LAND EXCHANGE:**

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 and land exchange agreement. The Commission, in order to comply with article X, section 3 of the California Constitution and to approve the proposed 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; and/or
  - 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 land given by the trust in exchange;
- (5) The lands or interests in land given in exchange have been cut off from water access and are in fact no longer tidelands or submerged lands or navigable waterways and are relatively useless for public trust purposes;
- (6) Mineral interests are not being exchanged as part of the Agreement; and,
- (7) The exchange is in the best interests of the state.

**ANALYSIS AND STAFF RECOMMENDATION:**

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, feasibility studies, appraisals, local and state governmental

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staff reports, applicable case law and other useful information in determining a recommendation for the proposed Agreement.

*Purposes of the exchange.*

The purposes of the exchange provided for in the Agreement are to: 1) enhance public access and recreation to and along the water; 2) enhance the physical configuration of the trust land ownership, and 3) resolve a title dispute. Currently, the Trust Termination Easement Parcel is not adjacent to the San Gabriel River and only one corner of the parcel comes near the river. The Public Trust Easement Parcel to be received is partially located within the San Gabriel River and is a long parcel that extends along the river and the bike path located next to the river. Since the Public Trust Easement Parcel is physically located in and along the water, it provides better direct and continuous access to the San Gabriel River than the Trust Termination Easement Parcel. Since the privately owned Public Trust Easement Parcel is already improved with a bike path, obtaining a public trust easement, held by the Commission, in this parcel would ensure that the public has the right to use the bike path.

As the result of artificial changes to the mouth of the San Gabriel River and a boundary line and land exchange agreement in 1970, the Trust Termination Easement Parcel is not contiguous with other sovereign land interests. In contrast, the Public Trust Easement Parcel is adjacent to sovereign land ownership within the San Gabriel River. If the Agreement is approved, there will no longer be a gap in sovereign ownership. Additionally, the proposed Agreement will also resolve a title dispute between Bay City and the Commission of whether there is a valid public trust easement over the Trust Termination Easement Parcel.

*Interests in land to be acquired will provide a significant benefit.*

The Public Trust Easement Parcel provides significant benefits to the public trust because the parcel provides public access and recreation to, along, and in the San Gabriel River towards the Pacific Ocean. The Public Trust Easement Parcel has been improved with a portion of the San Gabriel River Bike Path that allows the public access from the Pacific Ocean to the San Gabriel Mountains. According to Bay City, there is a seasonal beach that occurs in the San Gabriel River within the Public Trust Easement Parcel that could provide beach access and beach recreational activities. The Public Trust Easement Parcel enhances the physical configuration of the trust land ownership because the public trust easement will now be located in and adjacent to the San Gabriel River and sovereign land ownership by the state. Additionally, the \$2.71 million deposit into the Kapiloff Land Bank Fund will allow the Commission to acquire outstanding interests in tide or submerged land or nearby uplands that are necessary and beneficial for public trust purposes, such as to provide meaningful public access.

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*Exchange does not substantially interfere with public rights of navigation and fishing.*

The Trust Termination Easement Parcel has been filled and reclaimed and is not covered with water. The parcel is also not adjacent to the San Gabriel River. Termination of the public trust easement in the Trust Termination Easement Parcel would not interfere with any navigation or fishing rights because it is not possible to participate in either activity in the Trust Termination Easement Parcel. The Public Trust Easement Parcel, however, will allow the public to access the water and engage in navigation, water-related recreational and fishing activities.

*Monetary value of lands or interests in lands received by the trust is equal or greater than lands given by the trust.*

Commission staff spent a significant amount of time appraising the value of the public trust easement on the Trust Termination Easement Parcel. Staff's approach was to appraise the value of the parcel based on the highest and best economic use with a trust consistent development (i.e., a visitor serving hotel) and compare that with the highest and best economic use of the parcel without consideration of the Public Trust Doctrine (i.e., residential development). The difference between those values is the basis of the valuation of the public trust easement on the Trust Termination Easement Parcel. Staff determined the state's public trust easement interest in the Trust Termination Easement Parcel is valued at \$2.71 million.

Commission staff is unable to assign any monetary value to the Public Trust Easement Parcel because if Bay City receives a CDP for the proposed development, the fee ownership of the Public Trust Easement Parcel will be transferred to the City. Under City ownership, the Public Trust Easement Parcel will be used for essentially the same public access purposes as the public trust easement that the Commission will obtain over the parcel.

Therefore, staff recommends that the proposed Agreement provide for \$2.71 million to be deposited into the Kapiloff Land Bank Fund based on the value the state's public trust easement interest in the Trust Termination Easement Parcel to ensure that the monetary value of the lands and interests to be exchanged into the Public Trust under the Agreement is equal or greater than the monetary value of the lands and interests to be exchanged out of the Public Trust. In addition to the \$2.71 million, the Commission will also receive a public trust easement on the Public Trust Easement Parcel that is slightly larger than the Trust Termination Easement Parcel.

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*Lands or interests in land given have been cut off from water access are no longer tidelands or submerged lands and are relatively useless for trust purposes.*

The Trust Termination Easement Parcel has been filled and reclaimed and does not currently provide water access. The Trust Termination Easement Parcel is no longer tidelands, submerged lands or a navigable waterway because it is physically separated from the current San Gabriel River and is no longer covered with water.

The 10.9-acre parcel was previously the site of a DWP power plant that was constructed in the 1920s and was removed in 1967. The entire site has been remediated since the 1980s and there are no environmental impairments or restrictions on the property. The Trust Termination Easement Parcel is fenced off and does not currently provide any public trust purposes.

The only portion of the 10.9-acre site impressed with a public trust easement is the 1.168-acre Trust Termination Easement Parcel that is located on the northern portion of the site, the farthest away from the ocean. This is the area that is proposed for residential development and the portion of the site closer to the ocean and the river are to be reserved as public spaces. For the past 30 years, this 1.168-acre Trust Termination Easement Parcel has remained relatively useless for trust purposes, as evidenced by the lack of trust-consistent development interest.

Since 1982, the site has been subject to a specific plan designation for open space and a visitor-serving hotel but there was never a certified Local Coastal Program (LCP) for this area. Commission staff has reviewed the feasibility studies submitted to the CCC that evaluated whether a hotel development on the site is feasible. Commission staff believes that the feasibility studies provided by Bay City concluding that a hotel is not feasible on the site are based on reasonable assumptions and analysis.

*Mineral interests are not being exchanged as part of the Agreement.*

The Agreement only involves public trust easements in the property and does not include any conveyance of fee interest that could include mineral rights. In addition, the Agreement expressly states that it does not affect any mineral interests.

*Exchange is in the best interests of the state.*

Through the proposed Agreement, the Commission will receive a slightly larger public trust easement adjacent to and in the San Gabriel River and \$2.71 million deposit in Kapiloff to acquire other interests in land better suited for public trust purposes. The proposed Agreement will allow for the residential development on the northern portion of the 10.9-acre site and, as a result, 6.4 acres will be conveyed to the City as open space and recreational land. The proposed Agreement will ensure that through



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acceptance of the Public Trust Easement Parcel the public has a permanent right to use the portion of the San Gabriel River Bike Trail that passes through the property and is currently in private ownership.

Since litigation of this matter would likely be extremely protracted and costly with uncertain results, the Parties to the Agreement consider it expedient, necessary, and in the best interests of the State and Bay City to resolve this dispute through a title settlement and land exchange agreement thereby avoiding the substantial costs and uncertainties of litigation.

Public Resources Code section 21080.11 states that “[t]his division [California Environmental Quality Act (CEQA)] shall not apply to settlements of title and boundary problems by the State Lands Commission and to exchanges or leases in connection with those settlements.” Commission staff believes that Public Resources Code section 21080.11 is applicable to the Agreement and that no additional CEQA review is required because the Agreement is in furtherance of the settlement of title problems. The dispute is over whether there is a valid public trust easement on the Trust Termination Easement Parcel.

In addition, the City certified an EIR on June 25, 2012, that examined all the environmental effects from the Specific Plan Amendment and related development on the site. The EIR did not discuss the title settlement and land exchange agreement that would be necessary before the development occurred. Although Commission staff believes the statutory exemption discussed above applies, in an abundance of caution, Commission staff prepared an Addendum to the certified EIR as contained in Exhibit B. There is no legal requirement to publicly circulate an Addendum; however, Commission staff published the Addendum on its website on October 1, 2014, and sent notices to all recipients on the original EIR mailing list as well as other interested parties known to Commission staff. As detailed in the Addendum, Commission staff found that the modified project, the proposed title settlement and land exchange agreement, did not have any new significant effects on the environment.

As described in the preceding paragraphs, the facts support each of the necessary findings the Commission must make, including that the Agreement is in the best interests of the state. 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 authorize its execution and the execution and recordation of all documents necessary to implement the Agreement.

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**OTHER PERTINENT INFORMATION:**

1. The State, acting by and through the Commission, is authorized under Division 6 of the Public Resources Code, and specifically pursuant to section 6307 of such code, to enter into title settlement and land exchange agreements.
2. 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 and to exchanges or leases in connection with those settlements.

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

3. An EIR, SCH No. 2011061018, was prepared for this project by the City and certified on June 25, 2012. Commission staff has reviewed this document and Mitigation Monitoring Program prepared pursuant to the provisions of CEQA (Pub. Resources Code, § 21081.6) and adopted by the City. On October 1, 2014, Commission staff prepared an Addendum to the certified EIR and posted the Addendum on its website and mailed notices of intent informing interested persons about the Addendum.
4. This activity involves lands that have NOT been identified as possessing significant environmental values pursuant to Public Resources Code section 6370 et seq.; however, the Commission has declared that all lands are “significant” by nature of their public ownership (as opposed to “environmentally significant”). Since such declaration of significance is not based upon the requirements and criteria of Public Resources Code section 6370 et seq., use classifications for such lands have not been designated. Therefore, the finding of the project’s consistency with the use classification as required by California Code of Regulations, Title 2, section 2954 is not applicable.

**EXHIBITS:**

- A. Site and Location Map
- B. Addendum

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**RECOMMENDED ACTION:**

**CEQA FINDINGS:**

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 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.

Find that an EIR, SCH No. 2011061018, was prepared for this project by the City of Seal Beach and certified on June 25, 2012, and that the Commission has reviewed and considered the information contained therein and in the Addendum as contained in Exhibit B prepared by Commission staff.

Find that in its independent judgment, none of the events specified in Public Resources Code section 21166 or State CEQA Guidelines section 15162 resulting in any new or substantially more severe significant impacts has occurred, and therefore, no additional CEQA analysis is required.

**AUTHORIZATION:**

1. Based upon the foregoing analysis, the information contained in the Commission's files, and the information presented at the public meeting on the proposed Agreement, find that:
  - A. The Public Trust Easement Parcel provides significant benefits to the public trust because the parcel provides public access and recreation along the San Gabriel River towards the Pacific Ocean. Additionally, the Public Trust Easement Parcel enhances the physical configuration of the trust land ownership.
  - B. The exchange provided for in the Agreement does not substantially interfere with public rights of navigation and fishing, but rather will protect and enhance the public's rights of public access and recreation in the Public Trust Easement Parcel that is adjacent to and in the San Gabriel River.

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- C. The Public Trust Easement Parcel to be acquired by the Commission and, the \$2.71 million deposit into the Kapiloff Land Back Fund is equal to or greater than the monetary value of the Trust Termination Easement Parcel to be quitclaimed by the Commission to Bay City.
  - D. The Trust Termination Easement Parcel, consisting of 1.17 acres being relinquished, is cut off from water access and no longer is in fact tidelands or submerged lands or navigable waterways, by virtue of being filled and reclaimed, and is relatively useless for public trust purposes.
  - E. The Agreement is in the best interests of the state for the following reasons: 1) by consolidating and expanding the total acreage of lands protected under the public trust; 2) providing and protecting public access and recreation along the San Gabriel River through the acquisition of the Public Trust Easement Parcel; 3) the \$2.71 million deposit into the Kapiloff Land Bank Fund shall be used to purchase outstanding interests in tide and submerged lands or in lands that are beneficial for the furtherance of public trust purposes.
  - F. The Agreement shall release any and all public trust claims from the Trust Termination Parcel Easement that is being conveyed by the Commission to Bay City and shall impose the public trust easement onto the Public Trust Easement Parcel being conveyed by Bay City to the Commission.
  - G. The purposes of the exchange provided for in the Agreement are to: 1) enhance public access and recreation to and along the water; 2) enhance the physical configuration of the trust land ownership, and 3) resolve a title dispute.
  - H. It is the intent of the Agreement that no mineral rights shall be transferred as part of the Agreement.
2. Find that the lands and interests in lands to be conveyed to the State of California, acting by and through the Commission, are to be accepted as public trust lands for the benefit of the people of the State

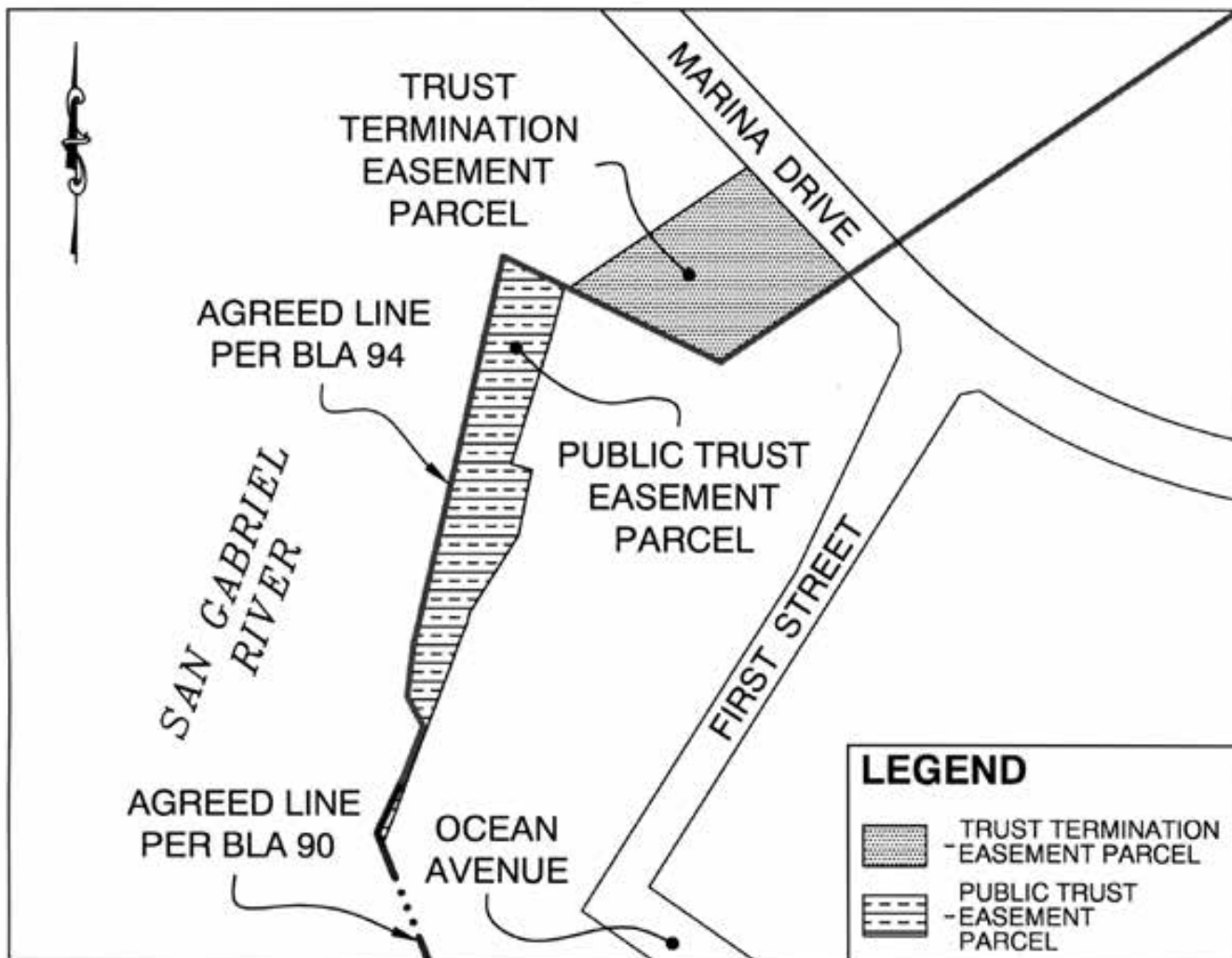
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of California, to be held by the State of California for public trust purposes.

3. Approve and authorize the execution, acknowledgment, and recordation of the 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.
4. Authorize the acceptance and deposit of \$2.71 million into the Kapiloff Land Bank Fund to be used only for the purchase of interest(s) in land pursuant to Public Resources Code section 8613, subdivision (a).
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 California State Lands Commission, including the execution, acknowledgment, acceptance, and recordation of all documents as may be necessary or convenient to carry out the Agreement; and to appear on behalf of the Commission in any legal proceedings relating to the subject matter of the Agreement.

NO SCALE

### SITE



SAN GABRIEL RIVER VICINITY, CITY OF SEAL BEACH

NO SCALE

### LOCATION



MAP SOURCE: USGS QUAD

### Exhibit A

W 26609  
 BAY CITY  
 PARTNERS, LLC  
 TITLE SETTLEMENT  
 ORANGE 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.

**ENVIRONMENTAL IMPACT REPORT ADDENDUM  
TITLE SETTLEMENT AND LAND EXCHANGE  
AGREEMENT (DEPARTMENT OF WATER AND POWER  
SPECIFIC PLAN AMENDMENT PROJECT)**

**SCH No. 2011061018**

October 2014

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**Responsible Agency:**

California State Lands Commission  
100 Howe Avenue, Suite 100 South  
Sacramento, California 95825

**Lead Agency:**

City of Seal Beach  
211 8<sup>th</sup> Street  
Seal Beach, California 90740

**Project Proponent:**

Bay City Partners, LLC  
627 Bayside Drive  
Newport Beach, California 92660

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### 1.1 PROJECT LOCATION

The Department of Water and Power Specific Plan Amendment (Project) is located within the City of Seal Beach (City), in the northwestern portion of Orange County. The overall Project involves a 10.9-acre site (Assessor's Parcel Numbers [APNs] 043-171-02, -172-07 (portions), -172-08, -172-12, and -172-13), which currently consists of vacant land, portions of a residence and commercial facility, and portions of the San Gabriel River and associated bike trail (San Gabriel River Bike Trail). The overall Project site was formerly utilized by the Los Angeles Department of Water and Power (DWP) for power plant facilities and operations. The Project site is generally bounded by Marina Drive to the north, 1<sup>st</sup> Street to the east, the Rivers End Café/beach parking lot to the south, and the San Gabriel River to the west.

### 1.2 PROJECT MODIFICATION

The proposed Project modification is a proposed Title Settlement and Land Exchange Agreement (Land Exchange Project) involving Parcels 1, 6, 7 and 8 of the Project (see Figure 2-1, *Existing Legal Parcels*).

The Project site is currently divided into eight legal parcels which are owned in fee by Bay City Partners, LLC (BCP). Parcel 1 is approximately 1.168 acre area currently encumbered with a public trust easement. A public trust easement is a sovereign public property right held by the State (under the jurisdiction of the California State Lands Commission [CSLC]), for the benefit of all the people in California. Public trust purposes include but are not limited to waterborne commerce, navigation, fisheries, water-related recreation, habitat preservation, and open space.

The proposed Land Exchange Project includes the CSLC terminating the public trust easement on Parcel 1 in exchange for BCP granting a public trust easement on a approximately 1.177 acre parcel which includes a portion of Parcel 6, and a portion of Parcel 7 and Parcel 8 along the bike trail and depositing \$2.71 million into the Kapiloff Land Bank Fund, which is administered by the CSLC (see Figure 2-2, *Proposed Exchange*).

### 1.3 PROJECT BACKGROUND AND OBJECTIVES

On May 27, 2011, BCP submitted an application to the City to develop the DWP Specific Plan area with a 48-lot residential development on 4.5 acres and 6.4 acres for public open space passive recreation purposes. The Draft Environmental Impact Report (EIR) was circulated for a 57-day public review and comment period from November 14, 2011, to January 9, 2012. Following the public review period, the City prepared a Final

EIR, which included written responses to all comments received during the public review period regarding the Draft EIR, a Mitigation Monitoring and Reporting Program, and Errata. The Final EIR was released to the public on April 2, 2012.

On May 2, 2012, and June 6, 2012, the Planning Commission held duly noticed public hearings to consider the proposed Project. During the May 2, 2012 hearing, the Applicant presented a revised tract map that contained the same number of lots within the same tract boundary, but with a different lot configuration and site access. The Planning Commission provided comments to the applicant regarding the originally submitted tract map and the revised map. The concerns primarily focused on lot widths, drainage patterns/water quality features, pad elevations, and street/alley widths. Consequently, the Applicant again revised the tract map to address the Planning Commissions' comments. The site plan ultimately resulted in a 32-lot residential development on 4.5 acres and 6.4 acres for public open space passive recreation purposes. Upon an environmental analysis of the Alternative Site Plan, conducted in June 2012, the proposed project and Final EIR were considered by the Planning Commission and City Council. The Final EIR was certified on June 25, 2012, by the City Council.

CSLC staff first became aware of the Project in late April 2012, and on May 2, 2012, CSLC staff submitted a letter to the Planning Commission explaining that a portion of the Project site was impressed with a public trust easement. BCP, the property owner, has disagreed with CSLC's position. Several boundary line and exchange agreements with the CSLC and the prior owners involved portions of the 10.9-acre site in the late 1960s and early 1970s which fixed the boundaries of Rancho Los Alamitos and State Tideland Location No. 137.

As the agency with ownership and control of the State's ungranted tide and submerged lands, the CSLC must make specific findings pursuant to Public Resources Code section 6307 when approving a title settlement and land exchange agreement involving filled or reclaimed tide and submerged lands that are subject to the public trust.

The proposed Land Exchange Project involves \$2.71 million being deposited into the Kapiloff Land Bank Fund, which CSLC administers as the trustee pursuant to Public Resources Code section 8600 et seq. The Kapiloff Land Bank Act (Act) was introduced by Assemblyman Lawrence Kapiloff and enacted by the Legislature in 1982. The Act is an extension of CSLC's authority as set forth in Public Resources Code section 6307, which was enacted to facilitate settlements of title to real property with cash payments where exchange parcels are not readily available or are not of equal value and to facilitate mitigation through the pooling of such payments.

## **2.0 DESCRIPTION OF PROJECT MODIFICATION**

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### **2.1 ADDENDUM PURPOSE AND NEED**

Once an Environmental Impact Report (EIR) has been certified for a project, no subsequent or supplemental EIR shall be required unless one or more of the following events occurs:

- 1) Substantial changes are proposed in the project which will require major revisions of the EIR.
- 2) Substantial changes occur with respect to the circumstances under which the project is being undertaken which will require major revisions in the EIR.
- 3) New information, which was not known and could not have been known at the time the EIR was certified, becomes available. (Pub. Resources Code, § 21166.)

The State CEQA Guidelines section 15162 (Cal. Code Regs., tit. 14, § 15000 et seq.) provides additional information on when the above events trigger the need for a subsequent EIR. A subsequent EIR is required if:

- 1) Substantial changes are proposed in the project which will require major revisions of the previous EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects;
- 2) Substantial changes occur with respect to the circumstances under which the project is undertaken which will require major revisions of the previous EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; or
- 3) New information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified as complete shows any of the following:
  - A. The project will have one or more significant effects not discussed in the previous EIR;
  - B. Significant effects previously examined will be substantially more severe than shown in the previous EIR;
  - C. Mitigation measures or alternatives previously found not to be feasible would in fact be feasible, and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measure or alternative; or

- D. Mitigation measures or alternatives which are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative.

When none of the above events has occurred, yet some changes or additions are necessary, an addendum is required. (State CEQA Guidelines, § 15164.)<sup>1</sup>

As will be explained below, none of the conditions described in State CEQA Guidelines section 15162 calling for preparation of a subsequent EIR has occurred. This Addendum supports the conclusion that the Land Exchange Project does not result in any new significant environmental effects or a substantial increase in the severity of previously identified significant effects. There are no new mitigation measures or alternatives available that would substantially reduce the environmental effects beyond those previously described in the EIR. As a result, an addendum is an appropriate CEQA document for analysis and consideration of the Land Exchange Project.

Circulation of an addendum for public review is not necessary (State CEQA Guidelines, § 15164, subd. (c)); however, the addendum must be considered in conjunction with the Final EIR by the decision-making body (State CEQA Guidelines, § 15164, subd. (d)).

## **2.2 COMPONENTS OF PROJECT MODIFICATION**

Parcel 1 is encumbered with a public trust easement held by the California State Lands Commission (CSLC) in trust for the people of California. Development of residential uses is prohibited on such land. In order to settle the disputed claim of a public trust easement and allow use of Parcel 1 for residential development, the Project Proponent proposes to obtain approval from the CSLC of a title settlement and land exchange agreement pursuant to Public Resources Code section 6307 to terminate the public trust easement from Parcel 1 in exchange for Bay City Partners, LLC (BCP) granting to CSLC a public trust easement in a portion of Parcels 6, 7 and 8 and \$2.71 million to be deposited in the Kapiloff Land Bank Fund (see Figure 2-2, *Proposed Exchange*).

CSLC staff and BCP have worked on a draft title settlement and land exchange agreement for the termination of the public trust easement on Parcel 1 (1.168 acres) in exchange for a public trust easement on a portion of Parcels 6, 7, 8 (1.177 acres) which is located along the San Gabriel River, plus a cash payment of \$2.71 million to the Kapiloff Land Bank Fund. These monies will be held in the Kapiloff Land Bank Fund

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<sup>1</sup> It is noted that this Addendum does not address other CEQA exemptions that may be applicable to this land exchange, such as Public Resources Code section 21080.11 (CEQA not applicable to State Lands Commission settlements) or other CEQA categorical exemptions. (See e.g., State CEQA Guidelines, §§ 15307 (actions by regulatory agencies for protection of natural resources), 15308 (actions by regulatory agencies for protection of the environment), 15317 (open space contracts or easements), and 15061, subd. [b][3] (common sense exemption).)

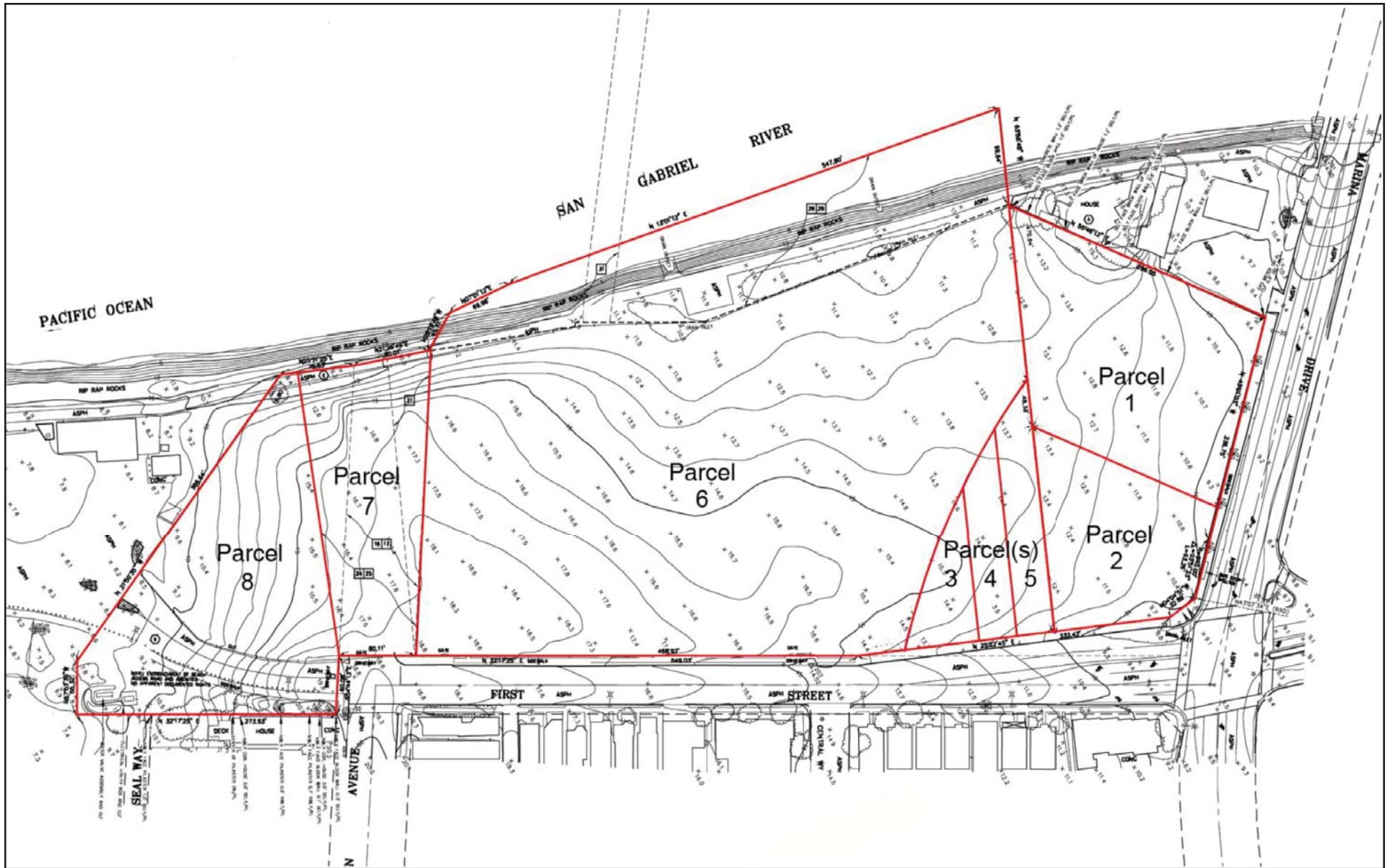
subject to the statutory requirement that they be spent to acquire property interests in tide and submerged lands or adjoining lands that are necessary or extremely beneficial for public trust purposes. The payment of \$2.71 million to this fund conforms to its purpose and furthers the CSLC's mission of acquiring public trust lands. The CSLC holds and administers the acquired lands as sovereign lands of the legal character of tidelands and submerged lands.

The CSLC's discretionary actions associated with this proposed Project modification include making the requisite findings pursuant to Public Resources Code section 6307 and approving the Title Settlement and Land Exchange Agreement prior to residential development on the site.

The Final EIR certified by the City of Seal Beach (City) did not expressly analyze the environmental effects of the proposed Land Exchange Project. Public comment was received during public review of the Draft EIR, circulated from November 14, 2011, through January 9, 2012. The City responded to those comments pertaining to the claimed public trust easement as follows:

“...comment makes a legal argument that the ‘public trust doctrine prohibits the type of residential land use proposed in this Project...’ Such argument does not raise new environmental information or challenge information provided in the Draft EIR. In that this argument does not question the Draft EIR’s factual conclusions or the adequacy of the environmental analysis in the Draft EIR, no further response is necessary.”

The purpose of this Addendum to the certified EIR is to verify that the proposed Land Exchange Project between BCP and the CSLC would not cause significant, adverse impacts to the environment.



NOT TO SCALE



THIS PLAT FOR  
GENERAL  
REFERENCE ONLY

NO SCALE

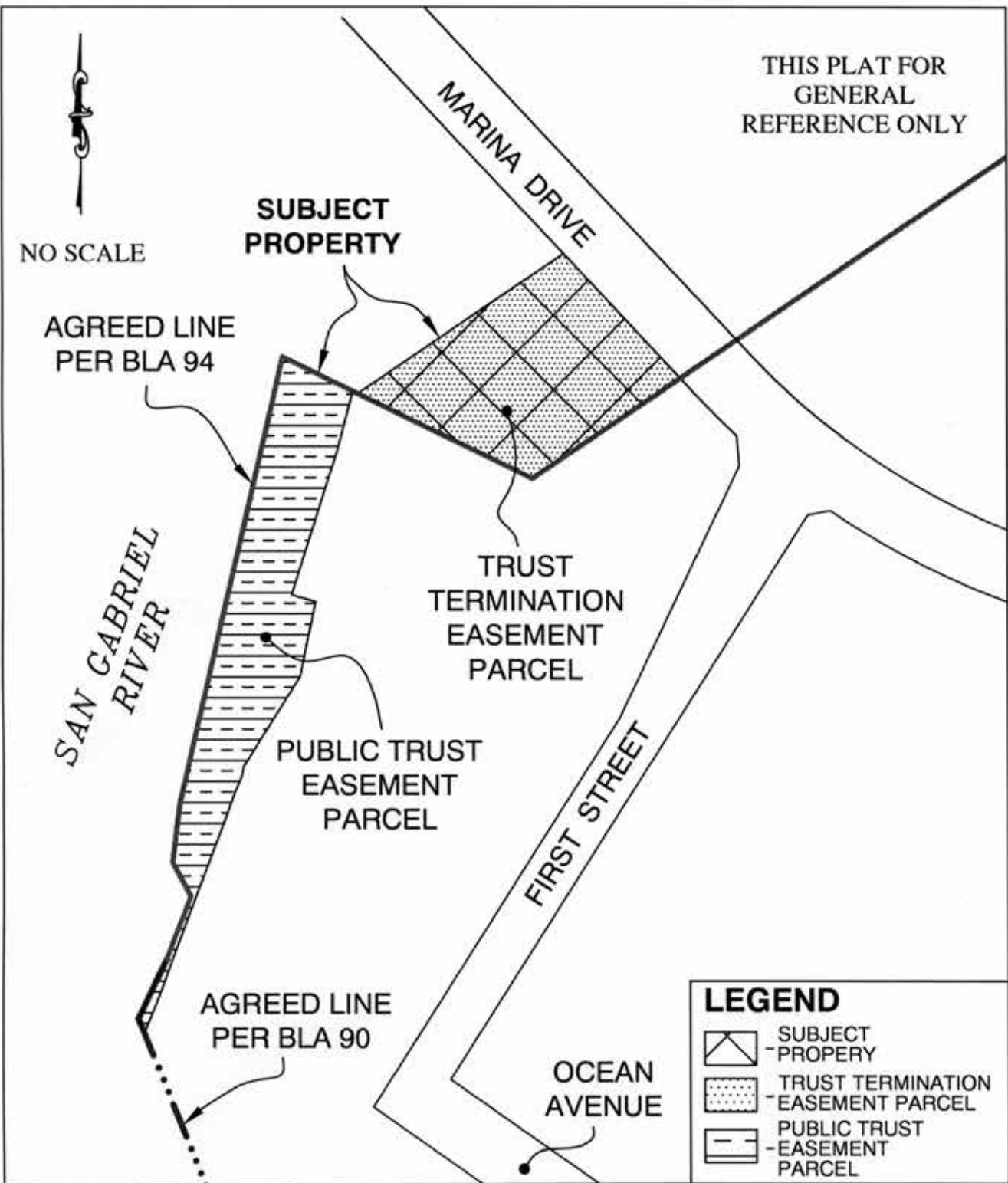


FIGURE 2-2

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PROPOSED SETTLEMENT

CALIFORNIA STATE  
LANDS COMMISSION



### 3.0 ENVIRONMENTAL ASSESSMENT

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This comparative analysis has been undertaken to analyze whether the proposed Land Exchange Project would have any significant environmental impacts that are not addressed in the Final Environmental Impact Report (EIR). The comparative analysis discusses whether impacts are increased, decreased, or unchanged from the conclusions discussed in the Final EIR. The comparative analysis also addresses whether any changes to mitigation measures are required.

**Aesthetics/Light and Glare.** The Land Exchange Project would result in the same land use and development as that analyzed for the Final EIR for the Project. Therefore, no new impacts have been identified and no new mitigation measures are required.

**Agriculture Resources.** As was the case with the Final EIR for the Project, the Land Exchange Project would not result in any impacts to farmland, agricultural uses, or forest land. Therefore, no new impacts have been identified and no new mitigation measures are required.

**Air Quality.** The Land Exchange Project would result in the same construction activities (including cut and fill and earthwork volumes) as the Final EIR for the Project. The Land Exchange Project would also result in the same generation of vehicle trips as the Final EIR for the Project, resulting in the same operational air emissions. Thus, no new impacts have been identified and no new mitigation measures are required.

**Biological Resources.** With implementation of the Land Exchange Project, construction activities would occur over the same development footprint as the Final EIR for the Project. The Land Exchange Project would also not conflict with local policies, ordinances, or plans, similar to the Final EIR for the Project. No new impacts have been identified and no new mitigation measures are required.

**Cultural Resources.** The Land Exchange Project would result in the same construction activities as the Final EIR for the Project. No new impacts have been identified and no new mitigation measures are required.

**Geology and Soils.** The Land Exchange Project would result in the same impacts regarding geology and soils since the proposed development area would be the same (compared to the Final EIR for the Project). No new impacts have been identified and no new mitigation measures are required.

**Greenhouse Gas (GHG) Emissions.** The Land Exchange Project would result in the same construction activities as the Final EIR for the Project in regards to grading and construction activities as well as long-term trip generation/distribution. Thus, the Land Exchange Project would not result in increased GHG emissions compared to the Final



EIR for the Project. No new impacts have been identified and no new mitigation measures are required.

**Hazards and Hazardous Materials.** The Land Exchange Project would involve similar construction activities and operations, and would result in similar hazard and hazardous materials-related impacts as the Final EIR for the Project. No new impacts have been identified and no new mitigation measures are required.

**Hydrology and Water Quality.** The Land Exchange Project would not result in any changes to the proposed grading, drainage, and/or resultant discharge patterns for the site and surrounding area, compared to that analyzed in the Final EIR for the Project. No new impacts have been identified and no new mitigation measures are required.

**Land Use and Planning.** The proposed Land Exchange Project would not result in any changes to the proposed land uses. These project changes would be consistent with the City's goals and policies applicable to the project site. No new impacts have been identified and no new mitigation measures are required.

**Mineral Resources.** As the Land Exchange Project only involves public trust easements and specifically states that it is not intended to affect any mineral rights at the site, no new impacts have been identified and no new mitigation measures are required for the Land Exchange Project.

**Noise.** The Land Exchange Project would not result in any new long-term mobile and stationary noise impacts. No changes to grading or construction activities would occur. No increases to vehicles trips would occur. No new impacts have been identified and no new mitigation measures are required.

**Population and Housing.** The Land Exchange Project would not result in an increase in population or housing. No new impacts pertaining to housing displacement would occur. No new impacts have been identified and no new mitigation measures are required.

**Recreation.** The Land Exchange Project would not result in any changes to the proposed recreational facilities or passive open space use on the southern portion of the site and no new demands for recreational facilities would result. The proposed Land Exchange Project would impress a public trust easement over a portion of the existing San Gabriel River Trail in the northern portion of the overall Project site. As discussed on page 5.13-2 of the Final EIR, the San Gabriel River Trail is an approximately 35-mile-long regional recreational paved trail that runs along the eastern boundary of the San Gabriel River. The trail extends from the base of the San Gabriel Mountains in the City of Azusa to the River's End Staging Area (RESA). The San Gabriel River drains a watershed that extends from the San Gabriel Mountains to the Pacific Ocean. The River

empties into the outlet of Alamitos Bay southwest of the project site. As depicted on the City's General Plan Figure OS-1, *Existing Parks, Recreation, and Open Space Areas*, the San Gabriel River corridor is designated Greenbelt. As discussed on page 5.13-25 of the Final EIR, regional recreational activities would continue along the Bike Trail/River. The Final EIR for the Project does not propose any physical alterations or improvements to these portions of the project site. The existing bike trail parcel is under lease to the City of Seal Beach until March 2015. Bay City Partners, LLC (BCP) has applied to the California Coastal Commission to develop a residential parcel which includes Parcel 1. If the overall Project is not approved by the Coastal Commission, the bike trail parcel lease would terminate 30 days thereafter. The Land Exchange Project would facilitate the continued use of the bike trail parcel.

The proposed Land Exchange Project and public trust easement would not result in any changes to the use of the existing bike path and no physical changes to the environment would occur. Thus, no new impacts have been identified and no new mitigation measures are required.

**Transportation/Circulation.** The Land Exchange Project would not result in an increase in trip generation. The circulation system would be unchanged. No new impacts have been identified and no new mitigation measures are required.

**Public Services.** The Land Exchange Project would not result in an increase in demands on public services. The acreage for the passive open space would be unchanged. No new impacts have been identified and no new mitigation measures are required.

**Utilities and Service Systems.** The Land Exchange Project would not result in an increase in the demands on utilities and service systems as that considered for the Final EIR for the Project. No new impacts have been identified and no new mitigation measures are required.

## **4.0 DETERMINATION/ADDENDUM CONCLUSION**

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As detailed in the analysis presented above, this Addendum supports the conclusion that the changes to the overall Project by including the Land Exchange Project do not result in any new significant environmental effects or a substantial increase in the severity of previously identified significant effects. No new information has become available and no substantial changes to the circumstances under which the overall Project is being undertaken have occurred since certification of the Environmental Impact Report (EIR). No substantial changes are required for the proposed Land Exchange Project, compared to that analyzed in the EIR. There are no new mitigation measures required and no new alternatives are available that would substantially reduce the environmental effects beyond those previously described in the EIR. Therefore, the California State Lands Commission (CSLC) has determined that no subsequent or supplemental EIR is required.

## **5.0 ADDENDUM PREPARATION SOURCES AND REFERENCES**

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### Addendum Preparers:

Eddie Torres, Environmental Sciences Manager, RBF Consulting

Kathryn Colson, Staff Counsel, CSLC

Eric Gillies, Asst. Chief, Division of Environmental Planning and Management, CSLC

### References:

City of Seal Beach, *Final Department of Water and Power Specific Plan Amendment Environmental Impact Report*, dated April 2, 2012 and certified June 25, 2012.