

**CALENDAR ITEM  
C59**

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K. Colson

**CONSIDER AMENDMENTS TO A PREVIOUSLY APPROVED TITLE SETTLEMENT  
AND LAND EXCHANGE AGREEMENT INVOLVING THE DOWNTOWN  
SACRAMENTO RAILYARDS AND CERTAIN NEARBY PARCELS ALONG THE  
SACRAMENTO RIVER LOCATED IN THE CITY OF SACRAMENTO, SACRAMENTO  
COUNTY**

**PARTIES:**

IA Sacramento Holdings, LLC  
2901 Butterfield Road  
Oak Brook, Illinois 60523

City of Sacramento  
730 "I" St., Suite 304  
Sacramento, CA 95814

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

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

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### **INTRODUCTION:**

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

The present item involves two substantive amendments to the Title Settlement and Exchange Agreement (Agreement) previously approved by the State Lands Commission (State Lands or Commission) in 2007 and then reapproved in substantially the same form in 2009. First, IA Sacramento Holdings L.L.C. (IA Holdings) will be substituted for Thomas Enterprises (Thomas) as party to the Agreement.

The second amendment involves changes to the environmental liability provisions. The previous Agreement had three basic environmental liability provisions: an environmental insurance policy, indemnification and release from Thomas and indemnification and release from California Department of State Parks and Recreation (State Parks) for the Waterfront Parcel. The proposed agreement includes a provision for environmental insurance but the insurance policy is not controlled by IA Holdings. IA Holdings will request that Thomas and Union Pacific obtain an endorsement naming State Lands and State Parks or the State of California as additional insureds on the environmental liability insurance policy issued with respect to the Railyards Parcel. The Commission's written approval of the endorsement is a required document to close escrow. Under the previously approved Agreement, Thomas had agreed to indemnify and release the Commission on the Former American River Parcel, Railyards Parcel and Waterfront Parcel. IA Holdings has agreed to release the Commission for and not seek contribution or cost recovery from the Commission for remediation costs or any claims related to environmental contamination in the Former American River Parcel. Since IA Holdings has not been involved in the Waterfront Parcel and the Commission asserts no claims within the Railyards Parcel outside of the Former American River Parcel, staff has agreed to these modifications. State Parks will continue to release, hold harmless, defend and indemnify the Commission for any claims relating to environmental contamination in the Waterfront Parcel.

### **BACKGROUND:**

As background the agreement provides for the exchange of property interests and termination of the State's unresolved title and boundary issues involving 24± acres of the historic river bed of the American River. The title history and background information regarding the Commission's sovereign claims in the historic river bed of the American

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River are discussed in Exhibit B.

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

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

On December 3, 2007 the Commission approved Calendar Item #37 by a vote of 2/0, with the representative of the Director of Finance supporting the State's assertion of its public trust property interest in the former bed of the American River, but abstaining on the approval of the agreement at that time.

On August 11, 2009, the Commission reapproved substantially the same Agreement (Calendar Item C45) with minor modifications involving how parcels would be transferred through phases between State Parks and Thomas. The City of Sacramento, State Parks and State Lands executed the agreement but Thomas did not sign.

Recently negotiations were renewed with the new owner of the Railyards Parcel IA Holdings. An affiliate of IA Holdings made two loans to Thomas each of which were secured by, among other things, deeds of trust encumbering the Sacramento Downtown Railyards. On October 22, 2010, IA Holdings acquired title to the Sacramento Downtown Railyards from Thomas pursuant to a foreclosure of one of such deeds of trust.

### **DOWNTOWN SACRAMENTO RAILYARDS REDEVELOPMENT:**

The Downtown Sacramento Railyards history dates to the Civil War period. The construction of the transcontinental railroad, with its western terminus in Sacramento began in 1863 and culminated with the driving of the Golden Spike in Promontory, Utah

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in 1869. Sacramento was the headquarters of the Central Pacific Railroad and Omaha (the eastern end of the line) was Union Pacific's headquarters. The Railyards expanded from 20 acres of filled slough in 1863 to over 200 acres by the 1930s. Starting with 15 workers in 1863, by 1898, 3000 workers were employed in the Railyard Shops. For much of the Nineteenth Century the Central Pacific Railroad was not only the largest employer in the Sacramento region, but together with the Southern Pacific, which it took control of in 1884, controlled much of California's economy and politics. The peak of employment in the Shops was during World War II when nearly 7,000 workers (including many women, minorities, and Mexican nationals who were brought in and employed to fill positions opened by military service) worked in the yard. The Shops after the war were converted to more maintenance facilities and eventually most jobs were phased out to other locations. The Southern Pacific and Union Pacific companies merged in 1996 and the Railyard shops were closed permanently in 1999. In 1995 the US Environmental Protection Agency had identified the Railyards as a "Brownfields" site and selected it to serve as a cleanup pilot project. The cleanup has been progressing since that time, but remains unfinished. Thomas closed escrow with Union Pacific on their purchase and sale agreement in December 2006 and obtained a package of environmental insurance policies for completing the environmental remediation of the Railyards, with the goal being to the standard required by applicable government agencies, to permit the intended use of the property and to protect owners of the Railyards property from residual environmental liabilities.

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

While the City and IA Holdings continue to work on various aspects of the future of the Railyards property, the goals include:

- ▶ rebirth of the downtown
- ▶ creation of a 24 hour a day, 7 day a week environment
- ▶ establish a pedestrian connection to the downtown
- ▶ incorporate in an effective manner the historic Alkali Flats neighborhood

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- ▶ enlarge the downtown
- ▶ establish a critical mass (including development of approximately 10,000 -12,100 residential units)
- ▶ establish a live/work hub
- ▶ develop underutilized industrial area to a transit oriented mixed use
- ▶ renovate the area to acknowledge its historical significance
- ▶ create a major regional entertainment destination

It is important to note that the necessary infrastructure costs may reach approximately \$1 billion. The City is seeking federal funds and State bond funds in the hundreds of millions of dollars to facilitate the development of the Railyards.

### **RAILYARDS TECHNOLOGY MUSEUM:**

California State Parks will benefit through the proposed settlement, via the transfer of the Central Shops Parcels which include historic structures. These structures will be renovated to serve as the long-planned Railroad Technology Museum, a vibrant and interactive museum of science and technology. This new museum will activate the Central Shops area within the Railyards, helping to attract future development to the site and greatly expanding the offerings of the world-renowned California State Railroad Museum. State Parks currently has lined up considerable federal and state grant funding for the restoration of these historical buildings and the creation of the Railroad Technology Museum which is time sensitive and subject to additional risk if this Agreement, as well as, the Central Shops Transfer Agreement are not completed by the end of the fiscal year.

### **WATERFRONT AND SAND COVE PARCELS:**

The Waterfront Parcel is an important part of the City's Riverfront Masterplan, which is designed to encourage greater pedestrian use of the Sacramento River as a public attraction. As part of the Agreement the Waterfront Parcel would be transferred to the Commission from State Parks to be held as public trust land and then leased to the City. The Waterfront Parcel is situated to serve as a linkage to the Sacramento riverfront from existing and planned residential, commercial, office and regional transportation facilities in downtown Sacramento, the Richards Boulevard area, the Railyards and surrounding areas of Sacramento. The Waterfront Parcel is just north of the Old Sacramento area, an important tourist destination for the region, and will enhance the attraction of this area. An existing bikeway passing through the Waterfront Parcel links Old Sacramento with the 23+ mile American River Parkway and maintenance of such linkage through the parcel enhances pedestrian and bicycle access to both the Sacramento and American Rivers.

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The Sand Cove Parcels provide access from an adjacent rural road and surrounding communities to the Sacramento River. Under the Agreement, the City will be quitclaiming these parcels to the Commission and these parcels will be leased back to the City for uses consistent with the public trust. The 11-acre site contains a Native American artifact burial ground and has significant value for historic, cultural and natural preservation. Trails and other limited improvements, which exist or are planned by City for the Sand Cove Parcels, would attract visitors to this waterfront site and enhance their experience of the Sacramento River.

### **PROPOSED TITLE SETTLEMENT AND EXCHANGE AGREEMENT:**

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

The Agreement provides:

1. The City of Sacramento as trustee of tide and submerged lands (Former American River Parcel) granted to it by the California Legislature pursuant to, Chapter 519, Statutes of 1868 (granting statute) will quitclaim, as trustee, the State's right, title and interest in and to the State's public trust tidelands and submerged lands, within the old channel of the American River within the Railyards to the Commission and to help in meeting the equal value test of Public Resources Code Section 6307 will also convey the Sand Cove Parcels to the Commission. The Waterfront Parcel, which will be conveyed to the Commission by State Parks, which together with the Sand Cove Parcels will be leased by the Commission to the City to be utilized for Public Trust purposes.
2. The Commission's role will be to accept a quitclaim of sovereign property rights within the Former American River Parcel from the City of Sacramento (as trustee under Chapter 519, Statutes of 1868) and accept a quitclaim of the Sand Cove Parcels also from the City. The Commission will accept the transfer of jurisdiction of the Waterfront

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

3. State Parks will transfer its title to the Waterfront Parcel to the Commission pursuant to Government Code Section 14673 to be held as public trust lands and will be receiving title to the Central Railshops Parcel (9.23 acres) from IA Holdings. Parks will release, hold harmless, defend and indemnify State Lands from any claims arising from the Waterfront Parcel.

4. IA Holdings will convey the Central Railshops Parcel, as provided in the Central Railshops Transfer Agreement, to State Parks and will receive a termination of any public trust claims and quitclaim of state sovereign interest within the Former American River Parcel and Railyards Parcel from State Lands. IA Holdings additionally agrees to request an endorsement naming the Commission or the State of California as an additional insured on the pollution liability insurance policy for claims related to the existence of hazardous substances within the Railyards Parcel. IA Holdings agrees release the Commission from all claims and liability that might arise from toxic or hazardous material contamination in the Former American River Parcel.

### **LEGAL REQUIREMENTS:**

Because the City does not have the legal authority to terminate the State's Public Trust interest on trust property, the Commission must take title to the Former American River

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Parcel and as part of that exchange terminate the Public Trust interest on those filled tide and submerged lands. The Commission, in order to approve the proposed exchange, will have to make the following requisite findings provided for in Public Resources Code Section 6307:

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

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

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

The subject agreement is being entered into for the purposes of and satisfies each of the alternatives numbered 3 through 7. Additionally, cutting off and filling of the Former American River Parcel helped accomplish alternatives 1 and 2. In addition to the above statutory required findings, the California courts have identified several other legal requirements necessary for a conveyance of trust lands and a termination of the Public Trust interest in order to comply with California Constitution Article X, Section 3.



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The lands must be found by the State to be:

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

### **CONCLUSION:**

The Commission staff has reviewed and analyzed in-house documents and other information submitted for the proposed Agreement. The Commission staff has performed appraisals and reviewed surveys, title reports, historic use reports, toxics reports and other studies conducted for the exchange. As described in the preceding paragraphs the facts support each of the necessary findings the Commission must make. The Former American River Parcel and Railyards Parcel were filled and reclaimed and excluded from the public channels in the 1860s as part of a highly beneficial program of waterfront development (which included elements of improving navigation, reclamation, flood control and reconfiguration of the shoreline); the Former American River Parcel and Railyards Parcel have been rendered useless for commerce, navigation and fisheries; and the Waterfront Parcel and Sand Cove Parcels may be used more effectively for Public Trust purposes than the Former American River and Railyards Parcels. The 24.85± acres of State claims within the Former American and Railyards Parcels are relatively small in area when compared to the hundreds of acres of filled and unfilled trust land held by the State in the American River. Further, the Waterfront Parcel and Sand Cove Parcels have greater public trust value and monetary value than the State's interest in the Former American River and Railyards Parcel.

The staff believes and the facts support that the proposed exchange is consistent with the Public Trust needs in the area. The lands, to be acquired by the Commission as trust lands (Waterfront Parcel and Sand Cove Parcels) will be managed by the City under leases from the Commission for purposes consistent with the Public Trust. The staff believes that the proposed exchange is in the best interest of the State. This exchange will help to facilitate the development of the Sacramento Railyards which has been a longstanding goal of the City. As part of the proposed Agreement, State Parks will receive the certain parcels containing historic railroad buildings which will be used to serve the long-planned Railroad Technology Museum. State Parks has federal and state grants to help pay for much the renovation which may be at risk if the proposed exchange is not completed shortly. Approval of the proposed Agreement will also

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resolve long standing title uncertainties that have existed in the Railyards.

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

### EXHIBITS:

- A. Site Plat showing Subject Property, involving location of Former American River Parcel, Railyards Parcel, Central Railshops Parcel, Waterfront Parcel and Sand Cove Parcels
- B. CSLC Calendar Item C45 dated August 11, 2009.

### RECOMMENDED ACTION

It is recommended that the Commission:

### CEQA FINDING

**Title Settlement, Land Exchange and Related 49-year Lease:** Find that the activities are exempt from the requirements of the California Environmental Quality Act pursuant to Public Resources Code section 21080.11 and is a statutorily exempt activity pursuant to Title 14, California Code of Regulations, section 15282(f) as this is a State Lands Commission Settlement of Title and Boundary Problems and the exchange and lease is in connection with the settlement.

### AUTHORIZATION

- 1) Find that the proposed Sacramento Downtown Railyards Title Settlement and Exchange Agreement includes:
  - a) A quitclaim of the Former American River Parcel and more particularly described in the agreement and shown for reference purposes only on Exhibit A, from the City of Sacramento to the California State Lands Commission;
  - b) Quitclaim of the Sand Cove Parcels, as more particularly described in the agreement and shown for reference purposes only on Exhibit A, from the City of Sacramento to the California State Lands Commission;
  - c) A transfer pursuant to Government Code section 14763 of jurisdiction and

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- control of the Waterfront Parcel from the California Department of Parks and Recreation to the California State Lands Commission;
- d) Acceptance by the California State Lands Commission of the quitclaim by the City of the Former American River Parcel, and acceptance of the Waterfront Parcel and Sand Cove Parcels as sovereign public trust lands;
  - e) A 49 year lease of the Waterfront Parcel and Sand Cove Parcels to the City of Sacramento, for Public Trust purposes, and support of proposed legislation to grant those parcels in trust to the City, as provided in the title settlement and exchange agreement.
  - f) A quitclaim of any and all state sovereign property rights, including public trust interest, in the Former American River Parcel and Railyards Parcel, more particularly described in the agreement and shown for reference purposes only on Exhibit A, to IA Sacramento Holdings LLC.
  - g) Conveyance by IA Sacramento Holdings LLC to the California Department of Parks and Recreation of title to the Central Shops Parcels at close of escrow as provided for in the Central Shops Transfer Agreement.
- 2) Find that, with respect to the proposed title settlement and land exchange agreement, which findings shall be effective on close of escrow as provided in the agreement:
- a) The exchange will provide a significant benefit to the public trust.
  - b) The exchange will not interfere with but rather enhance the public's rights of navigation, fishing and access to the Sacramento River.
  - c) The monetary value of the lands or interests in lands received by the trust in exchange (Waterfront Parcel and Sand Cove Parcels) to be conveyed to the California State Lands Commission and leased to the City of Sacramento, for public trust purposes, as described above, are equal to, or greater than, the value of the state lands or interest in lands to be conveyed by the state to IA Sacramento Holdings, LLC (Former American River Parcel and Railyards Parcel) in exchange;
  - d) The area of lands or interests in lands being relinquished by the state, which collectively are a relatively small area (24.85± acres) of the hundreds of acres of filled and unfilled public trust lands of the state in the American River, have been evaluated as to their current physical character and trust utility; the trust termination parcels (Former American River Parcel and Railyards Parcel) have been cut off from water access and are no longer in fact tidelands or submerged lands or navigable waterways, by virtue of having been filled or reclaimed, as the result of a highly beneficial program of flood control, reclamation and harbor development, and for 140 years have been excluded from the public channels, and are no longer in fact tide or submerged lands

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- and are relatively useless for public trust purposes.
- e) The lands to be acquired by the California State Lands Commission (Waterfront Parcel and Sand Cove Parcels) are of such a configuration and location that they can be used more efficiently by the Commission in furtherance of Public Trust purposes than the State interests in the filled lands (Former American River Parcel and Railyards Parcel) and upon close of escrow the Waterfront Parcel and Sand Cove Parcels will take on the legal status as public trust lands.
  - f) The exchange is in the best interests of the state.
  - g) The exchange is being entered into for each of the several following purposes:
    - 1) To enhance trust land ownership along the shoreline.
    - 2) To enhance public access to and along the shoreline.
    - 3) To enhance waterfront and nearshore development or redevelopment for public trust purposes.
    - 4) To preserve, enhance or create riparian habitat and open space.
    - 5) To resolve a boundary and title dispute.
  - h) On the date provided for in the exchange agreement and consistent with its terms, the trust termination parcels (Former American River Parcel and Railyards Parcel) will be found to no longer be necessary or useful for the purposes of the public trust and any and all public trust interest or state sovereign title therein will be terminated.
4. Find that the lands to be conveyed to the California State Lands Commission are to be accepted as Public Trust Lands for the benefit of the people of the State of California, to be held by the State of California in perpetuity for Public Trust purposes.
5. Approve and authorize the execution, acknowledgment, and recordation of the Sacramento Downtown Railyards Title Settlement and Exchange Agreement and associated deeds and acceptances on behalf of the California State Lands Commission, in substantially the form of the copy of such agreement on file with the Commission's Executive Officer or his designee's review and approval of the environmental insurance policy endorsement naming the California State Lands Commission or the State of California as an additional insured to be obtained by IA Holdings consistent with the terms and provisions set forth in the Agreement.
6. Approve and authorize the issuance of a 49-year lease of the Waterfront Parcel and Sand Cove Parcels, acquired by the California State Lands Commission pursuant to the Sacramento Downtown Railyards Title Settlement and Exchange Agreement to the City of Sacramento, for Public Trust Purposes, as provided for

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in the title settlement and exchange agreement.

7. Authorize the staff of the California State Lands Commission and/or the California Attorney General to take all necessary or appropriate action on behalf of the California State Lands Commission, including the execution, acknowledgment, acceptance, and recordation of all documents as may be necessary or convenient to carry out the title settlement and exchange agreement.