

# Staff Report 27

## **PARTIES:**

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

Halo Ranch, a California Limited Liability Company (Halo Ranch)

## **PROPOSED ACTION:**

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Consider a Compromise Title Settlement and Land Exchange Agreement Between the California State Lands Commission and Halo Ranch, LLC resolving a title dispute to certain real property located near the Petaluma River.

## **AREA, LAND TYPE, AND LOCATION:**

Historic tidelands and existing tidal marsh near the Petaluma River within portions of Assessor's Parcel Number 068-010-004, commonly known as 4551 Lakeville Highway, Petaluma, California, Sonoma County.

## **BACKGROUND:**

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In 2017 Halo Ranch representatives approached Commission staff regarding the State's potential ownership interests in portions of an approximately 241-acre parcel of land located just outside the City of Petaluma (Subject Property). After significant title and boundary research, staff determined that the Commission did have historic property interests throughout the parcel.

The Subject Property is bisected by an agricultural berm that runs, more or less, from east to west through the middle of the property. The berm was constructed along the edge of a historic slough to the Petaluma River (River) in the mid-20<sup>th</sup> century by the owner as an effort to reclaim the northern portion of the land for agricultural use. The northern portion of the Subject Property amounts to approximately 186-acres of agricultural land (Bank Property). The southern portion of the Subject Property amounts to approximately 55-acres of tidal marsh that has not been reclaimed or developed (Marsh Property).

Halo Ranch wishes to restore the Bank Property to wetlands through the Halo Ranch Mitigation Bank (the Project). To move forward with the Project, Halo Ranch must remove any encumbrances on the Bank Property, including the State's ownership claims. The parties also wish to establish a boundary line at the last natural location of Petaluma River's ordinary low-water mark along the southern boundary of the larger Subject Property. To resolve this title dispute and boundary location, Halo Ranch and Commission staff have negotiated the proposed Title Settlement and Land Exchange Agreement described herein (Agreement).

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

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The recommended Compromise Title Settlement and Land Exchange Agreement resolves the title disputes and facilitate the creation of the wetland mitigation bank on the Bank Property. The Agreement would include the following key components:

- (1) The Commission would quitclaim any property interest it may have in the Bank Property landward of the approximate top of the agricultural berm that runs along its southern border (estimated to be a historic Public Trust easement of approximately 2.66 acres). Doing so would allow Halo Ranch to record a deed restriction over the lands, permanently committing it to wetlands.
- (2) Halo Ranch would grant the State of California a Public Trust easement over a 3.5-acre triangle shaped area within the southern Marsh Property of the Subject Property (Proposed Public Trust Addition). On the northern edge, the Proposed Public Trust Addition ends within the larger Subject Property. The western boundary abuts a small slough that is navigable during high tide. The eastern boundary abuts the historic channel of the River as shown on the 1922 survey, which is a combination of marshlands and tidal sloughs. The State still asserts sovereign ownership of this historic river channel.
- (3) The parties would agree to and establish a boundary line of the ordinary low water mark along the southern boundary of the Subject Property based on the location of the shoreline according to a 1922 survey, which research indicates is the best evidence of the ordinary low-water line of the Petaluma River at this location, prior to substantial artificial influence. Halo Ranch would quitclaim its property interests waterward of said line. The Commission would quitclaim its fee interests landward of the boundary line. Such boundary line would not extinguish any Public Trust easement claims within the Marsh Property.

## **STAFF ANALYSIS AND RECOMMENDATION:**

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### **BASIS OF STATE'S CLAIMS:**

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 Petaluma River at this location was and remains a navigable, tidally influenced river. It is also a river that has been heavily manipulated and altered by human influences over the years. As early as the mid-1800s the River was dredged and channelized to accommodate growing agricultural shipping demands to nearby San Francisco. In the mid-1800s, the California Legislature authorized the reshaping of the River to improve navigability. (Chapter 205 of the Statutes of 1859, Chapter 56 of the Statutes of 1861, and Chapter 417 of the Statutes of 1865-6). Areas of the historically sinuous channel were cut off to create a new, straighter channel, that was a more accessible route for vessels. Over time, the unused loops and bows from the historic River were filled in and often became indistinguishable from the uplands. Because the current course of the River is so different from its historic path, the location of the State's interests is not always readily apparent.

### **HISTORY OF BANK PROPERTY**

The Subject Property is located just outside the city limits of Petaluma, about 4 miles east of downtown Petaluma, just south of Lakeville Highway. A water recycling facility borders the Subject Property to the west. And the neighboring parcel on the eastern side is privately held lands zoned for agricultural use.

Historically, the River bent upwards from its current location and provided the southern boundary of the Subject Property. A tidal slough branched off from the historic River, stretching into the Subject Property and dividing the Bank Property from the Marsh Property.

A 1922 dredger cut in the River at this location essentially caused the River to bypass this bend and substantially reduced the amount of water that flowed into the bend. Some water still runs into the historic channel even today, but it is no

longer a main river course and the tidal slough that once divided the Subject Property is now mostly marsh.

In the 1950s, the owner of the Subject Property at the time constructed a berm levee along the northern side of the historic slough in an effort to reclaim the land to the north for agricultural purposes. Since then, the Marsh Property to the south has remained in its natural state and remains undeveloped tidal marsh. But the area to the north has been used over the years for various agricultural endeavors from dairy and beef ranching to silage farming.

### **BANK PROPERTY OWNERSHIP HISTORY**

Halo Ranch derives its ownership interest in the Bank Property, and the larger Subject Property, from three underlying sources of title: Rancho Petaluma, Swamp & Overflowed Survey Number 5, and Swamp and Overflowed Survey Number 6 (the latter two collectively are the "S&O Surveys").

To comply with obligations in the Treaty of Guadalupe Hidalgo (1848), the United States was required to confirm title to Rancho lands to valid Mexican grantees of those lands. M.G. Vallejo filed a petition with the General Land Office in 1852 for confirmation of Rancho Petaluma. After being resurveyed in March 1860, Rancho Petaluma was eventually confirmed and a patent was issued on November 19, 1874. At the Bank Property, the 1860 Rancho survey calls to the edge of the historic swamp or marshlands.

The United States Supreme Court has also ruled that, since California failed to timely assert title interests to Rancho lands, it is now barred from claiming them as sovereign lands of California under the Equal Footing Doctrine. *Summa Corporation v. State*, 466 U.S. 198 (1984). As such, it is unlikely that the State has any title claims to the portions of the Bank Property within the historic boundaries of Rancho Petaluma, which are presently well upland from the current call of the River.

Title from the rest of the Bank Property came from the S&O Surveys. Both surveys were done in September 1857 and have meander calls to "Petaluma Creek" but neither meandered the tidal sloughs shown on a U.S. Coast Survey T-818 from 1860. Both surveys have certificates of purchase issued in October 1859. This error of selling portions of the Bank Property as Swamp and Overflowed lands without meandering the tidal sloughs shown in historic mapping, resulted in the unlawful and invalid conveyance of tidelands. To correct such errors throughout the State, the California Legislature passed a series of curative acts in the late 1800s, including Chapter 425, Statutes of 1872. This statute was passed after the S&O Survey lands were sold and looked back to those sales. In essence, the statute provided that prior applications for purchase of State-owned lands would be valid, even if the

character of the land was mischaracterized. Here, even though there were likely tidal sloughs bundled into the overall S&O sale, the curative act validated the underlying fee sale.

However, the curative acts did not extinguish the Public Trust. Courts have determined that lands imbued with the Public Trust remain imbued with the Public Trust even after they are sold to a private party, unless the legislature expressly stated its intent to lift the Public Trust. See *People v. California Fish Company* (1913) 166 Cal. 576. Here, the sales were categorized as S&O land sales- suggesting the State was not even aware that it was divesting Public Trust lands. The curative act likely validated the fee sale of the Subject Property lands surveyed as S&O, but the Public Trust easement remains in place on any portion of the Subject Property that was in fact tidelands.

Looking specifically at the Bank Property, based on research by Commission surveying staff, Commission staff estimate that approximately 2.66 acres of the Bank Property, near its southern border, were historically tidelands and are still imbued with the Public Trust Easement.

Lands imbued with the Public Trust cannot be restricted for a specific use in perpetuity. This presents an issue for Halo Ranch, which must record a deed restriction on the Bank Property as part of the process for creating the Project. Halo Ranch proposes exchanging the States' existing Public Trust easement on the Bank Property for another Public Trust easement outside the Project site.

#### **AUTHORITY & LEGAL REQUIREMENTS:**

The Public Resources Code gives the Commission authority to enter into title settlement and exchange agreements for certain lands subject to the Public Trust if a specific set of circumstances are present. Public Resources Code section 6307 lists the conditions that must be met for the Commission to enter into such an agreement. Those conditions are:

- (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; 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 Public 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.<sup>1</sup>

The Commission may only approve the Agreement if it finds the above conditions have been satisfied.

Pursuant to Public Resources Code section 6357, the Commission can establish the ordinary low-water mark of any of the swamp, overflowed, marsh, tide, or submerged lands of this State by certain means, including an agreement. To establish and fix such a line, courts require evidence that: (1) a reasonable attempt has been made to locate the true boundary line; and (2) the proposed line is based on those attempts. (*City of Long Beach v. Mansell* (1970) 3 Cal.3d 462, 480).

#### **ANALYSIS AND STAFF RECOMMENDATION:**

Commission staff analyzed all available evidence related to the Bank Property, including title history, surveys, historic mapping, environmental information, use data, information related to the history of the River at this location, applicable caselaw and other useful information in order to determine the best evidence of the location of any property interests held by the State. Staff also visited the Subject Property to inspect its current character and used a drone to obtain aerial footage of the area. Staff have spoken with environmental scientists at California Fish and Wildlife about the resource value of the area. Staff have also conducted an appraisal of the State's interest in the Bank Property as well as of the Proposed Public Trust Addition. This evidence serves as the basis for the proposed Agreement.

Staff recommends the Commission approve the proposed Agreement for several reasons. Approval of this Agreement will settle a long-standing title dispute at the Bank Property without costly and time-consuming litigation, where a favorable outcome for the State is not guaranteed.

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<sup>1</sup> See Public Resources Code §6307.

The Agreement will, essentially, relocate the Public Trust easement over portions of the Bank Property to a location that is better suited for the use and enjoyment of the public. Presently, the State's asserted Public Trust easement is disbursed throughout the Bank Property, which is private uplands that have been cut off from the River and used for agricultural purposes for decades. The current easement locations are inaccessible to the public and a significant distance from the River. Releasing the State's interest in these lands will not substantially interfere with public rights of navigation or fishing because these relatively small areas have been filled, reclaimed and long since cut off from navigable waterways.

On the other hand, the Public Trust easement that Halo Ranch will grant to the State as part of the Agreement will provide significant value to the Public Trust. The Proposed Public Trust Addition is located adjacent to existing Public Trust lands. There are some opportunities to navigate to the area through a tidal slough on the western side of the parcel. Navigability is somewhat limited by the marshy terrain, but this marshy character adds significant resource value to the Public Trust as important habitat. According to the California Department of Fish and Wildlife, the Petaluma River is California's largest natural tidal brackish marsh, supporting various species including deer, raccoons, jackrabbits, foxes, migratory bird species, and wetland bird species.<sup>2</sup> The Subject Property is located just across the River from the approximately 4,200 acre Petaluma Marsh Wildlife Area, which is managed by the California Department of Fish and Wildlife. Studies performed in developing the Project have noted that important, listed species have been observed in the area. By accepting the easement over the Proposed Public Trust Addition, the Commission will be able to protect and preserve this vital habitat for the public.

Additionally, in an interest of settlement, Commission staff and Halo Ranch have reviewed historic records including maps, surveys, reports, and caselaw in an effort to determine the location of the ordinary low-water mark prior to the dredging events directly adjacent to the Halo Ranch Lands. After extensive research and discussions, Commission staff and Halo Ranch agree that the U.S. Coast and Geodetic Survey's Map T-4016, dated 1922 is the best evidence of the last natural location of Petaluma River's ordinary low-water mark at this location. The parties intend to resolve the location of the ordinary high-water mark through a separate agreement at a later date.

Commission staff independently evaluated its factual and legal position related to the title and boundary dispute for the Bank Property. A review the State's claim and other materials, including a staff appraisal of the respective property interests show that the monetary value of the property interests to be exchanged into the Public

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<sup>2</sup> <https://wildlife.ca.gov/Lands/Places-to-Visit/Petaluma-Marsh-WA>

Trust are equal to or greater than the monetary value of the property interests to be exchanged out of the Public Trust.

Since litigation of this matter would likely be protracted, costly, and risky, staff have concluded it is expedient, necessary, and in the best interests of the State to resolve this dispute through the Agreement.

The facts just described support each of the necessary findings the Commission must make under Public Resources Code sections 6307 and 6357, including that the exchange 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 the Commission approve the Agreement, in substantially the form on file with the Commission and authorize its execution and the execution and recordation of all documents necessary to implement it.

**CLIMATE CHANGE:**

Climate change impacts, including sea level rise, more frequent and intense storm events, and increased flooding and erosion, affect both open coastal areas and inland waterways in California. The Proposed Public Trust Addition and the Bank Property are located near the Petaluma River, which is tidally influenced at this location and is vulnerable to shallow coastal flooding at current sea levels and will be at higher risk of flood exposure given projected scenarios of sea-level rise.

The California Ocean Protection Council updated the State of California Sea-Level Rise Guidance in 2018 to provide a synthesis of the best available science on sea level rise projections and rates. Commission staff evaluated the “high emissions,” “medium-high risk aversion” scenario to apply a conservative approach based on both current emission trajectories and the lease location and structures. The San Francisco tide gauge was used for the projected sea-level rise scenario for the region as listed in Table 1.

**Table 1. Projected Sea-Level for San Francisco**

<b>Year</b>	<b>Projection (feet)</b>
2030	0.8
2040	1.3
2050	1.9
2100	6.9

Source: Table 13, State of California Sea-Level Rise Guidance: 2018 Update Note: Projections are with respect to a 1991 to 2009 baseline.

Rising sea levels could lead to more frequent flood inundation in low-lying areas and larger tidal events. In addition, as stated in *Safeguarding California Plan: 2018 Update* (California Natural Resources Agency 2018), climate change is projected to increase the frequency and severity of natural disasters related to flooding, fire, drought, extreme heat, and storms (especially when coupled with sea level rise). In rivers and tidally influenced waterways, more frequent and powerful storms can result in increased flooding conditions and damage from storm-created debris. Climate change and sea level rise will further influence coastal and riverine areas by changing erosion and sedimentation rates. Near-coastal riverine areas will be exposed to increased wave force and run-up, potentially resulting in greater bank erosion than previously experienced. Finally, in rivers and tidally influenced waterways, flooding and storm flow will likely increase scour, decreasing bank stability and structure.

The combination of these projected conditions could increase the likelihood of damage and affect access to any structures within the Proposed Public Trust Addition or the Bank Property in the future. However, because both parcels will likely be designated as tidal wetland, they should suitably adapt to impacts from climate change.

In the event the Proposed Public Trust Addition becomes inundated with waters of the Petaluma River, it will still hold Public Trust resource value as habitat and may provide additional navigation and recreation opportunities in the area. Additionally, the Agreement includes a provision acknowledging that, should the Bank Property become inundated by waters of the Petaluma River due to sea-level rise, those impacted areas will be subject to a Public Trust easement as long as they are inundated.

**CONCLUSION:**

The Agreement results in a substantial gain and benefit to the public, relocating a scattered Public Trust easement to a certain location, abutting trust lands with habitat and open space values. In exchange, the State will quitclaim a residual Public Trust easement in now private lands that have been filled and cut off from navigable waterways. Staff recommends that the Commission find the Agreement to be in the State's best interests and authorize the Agreement.

**OTHER PERTINENT INFORMATION:**

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1. Approval or denial of this Agreement is a discretionary action by the Commission based on the Commission's legislatively delegated authority and responsibility as trustee of the State's Public Trust land as authorized by law. If the

Commission denies the proposed Agreement, the dispute over title and boundary issues on the Bank Property will remain unresolved.

2. The State, acting by and through the Commission, is authorized under Division 6 of the Public Resources Code, and specifically pursuant to sections 6307 and 6357 of such code, to enter into title settlement and land exchange agreements and establish a boundary line.
3. This action is consistent with the “Leading Climate Activism” and “Meeting Evolving Public Trust Needs” Strategic Focus areas of the Commission’s 2021-2025 Strategic Plan.
4. Staff recommends that the Commission find that this activity is exempt from the requirements of the California Environmental Quality Act (CEQA) as statutorily exempt. The project is exempt because it involves settlement of title and boundary disputes.

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

## **EXHIBITS:**

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- A. Subject Property Map
- B. Map of Settlement Properties

## **RECOMMENDED ACTION:**

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It is recommended that the Commission:

### **CEQA FINDING:**

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, settlement of title and boundary disputes.

### **PUBLIC TRUST AND STATE’S BEST INTERESTS:**

Find that the proposed Compromise Title Settlement and Land Exchange 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.

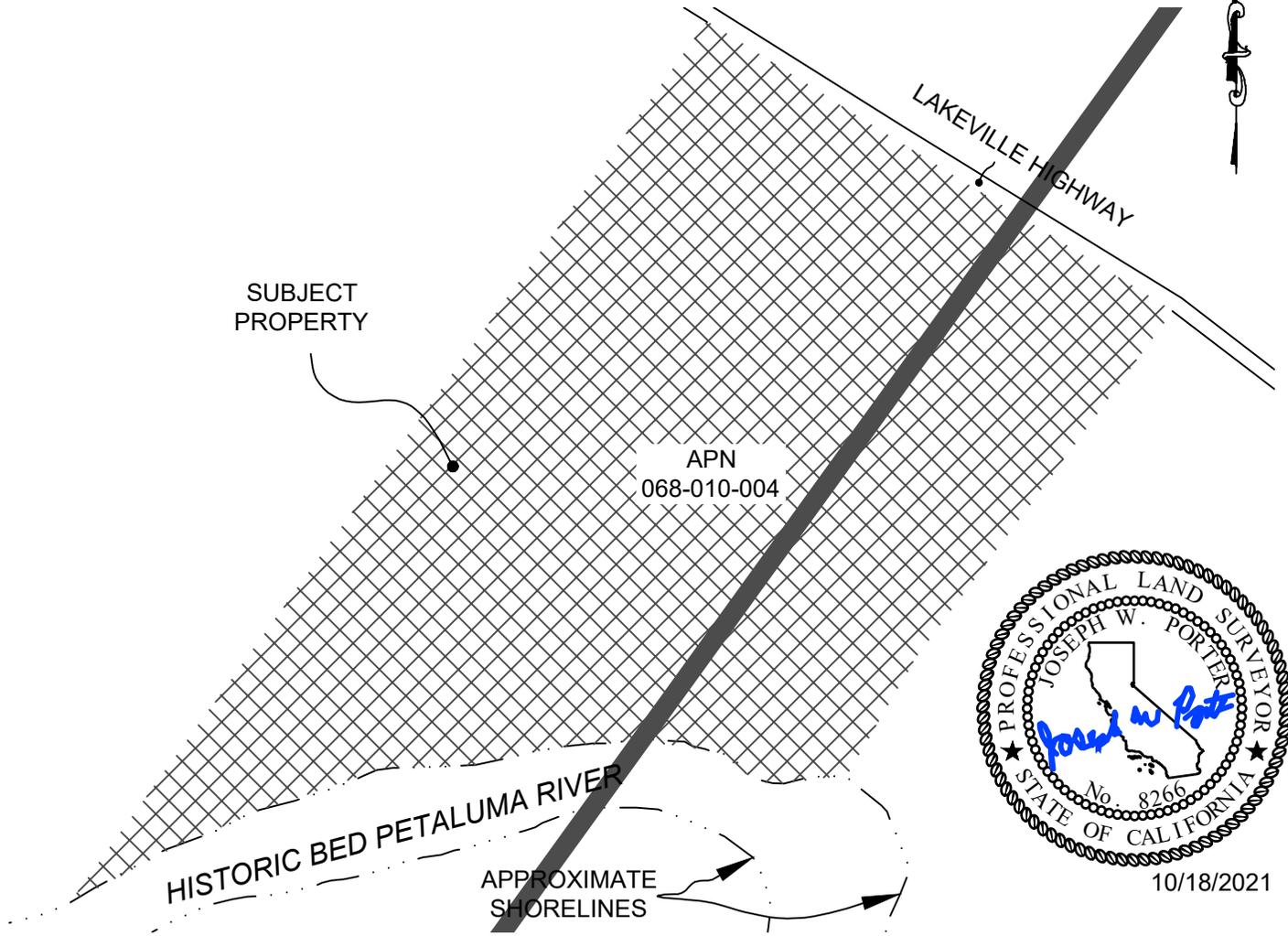
**AUTHORIZATION:**

1. Find that, with respect to the proposed Compromise Title Settlement and Land Exchange Agreement:
  - A. The Proposed Public Trust Addition provides significant benefits to the Public Trust as a habitat resource, open space, and potential additional access to the Petaluma River.
  - B. The exchange provided for in this Agreement does not substantially interfere with public rights of navigation and fishing, but rather will enhance the public's rights of access and navigation on the Proposed Public Trust Addition and adjacent trust lands.
  - C. The monetary value of Halo Ranch's interest in the Proposed Public Trust Addition to be conveyed to the State by Halo Ranch is equal to or greater than the value of the State/Trustee's interest in the Bank Property to be quitclaimed by the State to Halo Ranch.
  - D. The State's interest in the Bank Property being relinquished by the State, is a relatively small parcel, cut off from water access and no longer in fact tidelands or submerged lands or the bed of a navigable waterway, by virtue of being filled or reclaimed, and is relatively useless for Public Trust purposes.
  - E. This Agreement is in the best interests of the State by resolving a title dispute at no expense to the State, enhancing public access to and along the water by relocating a Public Trust easement to a certain location abutting trust lands, and creating a Public Trust easement over land with existing open space and habitat value.
  - F. This Agreement shall release any and all Public Trust claims from the Bank Property that is being released by the State to Halo Ranch and shall impose the Public Trust onto the Proposed Public Trust Addition that is being received by the State from Halo Ranch.
  - G. The exchange provided for in this Agreement is to enhance public access to and along the water; to preserve, enhance, or create open space; and to resolve boundary or title disputes.
  - H. It is the intent of the Agreement that, to the extent that there are mineral rights present in either parcel, those rights shall be transferred with the corresponding surface estate.

2. Find that the proposed boundary line along the north bank of the historic Petaluma River is based on the best available evidence of the ordinary low water mark prior to significant artificial influence.
3. Find that the property interests 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 of California, to be held by the State of California for Public Trust purposes.
4. Authorize the Executive Officer or her designee to approve final drafts of the exhibits to the agreement, which shall be prepared in accordance with the draft record of survey on file with the Commission and the terms outlined herein, and to make minor revisions to the copy of the agreement currently on file with the Commission in order to effectuate the terms and conditions of the agreement if the Executive Officer determines such revisions are appropriate and necessary.
5. Approve and authorize the execution, acknowledgment, and recordation of the Compromise Title Settlement and Land Exchange Agreement and associated deeds and acceptances and leases on behalf of the Commission, in substantially the form of the copy of such agreement on file with the Commission with any minor revisions deemed appropriate and necessary by the Executive Officer to effectuate the Agreement.
6. Accept the grant of a Public Trust easement over the Proposed Public Trust Addition parcel described in the Agreement and generally shown on Exhibit B.
7. 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

# SITE

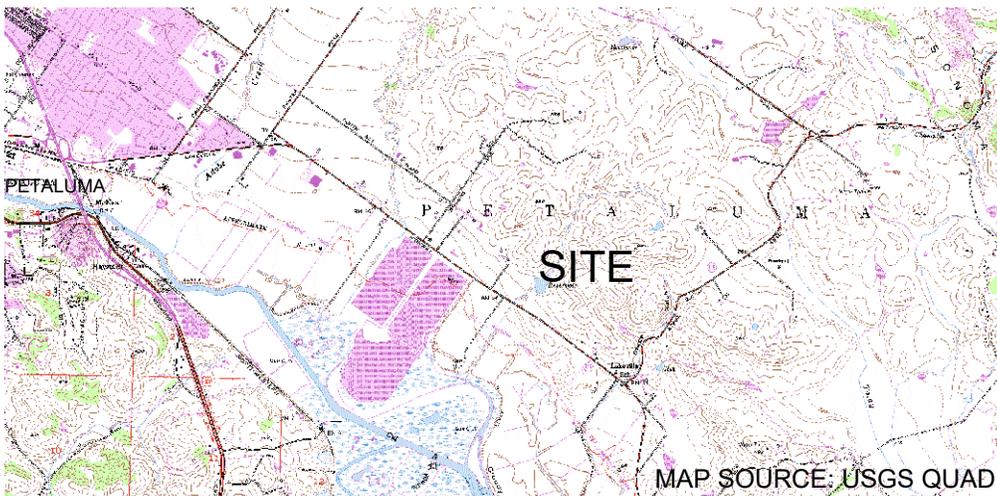


10/18/2021

PLAT OF SUBJECT PROPERTY  
4551 LAKEVILLE HIGHWAY, PETALUMA

NO SCALE

# LOCATION



# EXHIBIT A

W 27251  
 HALO RANCH LLC  
 APN 068-010-004  
 TITLE SETTLEMENT AND  
 EXCHANGE AGREEMENT  
 SONOMA COUNTY

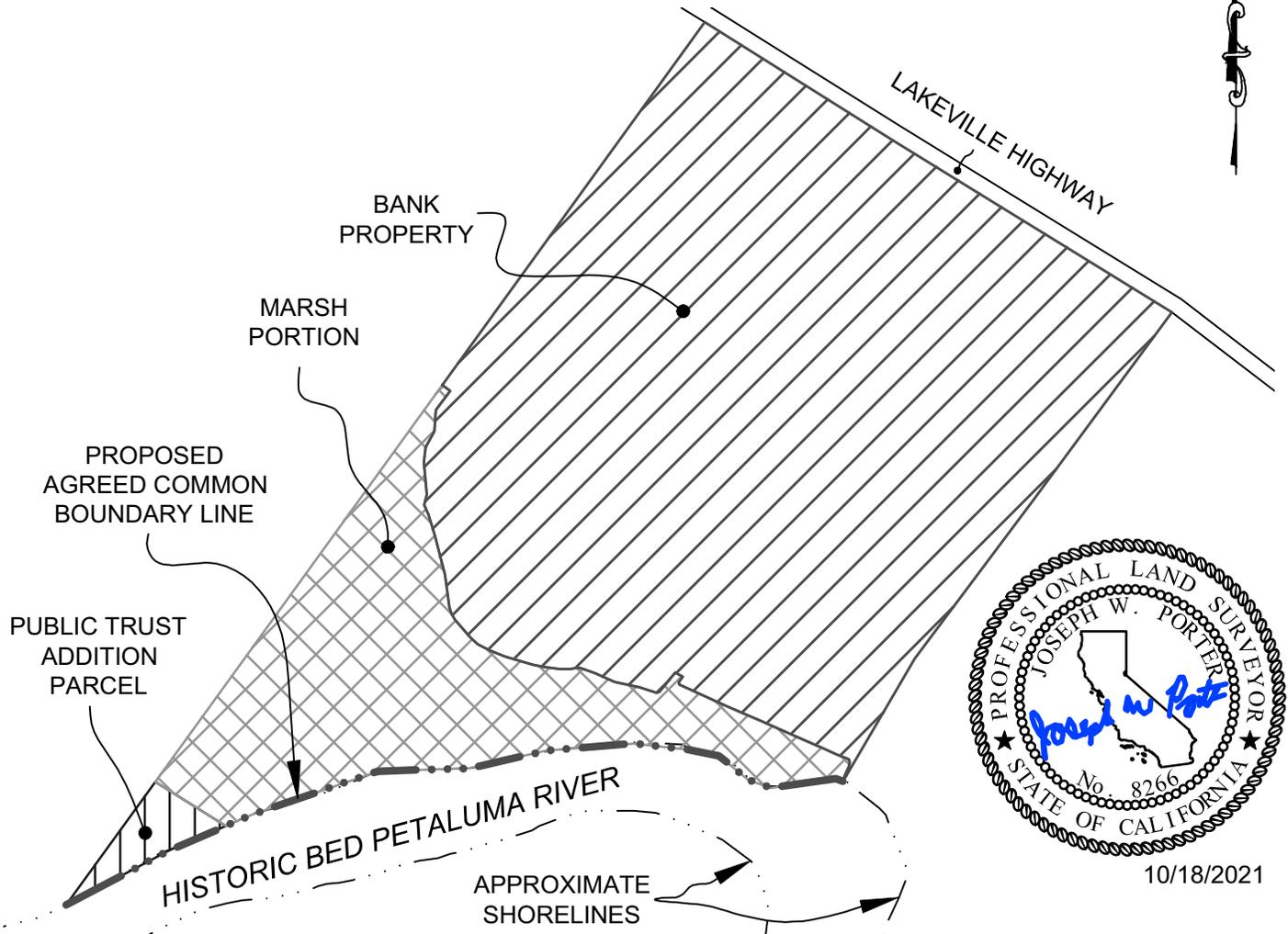


JWP 10/18/2021

THIS EXHIBIT IS SOLELY FOR PURPOSES OF GENERALLY DEFINING THE TITLE SETTLEMENT AREA, IS BASED ON UNVERIFIED INFORMATION PROVIDED BY 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.

NO SCALE

# SITE

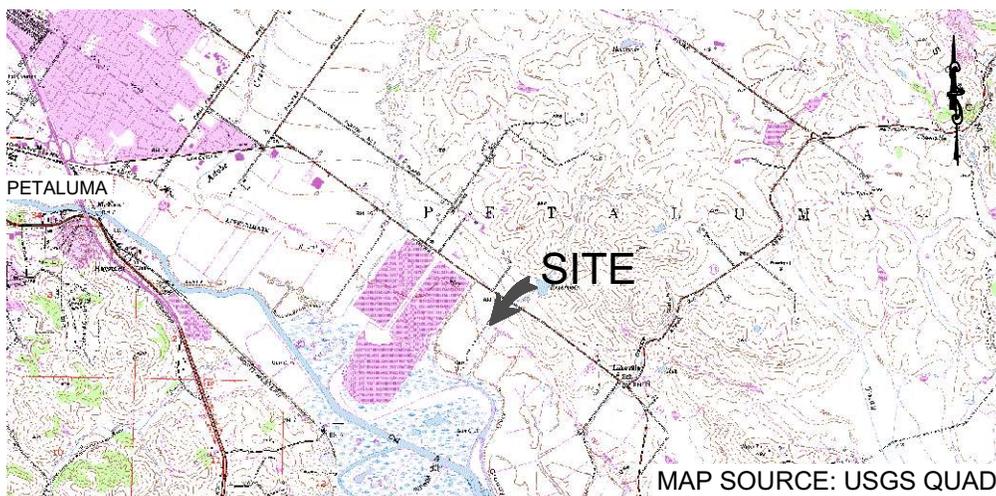


10/18/2021

PLAT OF APPROXIMATE SETTLEMENT PROPERTIES  
4551 LAKEVILLE HIGHWAY, PETALUMA

NO SCALE

# LOCATION



MAP SOURCE: USGS QUAD

# EXHIBIT B

W 27251  
 HALO RANCH LLC  
 APN 068-010-004  
 TITLE SETTLEMENT AND  
 EXCHANGE AGREEMENT  
 SONOMA COUNTY



JWP 10/18/2021

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