

Staff Report 44

PARTIES:

Mark Chodos

Miguel Pena

California State Lands Commission

California State Lands Commission, Kapiloff Land Bank Trustee

PROPOSED ACTION:

Consider acknowledging staff's actions pursuant to the Commission's delegation of authority to expend moneys from the Kapiloff Land Bank Fund for the emergency removal and disposal of marine debris in the Sacramento River; authorization of settlement in lieu of litigation; and authority to recoup costs.

AREA, LAND TYPE, AND LOCATION:

Sovereign land in the Sacramento River, adjacent to 2191 Garden Highway, Sacramento County.

BACKGROUND:

On the evening of June 21, 2022, an 85-foot former military vessel "*All American*" (ASR-85 or "crash boat") burned at dock in the Sacramento River, adjacent to 2191 Garden Highway. Regional fire crews extinguished the fire after hours of battle. California Department of Fish and Wildlife, Office of Spill Prevention and Response (OSPR) and the U.S. Environmental Protection Agency (USEPA) then responded to contain and remove petroleum products, including fuel, oil, and lubricants, and loose hazardous waste, such as marine batteries.

The vessel was no longer seaworthy. Firefighters cut holes in the wooden vessel as part of their suppression efforts. The interior of the vessel was burned and unusable. An electric pump ran continuously to maintain the water level in the vessel. If the pump had failed or been removed, the *All American* would have sunk in shallow

water allowing free communication of the Sacramento River into the interior. If that occurred, residual petroleum product and any other remaining hazardous waste would have washed into the River, along with solid waste such as charred wood and loose debris. Staff of the Sacramento County Sheriff's Marine Unit and salvage contractors also believed that there was a significant risk the compromised wooden hull would break apart in the current.

The owner of the *All American* has not been confirmed, and staff have conflicting accounts at this time. Mark Chodos owns the dock where the vessel burnt and owns the upland at 2191 Garden Highway. Chodos drove the vessel to Sacramento and tied it up to his dock in the days before the vessel burnt, but Chodos disclaims ownership. Federal, state, and local agencies continue to search for firm evidence of ownership.

PROJECT DESCRIPTION:

Because of the threat of release of contaminants and debris into the Sacramento River, staff determined that the *All American* presented a threat of substantial harm to public health and welfare and to the environment and that the Commission approvals necessary to abate the threat of harm could not be delayed until this public meeting. Staff therefore prepared a declaration of emergency on July 15, 2022, pursuant to subdivision I(A)(2) of the Commission's standing delegation of authority (Exhibit A to [Item 55, April 26, 2022](#)). As part of that declaration, staff determined that the *All American* met the definition of marine debris in Harbors and Navigation Code sections 550 and 551 because of its burned and compromised condition and that the vessel could be removed immediately because of the threat posed and because an owner was unknown and not identifiable.

No other federal, state, or local agency had resources available to remove the debris. Sacramento County staff formally asked for assistance from the Commission by letter on July 11. Staff solicited bids from three reputable, available marine salvage contractors, two of whom returned bids within the emergency timeline. After consideration of the methods proposed, costs, and follow up interviews, staff awarded the contract to Lind Marine on July 21, 2022. Lind Marine proposed to demolish the *All American* at its location in the water. Staff determined that this was less risky compared with a proposal to tow the boat to a location where it could be brought on shore. Lind Marine and their environmental contractor deployed a boom to contain any release of waste during demolition and then removed the vessel using a barge-mounted excavator. The emergency project cost \$97,400, not

including staff time and expenses. The *All American* was removed from the water on August 3.

Prior to removal, staff worked with California Department of Toxic Substances Control (DTSC) to ensure that all recoverable hazardous waste was removed and properly disposed of. DTSC paid for asbestos testing, which returned negative results, and recovered a variety of hazardous materials, including marine and car batteries and containers of motor oil, lubricating oil, paint, and various chemicals.

While preparing contracts for removal, staff continued discussion with Chodos about his responsibility for the vessel and the likelihood that the Commission would seek to recoup its costs from him. Harbors and Navigation Code section 551, subdivision (c) allows an agency to recoup costs not only from an owner but also from “any person ... who placed the marine debris in or on or caused the marine debris to be in or on” public lands. Staff became concerned that Chodos might attempt to remove the vessel using unsafe means or an inexperienced contractor. Staff therefore negotiated a preliminary settlement agreement whereby the Commission would waive its right to recoup costs in exchange for Chodos paying \$20,000 in two installments into the Kapiloff Land Bank Fund. Chodos agreed to a written settlement proposal and provided the first \$10,000 payment on August 3, 2022. Although this settlement would not fully compensate the Commission, the settlement avoids the costs and delays of litigation and ensured that the vessel remained in place for proper disposal.

Staff recommends that moneys from the Kapiloff Land Bank Fund (Fund) be used to pay for this emergency contract. Depending on the source of deposits, the Fund may be used “for management and improvement of real property held by the trustee to provide open space, habitat for plants and animals, and public access.” (Pub. Resources Code sec. 8613, subd. (b).) In October 2018, the Commission authorized the expenditure of moneys from certain Fund subaccounts to improve the Crockett waterfront in Contra Costa County and remove abandoned vessels and marine debris from the San Francisco Bay Area ([Item 81, October 18, 2018](#)). Cleanup of the Crockett waterfront is ongoing with significant progress already being made. Further, the 2022–2023 California budget allocated \$2.165 million specifically for continuing the cleanup and rehabilitation of Crockett. Two of the Fund subaccounts authorized by the Commission in 2018—the Unocal and International-Matex Tank Terminals—are therefore available for reallocation to other needed projects.

Staff now asks the Commission to acknowledge and concur with staff's emergency actions and findings, authorize the proposed settlement with Chodos, and

additionally authorize staff to seek cost recovery from any other identified responsible party, if staff determine doing so is feasible and prudent.

STAFF ANALYSIS AND RECOMMENDATION:

AUTHORITY:

Public Resources Code sections 6005, 6216, 6301, 8610, 8612.5, 8613, 8617, and 8625; Harbors and Navigation Code section 551.

PUBLIC TRUST AND STATE'S BEST INTERESTS:

Removal of abandoned vessels and marine debris is an improvement of real property that enhances open space, plant and animal habitat, and public access. The burned *All American* was a clear threat to human health and the environment.

Such removal also improves navigability and recreational use, while reducing impacts to public health and safety. Navigation, recreation, open space, and public access are all uses recognized as consistent with the common law Public Trust Doctrine. Additionally, removal of the marine debris will not substantially interfere with, but actually improve, other Public Trust uses and values.

The proposed settlement agreement allowed the boat to stay in place and be removed quickly and efficiently. Absent this agreement, Chodos or another potentially responsible party may have attempted to move the boat, increasing the chances of the boat sinking, with accompanying environmental hazards, navigational hazards and much higher costs to remove. Furthermore, ownership of the boat is still unclear and once the boat was removed, recouping costs and proving ownership would be protracted, costly, and with uncertain results. Therefore, staff believes approval of the \$20,000 settlement with Mr. Chodos is in the best interests of the state.

CONCLUSION:

For the reasons stated above, staff believes that making the recommended findings and authorizations is consistent with the Public Trust and is in the best interests of the State.

OTHER PERTINENT INFORMATION:

1. The recommended findings and authorizations are discretionary actions by the Commission. Each time the Commission approves or rejects an action on

sovereign land, it exercises legislatively delegated authority and responsibility as trustee of the State's Public Trust lands.

2. This action is consistent with the "Meeting Evolving Public Trust Needs" Strategic Focus Area of the Commission's 2021–2025 Strategic Plan.
3. Staff recommends that the Commission find that this activity is exempt from the requirements of the California Environmental Quality Act (CEQA) as a categorically and statutorily exempt project. The project is categorically exempt under Class 4, Minor Alterations to Land California Code of Regulations, title 2, section 2905, subdivision (d)(3); and Class 30, Minor Actions to Prevent, Minimize, Stabilize, Mitigate or Eliminate the Release or Threat of Release of Hazardous Waste or Hazardous Substances, California Code of Regulations, title 14, section 15330; and statutorily exempt as an Emergency Project, California Code of Regulations, title 14, section 15269, subdivision (c).

Authority: Public Resources Code section 21084 and California Code of Regulations, title 14, sections 15269 and 15300 and California Code of Regulations, title 2, section 2905.

EXHIBIT:

A. Site and Location Map

RECOMMENDED ACTION:

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 categorically and statutorily exempt project, Class 4, Minor Alterations to Land California Code of Regulations, title 2, section 2905, subdivision (d)(3); and Class 30, Minor Actions to Prevent, Minimize, Stabilize, Mitigate or Eliminate the Release or Threat of Release of Hazardous Waste or Hazardous Substances, California Code of Regulations, title 14, section 15330; and statutorily exempt as an Emergency Project, California Code of Regulations, title 14, section 15269, subdivision (c).

PUBLIC TRUST AND STATE'S BEST INTERESTS:

Find that the proposed action is consistent with the common law Public Trust Doctrine and is in the best interests of the State.

AUTHORIZATION:

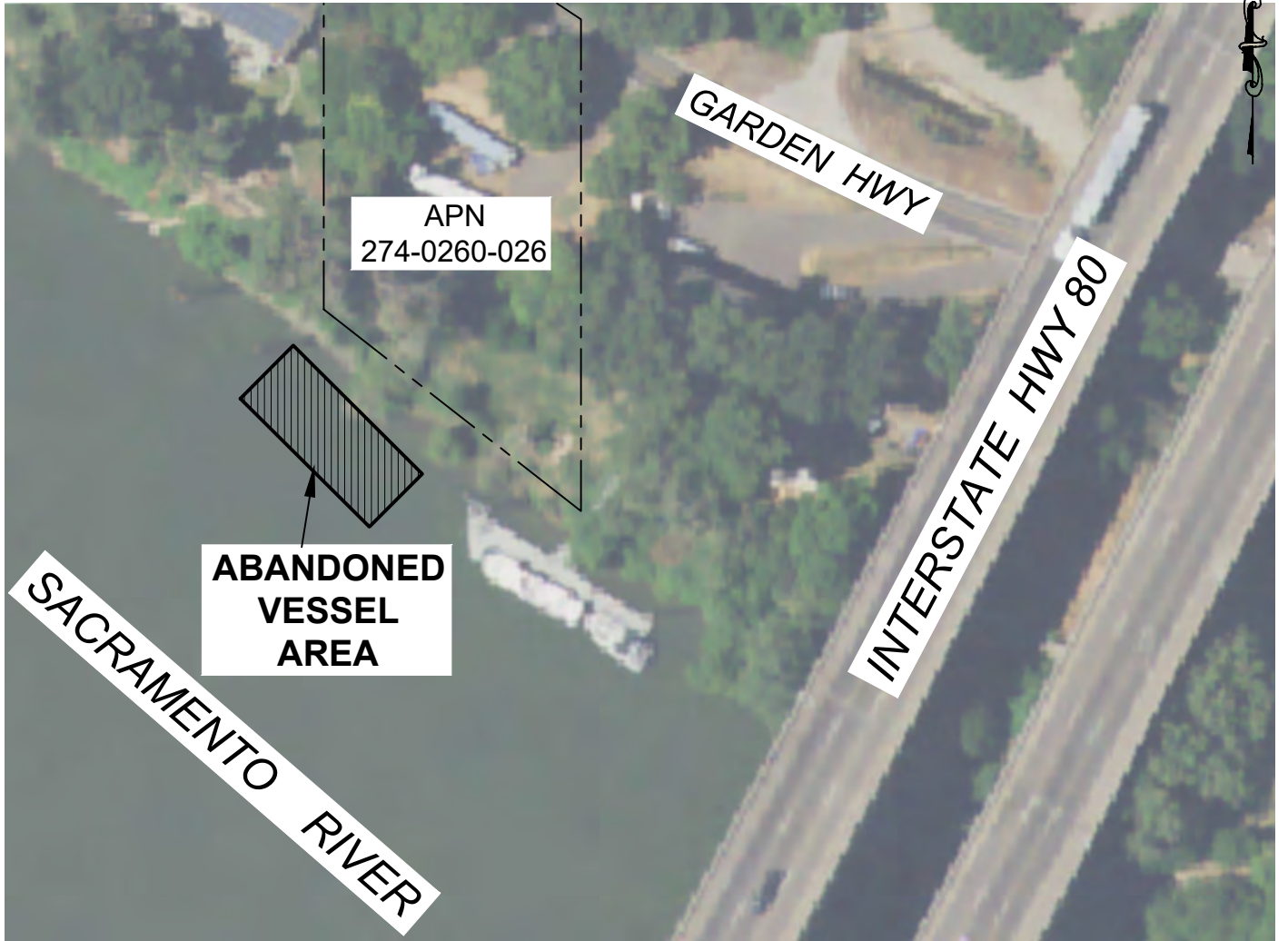
1. Acknowledge that the Executive Officer's standing delegation of authority provides the ability to address emergencies in real time and that the determination to remove the vessel known as the "All-American" was such an emergency; and further acknowledge
 - a. That staff made the determination to seek removal pursuant to Harbors and Navigation Code sections 550 and 551, and that staff found:
 - i. The *All American* was unseaworthy and not reasonably fit or capable of being made fit to be used as a means of transportation by water and was therefore marine debris.
 - ii. The marine debris constituted a danger to navigation, health, safety, or the environment, and could therefore be removed and disposed of immediately.
 - iii. The owner of the debris was not known or identifiable, and therefore no notification was required, and the debris could be destroyed immediately.
 - b. That following these findings, staff negotiated an emergency contract with an experienced marine salvage contractor for the removal and disposal of the *All American* debris; and
 - c. That staff authorized the expenditure of money from the Unocal Corporation and the International-Matex Tank Terminals Subaccounts in the Kapiloff Land Bank on behalf of the Commission, acting as Kapiloff Land Bank Trustee, for removal and disposal of the *All American* debris.
2. Approve the proposed settlement in lieu of litigation between the Commission and Mark Chodos, in substantially the form of the agreement on file with Commission staff, and authorize the Executive Officer or her designee to execute the settlement agreement and take all further actions which may be necessary or appropriate to carry out the provisions of said agreement.
3. Acting as Kapiloff Land Bank Trustee, accept the settlement amount of \$20,000 into the Kapiloff Land Bank Fund for unspecified projects to provide for

management and improvement of real property held by the trustee to provide open space, habitat for plants and animals, and public access.

4. Authorize the Executive Officer or her designee, in cooperation with the Office of the Attorney General, to recoup the Commission's costs from any identified responsible party outside the proposed settlement through any available administrative or civil means, if determined feasible and prudent.

NO SCALE

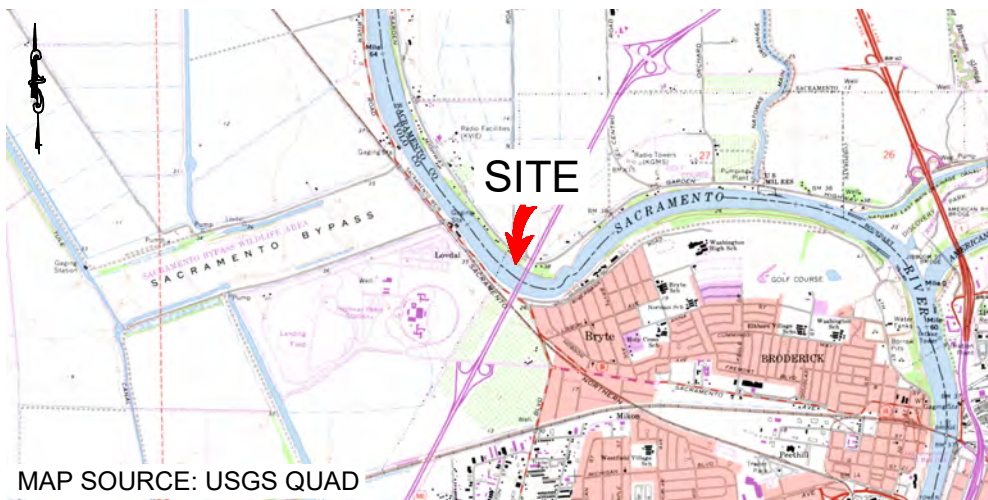
SITE



SACRAMENTO RIVER AT 2191 GARDEN HIGHWAY, SACRAMENTO

NO SCALE

LOCATION



MAP SOURCE: USGS QUAD

EXHIBIT A

W 27250
 APN 274-0260-026
 ABANDONED VESSEL
 REMOVAL
 ALL AMERICAN
 SACRAMENTO COUNTY



TS 07/14/2022

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.