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ON UNSPLASH



2021-2022

Kapiloff Land Bank Report

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Fiscal Year 2021-2022

This report summarizes the status of the Kapiloff Land Bank for fiscal year 2021-2022.¹

Background

The Kapiloff Land Bank Fund (Fund) enables the Commission to accept and hold money in trust to acquire certain property or to expend money for project-specific mitigation or restoration projects.² The Fund was created to facilitate real property title settlements and land exchanges as an extension of the Commission's authority under Public Resources Code section 6307. The Commission may accept cash deposits when substitute parcels of land of equal value are unavailable for exchange. Money from title settlements may only be expended to purchase outstanding interests in tide and submerged lands, lands that have been or may be converted to wetlands or adjoining or nearby lands where the public use and ownership of the land is necessary or extremely beneficial for Public Trust purposes.³ The Commission holds the acquired lands as sovereign Public Trust lands with the same legal character as tide and submerged lands.

Money may also be deposited into the Fund to manage and improve real property held by the Commission for open space, habitat for plants and animals, and public access.⁴ If a deposit is made into the Fund for a specified mitigation purpose as a condition of a permit, lease, or other Commission action, the money is subject to a statutory trust that limits its use to the identified mitigation. Any person or entity may donate money into the Fund for projects, specified or not, that provide for public access to, or management and

¹ This report complies with the annual reporting requirement in Public Resources Code section 8618.

² Kapiloff Land Bank Act (Chapter 1471, Statutes of 1982, as amended); Pub. Resources Code, § 8600, et seq.

³ Pub. Resources Code, §§ 8613, subd. (a), 8625, subd. (a).

⁴ Pub. Resources Code, §§ 8613, subd. (b), 8625, subds. (b) & (c).

improvement of, real property held by the Commission for open space, plant and animal habitat, and public access.

The Fund contains two account categories. The first is Title Settlements, which includes money received from title settlements (deposits) and is the source of money expended on property acquisitions (expenditures). The second is Special Mitigation and Management Projects, which includes money set aside for mitigation, management, or improvement projects. This second category contains an individual subaccount for each fund source.

The Fund overall began the fiscal year with a balance of \$17,442,638 and received deposits of \$2,413,809, with accounts earning \$66,894 in interest. The Commission spent \$1,732,143 across all accounts. Most of this spending was on the Commission's Granted Lands Program and the Coastal Hazard and Legacy Oil and Gas Well Removal and Remediation Program (SB 44, Jackson, Chapter 645, Statutes of 2017)—all of which are within the Special Mitigation and Management Projects category. The Fund ended the fiscal year with a balance of \$18,191,198, a net increase of \$748,560. Below is a summary of significant Fund activity.

Title Settlements

The Title Settlements category began with a balance of \$7,863,524 and ended with a balance of \$7,893,092, a net increase of \$29,568. The net increase is attributed entirely to interest earned as there were no deposits from title settlements during the year.

Title Settlements (Deposits)

No title settlement deposits were made during this fiscal year. But title settlement deposits are expected in the 2022-23 fiscal year. More information about these title settlements and the expected deposits is available on Page 9 under “Fund Activity since July 1, 2022.

In February 2021, the Commission approved a Public Trust Exchange and Title Settlement Agreement for India Basin ([Item 40, February 23, 2021](#)). The Agreement consolidates and confirms Public Trust land holdings in an area in southern San Francisco called India Basin. One small shoreline parcel requires environmental remediation before it will be suitable for the State to accept as Public Trust lands. If the shoreline parcel is not remediated within 10 years, then the Developer will make a \$200,000 payment into the Fund. The Agreement closed on June 23, 2022. The contingent payment noted above will be due in June 2032 if the parcel has not been remediated and transferred to the State before then.

Property Acquisitions (Expenditures)

While staff continue to explore potential land acquisitions consistent with Kapiloff Land Bank Fund statute, the Commission did not authorize any property acquisitions in fiscal year 2021-22.

Special Mitigation and Management Projects

The Special Mitigation and Management Projects category contains funds received for mitigation actions or by agreements, judgments, penalties, or settlements other than as part of a title settlement. This category is maintained as individual subaccounts, some of which are limited to specific mitigation activities. If not limited, a subaccount may be used for public access, acquisitions, management, and property improvement.

The Special Mitigation and Management Projects category began with a balance of \$9,579,114. A total of \$2,451,135 in deposits, including interest, was received, while expenses totaled \$1,732,143. The category ended with a balance of \$10,298,106, a net increase of \$718,992.

Bolsa Chica Lowlands Restoration

The Bolsa Chica Lowlands Restoration Project consists of approximately 950 acres of lowlands in Orange County adjacent to the Pacific Ocean. Approximately 600 acres of the site have been restored. Much of the property has been transformed into a full tidal basin, with other portions converted into muted tidal areas or managed as wetland habitat.



The site also includes a not- yet-restored future full tidal area. The primary sources of original funding were the Ports of Los Angeles and Long Beach, in exchange for mitigation credits.

The Bolsa Chica subaccount began the fiscal year with a balance of \$3,171,745. Of this, the vast majority—\$2,696,400—is reserved for the future full tidal basin restoration, leaving a balance of only a few hundred thousand dollars for normal annual operations and maintenance (O&M) expenses, which include inlet dredging; facility/infrastructure repairs; and environmental, engineering, and other consultant contracts. The O&M budget for Bolsa Chica is approximately \$2 million per year. Recognizing that the operations account was becoming perilously low, the Commission first requested and received a \$1,000,000 General Fund appropriation in the 2017-2018 Budget Act. The Commission has since received \$2,000,000 annual appropriations from the Environmental License Plate Fund (ELPF) for O&M, including the fiscal year covered by this report. Because the appropriation is from the ELPF, the money does not appear in the Kapiloff Land Bank Fund and is not reflected in this report. Operating expenses from the Fund for Bolsa Chica in 2021-22 were \$6,920, which is lower than prior years because of the change in the paying fund to ELPF since 2018-19. The Bolsa Chica subaccount ended the year with a balance of \$3,176,394, which includes \$11,569 in interest earned. Because the interest earned exceeded the expenditures, the Bolsa Chica subaccount ended

the year with a modest increase of \$4,648. While the Commission did receive a further appropriation of \$2,000,000 for three years from the ELPF in the 2022-23 Budget Act, staff continues to research opportunities for ongoing, stable operational funding.

Owens Lake

There was no Fund activity related to Owens Lake in the fiscal year.

Granted Lands Program

Local governments that manage legislatively granted state-owned lands are trustees for the State and public. These trustees are required to manage their granted lands and resources consistent with their legislative trust grants, and the common law Public Trust Doctrine. Trustees must ensure that revenue generated from granted lands is used for purposes consistent with their legislative trust grant and that further the Public Trust. The Commission oversees management of these granted lands and resources. Revenue generated on certain granted Public Trust lands is deposited in the Fund to administer the Commission's Granted Lands Program. Revenue the Commission received from trustees are specified by agreement or granting statutes.

The trustees required to deposit revenue into the Fund are the Cities of Newport Beach, Pittsburg, Martinez, Eureka, and Sacramento, and the San Diego Unified Port District.⁵ The City of Albany, an historically non-revenue producing grant, was added to the list in fiscal year 2020–21.⁶

The Granted Lands Program began the fiscal year with a balance of \$1,205,271 and ended with a balance of \$1,111,708, a decrease of \$93,563. A total of \$233,930 was received from trustees during the fiscal year. Expenses for administering the Granted Lands Program (i.e., staff costs) in 2021-22 totaled \$338,658.

⁵ City of Newport Beach (Chapter 728, Statutes of 1994; Chapter 317, Statutes of 1997); City of Pittsburg (Chapter 422, Statutes of 2011); City of Martinez (Chapter 628, Statutes of 2014); City of Eureka (Chapter 891, Statutes of 2014); City of Sacramento (Chapter 250, Statutes of 2018); San Diego Unified Port District (Chapter 372, Statutes of 2019).

⁶ City of Albany (Chapter 590, Statutes of 2016)

Coastal Hazard and Legacy Oil and Gas Well Removal and Remediation Program

SB 44 (Jackson, Chapter 645, Statutes of 2017) authorizes the transfer, upon appropriation in the Budget Act, of \$2,000,000 annually from tideland oil and gas revenues to the Fund for the Commission's Coastal Hazard and Legacy Oil and Gas Well Removal and Remediation Program. SB 44 also authorizes the transfer, upon appropriation in the Budget Act, of an amount sufficient to bring the unencumbered balance of the Fund to \$2,000,000 for each fiscal year from 2019–20 to 2027–28.



To date, the Commission has re-abandoned four legacy wells in the Summerland Beach area – two in 2020 (Treadwell-10 and NorthStar-815) in two in 2021 (Olsson-805 and Duquesne-910). The two wells re-abandoned in 2021 occurred in July and December, respectively, the period covered by this report. Staff continues to monitor the re-abandoned wells and the surrounding area for seeps using diver and unmanned aerial vehicle (UAV or drone) surveys. Staff is also preparing engineering plans and obtaining permits to re-abandon two additional confirmed leaking legacy wells in Summerland: Treadwell-1, and Treadwell-5. This work is anticipated to occur in the second half of 2023. These re-abandonment operations are an essential part of the Commission's efforts to permanently stop the hydrocarbon source from leaking into surrounding waters and onto the beach.

Coastal hazards are remnants of artificial coastal structures that have been abandoned and orphaned (i.e., there is no known responsible party). These hazards, typically buried in the coastal surf zone, include wood or steel pilings, H piles and H beams, railroad irons, cables, angle bars, ties, pipes, pipelines, seep tent related structural remnants of rip rap structures, wood structures, groins, jetties, piers, and oil and gas-related infrastructure located along the California coastline. Hazard exposure depends on tide and beach erosion. Many hazards are only exposed during the high tidal erosion that occurs in winter. The Commission responds to and removes hazards subject to permit conditions.

The Commission has a contractor on call to remove coastal hazards as they are identified. Hazards are usually removed with small excavators or loaders. No coastal hazard removal work was conducted during the year owing to lower-than-expected coastal erosion at suspected hazard sites.

In December 2022, the Commission authorized hiring a consultant to conduct oil seep studies ([Item 65, December 9, 2022](#)). The studies will likely require historical research and an inventory of offshore natural tar, oil, and gas seeps. The survey, study, and monitoring of tar, oil, and gas seepage (seep studies) in state waters will determine locations, rates, and fingerprinting techniques to characterize tar, oil, and gas samples originating from natural seeps, geologic framework and other conditions controlling seeps, as well as their environmental impacts. The Commission expects to perform this work in 2023.

The SB 44 subaccount started the 2021-22 fiscal year with a balance of \$888,661. After receiving its \$2,000,000 appropriation, it incurred expenses of \$1,144,720 and earned interest in the amount of \$396, leaving a balance of \$1,145,115 at the end of the year.

More information on this Program is available in a separate report from the Commission to the Legislature, the SB 44 report, and is available at www.slc.ca.gov/publications. Please note that the information in the SB 44 report is based on the 2022 calendar year compared to this report, which is based on the 2021-22 fiscal year so specific data and monetary amounts may differ.

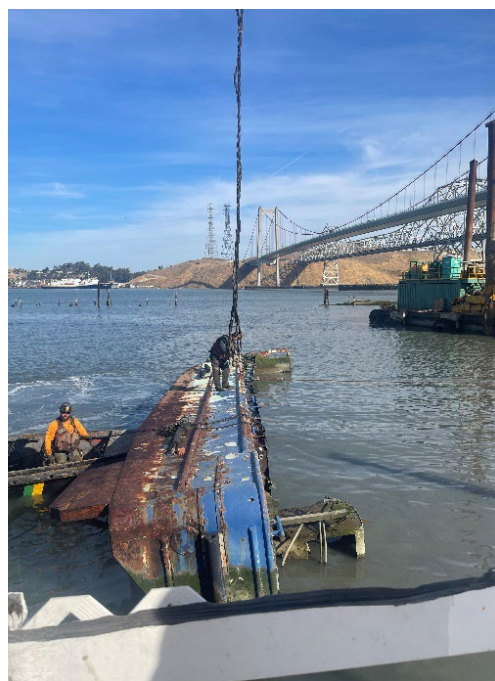
Martins Beach

In 2018, the Commission delegated authority to its Executive Officer to accept donations and make deposits to the Martins Beach subaccount ([Item 107, August 23, 2018](#)). This action comported with SB 854 (Chapter 51, Statutes of 2018) that established a subaccount in the Fund for money received from public and private sources, including nonprofit sources, to acquire and create a public access route to and along the shoreline, including the sandy beach, at Martins Beach in San Mateo County. There was no activity in the subaccount during the fiscal year, but it did earn interest of \$10,247 and ended with a balance of \$1,055,740.

Other Special Mitigation and Management Fund Activity

In December 2020, the Commission authorized expending up to \$37,500 from the Las Tunas Groins subaccount for a fence project at the La Jenelle Beach Park in Ventura County ([Item 57, December 17, 2020](#)). The Las Tunas Groins subaccount originated in a 1989 litigation settlement related to hazardous legacy groins the City of Malibu in Los Angeles County. The settlement terms have been fulfilled, and no obligation remains for these funds. The La Jenelle Beach Park is Public Trust land operated and maintained by the County of Ventura and used by the public for beach and fishing access. An existing bollard fence, a series of posts connected by cable or chain, surrounding the La Jenelle access road and parking lot had deteriorated and been removed. The lack of fencing created a potential public danger from illegal beach driving. Commission, County, and California Coastal Commission staff negotiated a solution in which the County would reinstall a bollard fence and the Commission would reimburse the County for half the cost but no more than \$37,500. The project was subsequently completed, and the Commission's share of the funds were transferred to the County in June 2022.

In October 2018, the Commission authorized the expenditure of \$705,252.55 from three subaccounts to remove and dispose of abandoned vessels, marine debris, navigation hazards or obstructions, and derelict structures in the San Francisco Bay Area ([Item 81, October 18, 2018](#)). The expenditure was intended to partly remediate the abandoned Crockett Marine Services Marina in the community of Crockett, Contra Costa County. In August 2020, a fire destroyed the derelict marine services shop. The Commission expended more than \$18,000 securing the site (e.g., boarding up windows and doors, installing gates and locks) and \$87,370 on post-fire hazardous waste and shoreline cleanup.



In August 2021, the Commission authorized staff to proceed with the next phases of shoreline cleanup, including removal of the hazardous former Nantucket Restaurant building and removal and disposal of shoreline and in-water debris ([Item 40, August 25, 2021](#)). Staff contracted to remove the restaurant building, which occurred in October 2021. In-water cleanup work of sunken vessels, piers, and other debris continued during this fiscal year and into fiscal year 2022-23. Work on the shoreline is expected to be completed in early 2023. Staff will continue to work with community groups on the planning for a revitalized Crockett waterfront.

Fund Activity since July 1, 2022

On August 3, 2022, the Commission's contractor removed an 85-foot-long former military vessel, named the All-American, from the Sacramento River. The Sacramento River at this location is state-owned Public Trust land.

The vessel had burned at dock on June 21, 2022. Fire crews responded and extinguished the fire after cutting holes into the hull of the vessel. The US EPA and California Department of Fish and Wildlife, Office of Spill Prevention and Response responded and removed fuel and oil from the vessel.



Because of its burned and compromised condition, the vessel was deemed an imminent threat to navigation and the environment. \$97,400 in Kapiloff funds were paid to the contractor for the removal. A settlement agreement was reached with the owner of the vessel to pay \$20,000 into the Kapiloff Fund ([Item 44, August 23, 2022](#)). Two payments of \$10,000 each were received and deposited. Although the settlement did not fully compensate the Commission, the settlement avoided potential costs and delays of litigation associated with the proper and timely removal of the vessel.

In August 2022, the Commission approved the acceptance of a partial quitclaim and release from Burlingame Point, LLC in exchange for a \$220,000 payment to the Kapiloff Special Mitigation and Management Fund ([Item 13, August 23, 2022](#)). The arrangement was a settlement of Burlingame Point, LLC's previous obligation to perform upgrades to Fisherman's Park in Burlingame. Due

to various complications with permitting and ground control that could not be resolved after 5 years of coordination with Commission staff, the staff and Burlingame Point, LLC determined that settling the matter with a payment to the Kapiloff Fund for a future beneficial project of the Commission's choosing was in the State's best interest.

Also in August, the Commission approved the Encinal Terminals Land Exchange and Title Settlement Agreement ([Item 45, August 23, 2022](#)). The public lands at Encinal Terminals have remained vacant for over 10 years, consisting of several derelict buildings and a dangerously decayed marginal wood and concrete wharf. The reconfigurations of lands through the Agreement resulted in a net increase to the trust of about 14 acres. The portions of the Project Area having the greatest trust value were added trust and include the entire shoreline in the project area and the submerged lands in Alaska Basin. The Developer will finance and maintain improvements to the Public Trust Lands, which include over 7 acres of waterfront land for the Bay Trail, public promenades and plazas, removal and reconstruction of the wharf, a public kayak launch, and a public water-shuttle landing. Public access, incorporating the Bay Trail, will be provided around the perimeter of the site and will provide opportunities for a range of recreational activities including walking, running, bicycling, fishing, watercraft launch, and vista point viewing. While no deposits were made to the Fund as part of this Agreement, public access at the site was greatly enhanced.

In October 2022, the Commission approved a Public Trust Exchange and Title Settlement Agreement among the City and County of San Francisco and the 2006 Murray G. and Doris M. Cole Revocable Trust ([Item 57, October 23, 2022](#)). This Agreement settled a dispute regarding ownership and trust status of Custer Avenue, a paper street in an industrial area of San Francisco near Islais Creek. Through the settlement, the City and State release their claims to sovereign ownership of Custer Avenue within the Cole property in exchange for an 18-foot-wide public trust easement along Islais Creek, a \$790,000 deposit into the Kapiloff fund for land acquisitions, and a \$160,000 payment to the Port of San Francisco to be used for public trust purposes. This Agreement is expected to close escrow in January 2023.

Fund Balance

The balance of the Fund as of July 1, 2021, is summarized below.

Title Settlements (Pub. Resources Code, § 8625, subd. (a)).

Principal	\$ 7,863,524	
Interest	\$ <u>29,567</u>	
Subtotal		\$ <u>7,893,091</u>

Special Mitigation and Management Projects (§ 8625, subds. (b), (c)).

Bolsa Chica Lowlands Restoration	\$ 3,164,825	
Granted Lands	\$ 1,111,708	
Martins Beach	\$ 1,045,493	
Coastal Hazards (SB 44)	\$ \$1,743,942	
Other Subaccounts	\$ 3,194,812	
Interest	\$ <u>37,327</u>	
Subtotal		\$ <u>10,298,107</u>

Total Fund Balance		\$ 18,191,198
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