

Staff Report 57

PROPOSED ACTION:

Consideration of an Exchange Agreement between the State of California, acting by and through the California State Lands Commission, in its capacity as trustee and land manager of state Public Trust lands and as Trustee of the Kapiloff Land Bank Fund, and Amazon.com Services LLC, regarding certain interests in lands in the City and County of San Francisco.

PARTIES:

The State of California, acting by and through the California State Lands Commission, in its capacity as trustee and land manager of state Public Trust lands and as Trustee of the Kapiloff Land Bank Fund.

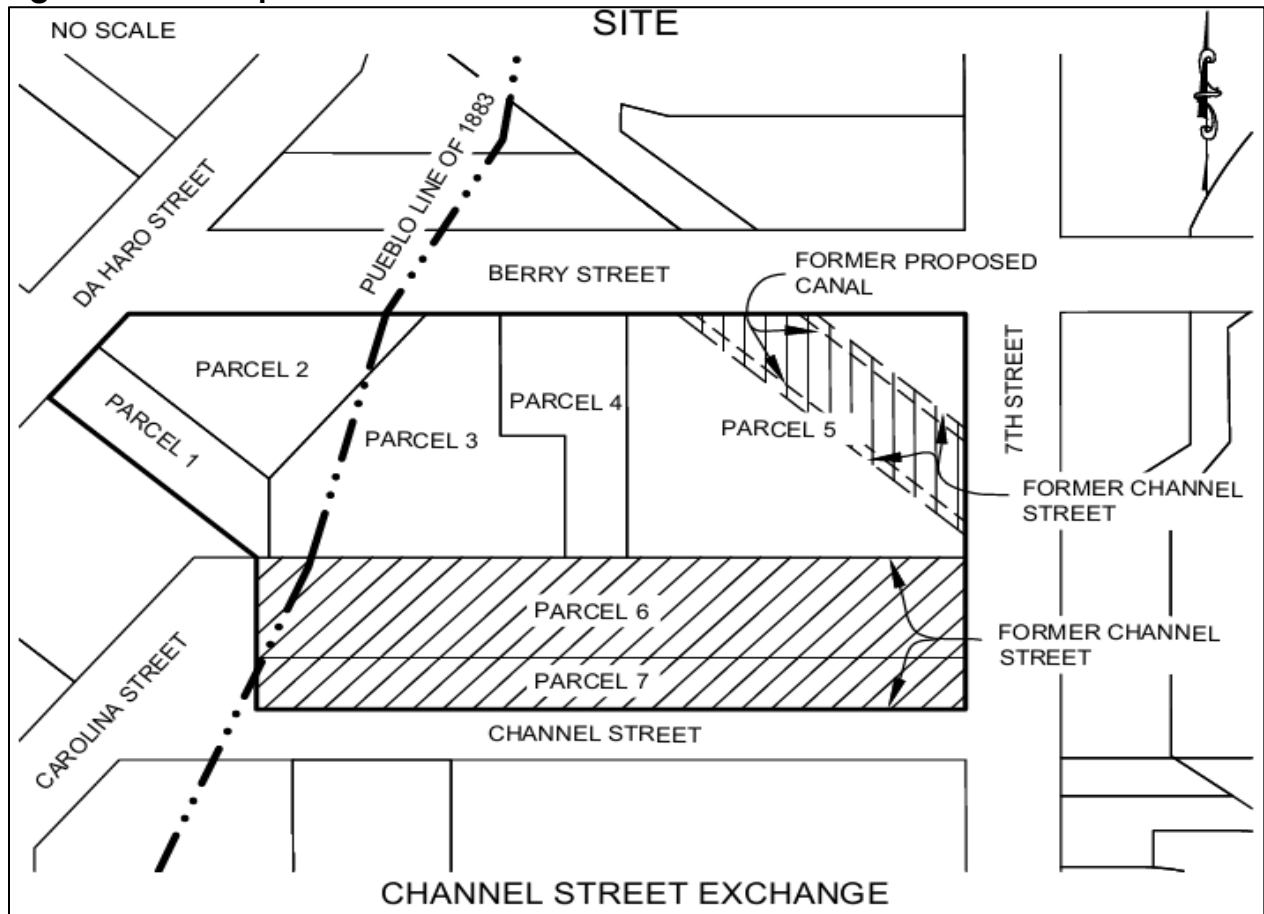
Amazon.com Services LLC, a Delaware limited liability company (Amazon)

AREA, LAND TYPE, AND LOCATION:

Approximately 2 acres located at 900 7th Street in the City and County of San Francisco (as shown in Figure 1).

Figure 1. Location Map



Figure 2. Site Map

BACKGROUND AND PROPOSED AGREEMENT:

The proposed Exchange Agreement (Agreement) concerns an approximately 6.5-acre site located at 900 7th Street in San Francisco (Property). In 2020, Amazon purchased the entire site. Amazon has requested that the Commission make certain findings to terminate the State's claims to two portions of the Property: approximately 2 acres of vacated former Channel Street; and approximately half an acre that was the location of a planned drainage canal, also named Channel Street but referred to here as the Channel Canal.

Beginning in the 1850s, much of the San Francisco waterfront was filled and built out to create a deep-water harbor pursuant to a series of statutes, including the Beach and Water Lots Acts of 1851 and 1853 ([Chapter 41, Statutes of 1851](#); [Chapter 160, Statutes of 1853](#)) and the Board of Tideland Commissioners Act of 1868 ([Chapter 543, Statutes of 1868](#)). Portions of the filled and reclaimed lands were cut off from the water as a result of these harbor improvements and conveyed into private ownership pursuant to legislative authorization. Other portions of these

lands, including Channel Street, were platted as public streets and reserved to the state.

The Property today is inland of streets and railroad tracks and has no access to the waters of the Bay. Historically, the Property sat at or near the mouth of Mission Creek, a formerly natural navigable drainage channel no longer present. Most of the Property is filled tide or submerged lands lying bayward of the San Francisco Pueblo line, the historic boundary between state Public Trust lands and private uplands. Of the filled lands, a large portion was platted as South Beach Block 40 and scheduled to be sold into private ownership. The historical land sales records, however, are incomplete, and it is uncertain whether Block 40 was sold under the Beach and Water Lots Acts or under the Board of Tideland Commissioners Act, or whether Block 40 was sold at all.

In 1868 and 1869, the Legislature and the Board of Tideland Commissioners created two branches of Channel Street. The first was a 200-foot-wide public street continuing straight southwest from 7th Street to 8th Street (Channel Street). The second was a 60-foot-wide drainage and navigation canal with a 10-foot-wide public walkway on each side (Channel Canal). The entire area remained unfilled until at least the 1880s. Block 40 seems to have been filled above tidewater first, and Channel Street and Channel Canal may have been filled in with debris following the Great Fire of 1906 that was precipitated by a 7.8 magnitude earthquake. By 1912, the Channel Canal area was claimed and occupied by private parties. In 1931, the Legislature granted Channel Street to the City and County of San Francisco ([Chapter 627, Statutes of 1931](#)). In 1985 and 2009, the City and County vacated 150 feet of the 200-foot width of Channel Street and sold or exchanged this area to Amazon's predecessor.

The Commission and Amazon have a bona fide dispute over the location, extent, and existence of Public Trust claims in the Property. The parties agree that certain portions of the Property are held by Amazon outside the Public Trust, but the precise location of historic boundary lines is unknown. The Commission asserts that Channel Canal was never sold out of state ownership or, in the alternative, remains subject to a Public Trust easement. The Commission also asserts that the 1931 grant to the City and County of San Francisco did not authorize the City and County to terminate the State's Public Trust interests in Channel Street. Amazon asserts that it holds the Property in fee and outside of the Public Trust as the result of valid deeds, confirming McEnerney actions, and by long continued private occupation. A "McEnerney action" refers to the McEnerney Act, which allows a claimant to prove their title when land records have been destroyed by a disaster, such as the 1906 Great Fire. The State, however, was not named as a party in the McEnerney actions and is not generally bound by McEnerney decrees.

Amazon desires to resolve the dispute over the extent to which the Property is subject to the Public Trust and to terminate all Public Trust claims in the Property. In exchange, Amazon will deposit \$1,325,000 into the Commission's Kapiloff Land Bank Fund. The Kapiloff Land Bank Fund enables the Commission to hold money in trust to acquire property that will be useful to the Public Trust.

LEGAL REQUIREMENTS:

Existing law authorizes the Commission to enter into a land exchange with any person or private or public entity concerning filled or reclaimed tide and submerged lands or beds of navigable waterways, or interests in these lands, that are subject to the Public Trust for commerce, navigation, and fisheries, or other lands or interest in lands (Pub. Resources Code, § 6307). The Commission must make the following findings to approve a land exchange:

- 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.
 - g. To resolve boundary or title disputes.
- 2) The lands or interests in lands to be acquired in the exchange will provide a significant benefit to the Public Trust.
- 3) The exchange does not substantially interfere with public rights of navigation and fishing.
- 4) The monetary value of the lands or interests in lands received by the trust in exchange is equal to or greater than that of the lands or interests in land given by the trust in exchange.

- 5) The lands or 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.

The Kapiloff Land Bank Act (Pub. Resources Code § 8600 et seq.) allows the Commission, acting as Trustee for the Kapiloff Land Bank, to accept a monetary deposit into the Kapiloff Land Bank Fund rather than land or interests in land. The monetary deposit must be used 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 furtherance of Public Trust purposes (Pub. Resources Code, §§ 8613 and 8625).

STAFF ANALYSIS AND RECOMMENDATION:

The purpose of the exchange is to resolve a title dispute. The disputed Property is filled and no longer submerged or covered and uncovered by tides. The former Channel Street and Channel Canal are cut off from access to the waters of San Francisco Bay. A major street, 7th Street, and railroad tracks separate the Property from modern-day Mission Creek. Both Channel Street and Channel Canal have ceased to be used for navigation or street purposes and are not suitable or necessary for navigation or any other Public Trust purpose. The lands adjoining Channel Street and surrounding Channel Canal have been freed of the Public Trust, are owned by Amazon, and are used for nontrust purposes. Because the Property is cut off from the water, adjacent to major streets, and subject to substantial title uncertainty, it can no longer be used for commerce, navigation, or fisheries and is relatively useless for Public Trust purposes.

A land exchange typically involves the state receiving lands or interests in lands, such as access easements, of equal or greater monetary value in exchange for trust termination lands. The Commission, however, acting as the Trustee of the Kapiloff Land Bank Fund, may accept monetary deposits into the Kapiloff Land Bank Fund for acquisition of property instead of taking land in the exchange. The Kapiloff Land Bank Fund was established to facilitate title settlements and enable the Commission to acquire lands for Public Trust purposes. Funds are deposited into the Land Bank Fund when received in exchanges to settle title issues. These funds are pooled or consolidated and are used to acquire other lands of equal or greater benefit to the Public Trust.

The Parties have conducted independent studies and valuations of their respective factual and legal positions relating to the disputed title and boundary claims. Amazon was unable to locate lands or interests in lands in or near San Francisco that it could purchase and that are suitable to be acquired and impressed with the Public Trust. Amazon therefore proposes to deposit \$1,325,000 into the Kapiloff Land Bank Fund. Appraisals and property interest evaluation studies prepared or reviewed by Commission staff have shown that the amount offered, \$1,325,000, is equal to or greater than the monetary value of the state's claims in the Property. Staff believes that settling its claims in this way is in the best interests of the State and recommends terminating the State's interest in the Property. The Attorney General's Office has reviewed the proposed Exchange Agreement and concurs in staff's recommendation.

OTHER PERTINENT INFORMATION:

1. The State, acting by and through the Commission, is authorized to enter into the proposed Exchange Agreement by Public Resources Code sections 6307 and 8600 et seq.
2. No portion of the Property is within the legal descriptions or map of the lands transferred to the City and County under the Burton Act.
3. This action is consistent with the "Meeting Evolving Public Trust Needs" Strategic Focus Area of the Commission's 2021–2025 Strategic Plan.
4. **Authorizing the Agreement:** Staff recommends that the Commission find that authorization to enter into the Agreement is exempt from the requirements of the California Environmental Quality Act (CEQA) as a statutorily exempt action. The action is exempt because it involves the settlement of a title and boundary dispute.

Authority: Public Resources Code section 21080.11.

5. **Acceptance of Deposit:** Staff recommends that the Commission find that the acceptance of funds as trustee of the Kapiloff Land Bank Fund is exempt from the requirements of CEQA as a statutorily exempt action. The action is exempt because it involves an action taken pursuant to the Kapiloff Land Bank Act.

Authority: Public Resources Code section 8631.

RECOMMENDED ACTION:

It is recommended that the Commission:

CEQA FINDING:

Authorizing the Agreement: Find that authorization to enter the Agreement 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 problems, because the Agreement is connected with a settlement of a bona fide title and boundary dispute.

Acceptance of Deposit: Find that the acceptance and deposit of \$1,325,000 into the Kapiloff Land Bank Fund 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 8631.

PUBLIC TRUST AND STATE'S BEST INTERESTS:

Find that the Agreement, consistent with the authorizations below, will provide a significant benefit to the Public Trust; and that the Agreement is consistent with the Public Trust Doctrine and in the best interests of the State.

AUTHORIZATION:

1. Pursuant to Pub. Resources Code, § 6307 and based on the foregoing analysis and the information contained in this staff report and in the Commission's files on the proposed Agreement, find that:
 - a. The Agreement is for the purpose of resolving a boundary and title dispute.
 - b. The \$1,325,000 deposit into the Kapiloff Land Bank Fund shall be used to purchase outstanding interests in tide and submerged lands or in lands that are beneficial for the furtherance of Public Trust purposes and that will provide a significant benefit to the Public Trust.
 - c. The Agreement will not substantially interfere with public rights of navigation and fishing.
 - d. The sum of \$1,325,000 is equal to or greater than the monetary value of the State's claims in the Property.

- e. The Property is cut off from water access and is no longer tide or submerged lands or a navigable waterway, by virtue of being filled or reclaimed, and is relatively useless for Public Trust purposes.
 - f. The Agreement is in the best interests of the State.
2. Approve and authorize the execution, acknowledgment, and recordation of the Agreement, in substantially the form of the Agreement on file with the Commission, and the acceptance, execution, acknowledgment, and recordation of all associated deeds on behalf of the Commission.
 3. Authorize and direct Commission staff or the California Attorney General to take all necessary or appropriate action on behalf of the Commission, including the execution, acknowledgment, acceptance, and recordation of all documents as may be necessary or convenient to carry out the Agreement; and to appear on behalf of the Commission in any legal proceedings relating to the subject matter of the Agreement.
 4. As Trustee of the Kapiloff Land Bank Fund, authorize the acceptance and deposit of \$1,325,000 into the Kapiloff Land Bank Fund to be used for the purchase of interests in a Land Bank Fund parcel pursuant to Public Resources Code section 8613, subdivision (a) and section 8625, subdivision (a).