

KAPILOFF LAND BANK REPORT

FISCAL YEAR 2022-2023



Photo courtesy of Commission staff, Katera Forbes

Kapiloff Land Bank Report

Fiscal Year 2022-2023

This report summarizes the status of the Kapiloff Land Bank for fiscal year 2022-2023.¹

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 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 began the fiscal year with a balance of \$18,191,198 and received deposits of \$2,484,088, with accounts earning \$404,399 in interest. The Commission spent \$1,551,247 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 \$19,528,438, a net increase of \$1,337,240. Below is a summary of significant Fund activity.

Title Settlements

The Kapiloff Land Bank Act (Public Resources Code § 8600 et seq.) allows the Commission to enter into a title settlement and land exchange agreement 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 pursuant to Public Resources Code § 6307.

The Commission, acting as Trustee for the Kapiloff Land Bank, may 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 (Public Resources Code §§ 8613 and 8625).

The Title Settlements category began with a balance of \$7,893,092 and ended with a balance of \$8,865,615, a net increase of \$972,523. The increase is

attributed entirely to a \$790,000 deposit from a title settlement and \$182,523 in interest.

Title Settlements (Deposits)

The Commission entered into two title settlement agreements during the fiscal year, one of which resulted in a deposit to the Fund. These are described below.

In October 2022, the Commission approved a Public Trust Exchange and Title Settlement Agreement involving 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 released 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 Fund for land acquisitions, and a \$160,000 payment to the Port of San Francisco to be used for public trust purposes. The money was deposited into the Fund on June 30, 2023.

In 2022, 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. The reconfigurations of lands through the Agreement resulted in an increase to the trust of about 14 acres. The portions of the project area having the greatest trust value were added to the 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 a wharf, a public kayak launch, and a public water-shuttle landing. Public access, incorporating the bay trail, will be provided around the perimeter and will provide opportunities for a range of recreational activities including walking, running, bicycling, fishing, watercraft launch, and vista point viewing. While no deposit was made to the Fund as part of this Agreement, public access at the site was greatly enhanced.

The Commission approved a title settlement agreement after the close of the fiscal year that is addressed in the “Fund Activity Since July 1, 2023” section of this report.

Property Acquisitions (Expenditures)

While staff continue to explore potential land acquisitions consistent with the Kapiloff Land Bank Fund statute, the Commission did not authorize any property acquisitions in fiscal year 2022-23.

Special Mitigation and Management Projects

The Special Mitigation and Management Projects category contains funds received for mitigation 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 expressly limited, the Commission may use a subaccount for public access, acquisitions, management, and property improvement.

The Special Mitigation and Management Projects category began with a balance of \$10,298,106. A total of \$1,915,964 in deposits, including interest, was received, while expenses totaled \$1,551,247. The category ended with a balance of \$10,662,823, a net increase of \$364,717.

Bolsa Chica Lowlands Restoration Project

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.



Figure 1. White Pelicans. Photo by Steven Eric Smith.

The site includes a not yet-restored future full tidal area. The Ports of Los Angeles and Long Beach provided most of the original project funding in exchange for mitigation credits.

The Bolsa Chica subaccount began the fiscal year with a balance of \$3,176,394. Most of this revenue, \$2,800,868, is reserved for the future full tidal basin restoration, leaving a balance of only a few hundred thousand dollars for 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, most of which goes toward dredging the inlet. Recognizing that the operations account was becoming perilously low, the Commission received a \$1 million General Fund appropriation in the 2017-2018 Budget Act. The Commission has since received \$2 million 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.

Interest earned during the year was \$68,765. Operating expenses were \$1,885 because, as noted above, most O&M expenses have been paid from the ELPF since 2018-19.. The Bolsa Chica subaccount ended the year with a balance of \$3,243,274, which represents a modest increase of \$66,880. While the Commission received a further appropriation of \$2 million for an additional 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 the people of California. 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 the trust grant and that further the Public Trust. The Commission oversees management of granted lands and resources. Revenue generated on certain granted lands is deposited in the Fund to administer the Commission's Granted

Lands Program. Revenues the Commission receives 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 in fiscal year 2020–21.⁶

The Granted Lands Program began the fiscal year with a balance of \$1,116,176 and ended with a balance of \$2,163,492, an increase of \$1,047,316. A total of \$1,465,073 was received from trustees, most of which, \$1,235,031, was received from the City of Newport Beach and the San Diego Unified Port District. Interest earned on the subaccount during the year was \$40,482. Expenses for administering the Granted Lands Program (i.e., staff costs) totaled \$458,239.

Martins Beach

In 2018, the Commission authorized its Executive Officer to accept donations and make deposits to the Martins Beach subaccount ([Item 107, August 23, 2018](#)). This action comported with Chapter 51, Statutes of 2018, which 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 were no receipts and no expenses in the subaccount during the fiscal year, but it earned interest of \$23,406 and ended with a balance of \$1,079,145.

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

SB 44 (Jackson, Chapter 645, Statutes of 2017), authorizes up to \$2 million annually from the state's General Fund to the Fund beginning in 2018-19 and through 2027-28, to administer the program. In July 2018, the Commission received the first \$2 million appropriation. SB 44 authorizes the transfer of an

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)

amount sufficient to bring the unencumbered balance of the program funds back up to \$2 million annually through fiscal year 2027-28.

The SB 44 subaccount started the fiscal year with a balance of \$1,744,337. It incurred expenses of \$997,803 and earned interest in the amount of \$21,520, leaving a balance of \$768,054. For unknown reasons, the Commission did not receive the 2022-23 fund transfer during the fiscal year. The Commission notified the Department of Finance, and in December 2023 (the current fiscal year), the Department of Finance authorized the 2022-23 fund transfer.

Legacy oil and gas wells are wells that were drilled before current abandonment standards, where there is scant information on the well's abandonment procedure, and there is no viable company with the responsibility to re-abandon the well should it start leaking or threaten the environment or public health and safety. Based on the Commission's research, there are 200 high-priority legacy oil and gas wells that could, depending on their condition, leak oil into the marine environment, negatively affecting swimmers, surfers, recreational users, and marine and coastal wildlife, as well as causing environmental degradation and public health and safety hazards.

The Commission re-abandoned two legacy wells (Treadwell-10 and NorthStar-815) in 2020, and two more (Olsson-805 and Duquesne-910) in 2021 in the Summerland area of Santa Barbara County. 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.

During 2022 and 2023 the Commission and its contractor obtained permits and prepared plans to re-abandon two additional wells along the Treadwell Pier (Treadwell-1 and Treadwell-5), also in the Summerland area. The abandonment of these wells is discussed in the Fund Activity Since July 1, 2023, section of this report. The Commission continues to monitor the re-abandoned wells and survey the area to assess whether there are additional leaking wells to address in future SB 44 funded re-abandonments. In December 2022, the Commission authorized its Executive Officer to retain a contractor to perform seep studies along the coastline ([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 retain a consultant to perform this work in 2024.

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 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 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.



Figure 2. Removal of exposed H-beams from the beach. Photo courtesy of Commission staff.

The Commission has a contractor on call to remove coastal hazards as they are identified. Hazards are usually removed with small excavators or loaders. In January 2023, the Commission, through its contractors, removed over 120 hazards from the Haskell's Beach area in Santa Barbara County that were exposed during the storms that occurred in late December 2022 and early January 2023. Staff will keep monitoring the sites as well as other sites, including Summerland and Mussel Shoals beaches, for exposure of additional hazards during future storms.

More information on this Program is available in a separate report from the Commission to the Legislature, the SB 44 report, at www.slc.ca.gov/publications.

Please note that the information in the SB 44 report is based on the 2023 calendar year, while this report is based on the 2022-23 fiscal year, so data and monetary amounts may differ.

Other Special Mitigation and Management Fund Activity

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 complications with permitting and ground control that could not be resolved after 5 years of coordination with Commission staff, the Commission 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.

In January 2023, the Commission completed the cleanup of the former Crockett Marine Services Marina site in the community of Crockett, Contra Costa County. The cleanup consisted of the removal of the remaining concrete foundation and pilings of the former Nantucket restaurant, marina slips, a shop building, a small crane, five sunken and beached barges and derelict vessels, a derelict army pier, remnant pilings, and shoreline debris. The removal project should also increase valuable eelgrass habitat.



Figure 3. One of the many vessels removed in the town of Crockett. Photo courtesy of Commission staff.

This multi-year removal project was made possible through an expenditure of \$705,253 from three Kapiloff Special Mitigation and Management Fund subaccounts ([Item 81, October 18, 2018](#)) and a \$2,165,000 budget appropriation f in fiscal year 2022-23. The Commission continues to work with community groups and the Town of Crockett to revitalize the waterfront area.

Fund Activity Since July 1, 2023

In October 2023, the Commission approved an Exchange Agreement between the Commission, acting as Trustee of the Kapiloff Land Bank Fund, and Amazon.com Services LLC ([Item 57, October 19, 2023](#)). The Agreement involves property interests in approximately 2 acres located at 900 7th Street in the City and County of San Francisco. The purpose of the exchange was to resolve a title dispute over the location, extent, and existence of Public Trust claims in the property. Because the property is filled, reclaimed, cut off from the water, 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. The Commission agreed to terminate all Public Trust claims in the property and in

exchange Amazon will deposit \$1,325,000 into the Fund's Title Settlement account. The deposit will be reported in the Kapiloff Land Bank Report for fiscal year 2023-24.

On September 1, 2023, the Commission and its contractor completed the re-abandonments of the Treadwell-1 and Treadwell-5 wells in the Summerland area of Santa Barbara County using a barge, divers, and heavy equipment. Onshore support consisted of oil spill response equipment staged in Lookout Park. The project started on August 14, 2023, and lasted 19 days, which included several weather-related standby days because of the historic arrival of Hurricane Hilary and turbulent swells.

Fund Balance

The balance of the Fund as of July 1, 2023, is summarized below.

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

Principal	\$ 8,683,092	
Interest	\$ <u>182,523</u>	
Subtotal		\$ <u>8,865,615</u>

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

Bolsa Chica Lowlands Restoration	\$ 3,174,509	
Granted Lands	\$ 2,123,010	
Martins Beach	\$ 1,055,739	
Coastal Hazards (SB 44)	\$ 746,534	
Other Subaccounts	\$ 3,341,155	
Interest	\$ <u>221,876</u>	
Subtotal		\$ <u>10,662,823</u>

Total Fund Balance		\$ 19,528,438
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