

Senate Bill No. 815

CHAPTER 660

An act to amend Section 2.1 of Chapter 1333 of the Statutes of 1968, and to amend Sections 2, 3, 4, 7, and 12 of Chapter 543 of the Statutes of 2004, relating to tidelands and submerged lands.

[Approved by Governor October 13, 2007. Filed with
Secretary of State October 13, 2007.]

LEGISLATIVE COUNSEL'S DIGEST

SB 815, Migden. Tidelands and submerged lands: City and County of San Francisco: seawall lots: Treasure Island.

(1) Existing law grants to the City and County of San Francisco the right, title, and interest of the State of California in and to certain tidelands and submerged lands in trust for certain purposes. Under existing law, the Burton Act, and the Burton Act transfer agreement, the interest of the state in and to the Harbor of San Francisco was transferred in trust to the City and County of San Francisco. The State Lands Commission has jurisdiction over tidelands and submerged lands of the state.

This bill would authorize the City and County of San Francisco to lease, sell, or otherwise transfer all or any portion of certain tidelands and submerged lands constituting "paper streets" in the City and County of San Francisco to any person, as defined, free of the public trust and of any additional restrictions on use or transfer created by the Burton Act or Burton Act transfer agreement upon a finding and declaration of specified conditions by the State Lands Commission.

The bill would declare, until January 1, 2004, certain parcels of real property denominated as the designated seawall lots, subject to certain specified conditions, are free from the use requirements of the public trust, the Burton Act trust, and the Burton Act transfer agreement. The San Francisco Port Commission would be authorized to lease all or a portion of the designated seawall lots provided that specified conditions are met. Revenues generated from the leases would be deposited in a separate account in the harbor fund, established in the treasury of the City and County of San Francisco, to be expended for specified purposes. The bill would exempt any lands or interests granted to the Treasure Island Development Authority pursuant to the Treasure Island Conversion Act of 1997 from the requirements of the Burton Act.

(2) The Treasure Island Public Trust Exchange Act approved an exchange of public trust lands within the Treasure Island Development Authority property, whereby certain trust lands on Treasure Island that meet specified criteria and are not useful for public trust purposes are freed from the public trust and may be conveyed into private ownership, and certain other lands

on Yerba Buena Island that are not public trust lands and that are useful for public trust purposes are made subject to the public trust.

This bill would revise that act to, among other things, no longer allow the reconfigured trust lands to include additional land in the trust along the western shore of Treasure Island in exchange for certain land removed from the trust. The bill would provide that certain parcels owned by the United States Department of Labor may be incorporated into the exchange authorized by the act if certain specified conditions are met.

The people of the State of California do enact as follows:

SECTION 1. As used in this act:

(a) “BCDC” means the San Francisco Bay Conservation and Development Commission established under Section 66620 of the Government Code.

(b) “Burton Act” means Chapter 1333 of the Statutes of 1968, as amended.

(c) “Burton Act lands” means those tidelands granted to the city by the Burton Act.

(d) “Burton Act Map” means that certain map entitled “MAP OF LANDS TRANSFERRED IN TRUST TO THE CITY AND COUNTY OF SAN FRANCISCO,” recorded in Book W of Maps, Page 66, of the City and County of San Francisco Recorder’s Office.

(e) “Burton Act transfer agreement” means that certain agreement dated January 24, 1969, between the state and the city, relating to the transfer of the Port of San Francisco from the state to the city, and any amendments to that agreement in accordance with its terms.

(f) “Burton Act trust” means the statutory trust imposed by the Burton Act, by which the state conveyed to the city, in trust and subject to certain terms, conditions, and reservations, the state’s interest in certain tidelands, including filled lands, and lands dedicated or acquired by the city as assets of the trust.

(g) “Capital plan” means the plan developed by the port dated February 2007, as may be amended from time to time, identifying projects to improve the infrastructure and buildings on trust lands on the San Francisco waterfront, including preservation of and structural repairs and improvements to historic piers, and the construction of public access within and around historic piers.

(h) “City” means the City and County of San Francisco, a charter city and county.

(i) “Commission” means the State Lands Commission.

(j) “Designated seawall lot” or “designated seawall lots” means any or all of the parcels of real property located in the city commonly known as seawall lots 328, 330, 337, and 347S, including a portion of Mission Rock Street, as shown on that certain map entitled “designated seawall lots,” which is reproduced in Section 15 and is on file with the commission and the port.

(k) “Harbor fund” means the separate fund in the treasury of the city established and maintained in accordance with Section B6.406 of the charter of the city and Section 4 of the Burton Act.

(l) “Historic pier” means any of the piers, marginal wharves, pier sheds, bulkhead buildings, and other buildings and structures in the San Francisco waterfront between and including Pier 48 and Pier 45 that have been included in the Port of San Francisco Embarcadero Historic District and that either are individually listed or eligible for listing on the National Register of Historic Places; or have been designated as, or meet the standards for, resources contributing to the historic significance of the Port of San Francisco Embarcadero Historic District under federal law.

(m) “Historic structure” means any building, structure, or other facility that is located on port property and either is individually listed or eligible for listing on the National Register of Historic Places; or has been designated as, or meets the standards for, a resource contributing to the historic significance of a national register listed or eligible for listing as a historic district under federal law.

(n) “Lease” means a ground lease or space lease of real property, license agreement for use of real property, temporary easement, right-of-way agreement, development agreement, or any other agreement granting to any person any right to use, occupy, or improve real property under the jurisdiction of the port.

(o) “McAteer-Petris Act” means Title 7.2 (commencing with Section 66000) of the Government Code.

(p) “Paper street” or “paper streets” means any or all of those areas of real property, located in the city, consisting of certain portions of lands designated as streets on the Burton Act Map, and more particularly described as follows:

(1) That portion of Daggett Street lying between the easterly prolongation of the northerly line of Sixteenth Street and the southwesterly line of Seventh Street.

(2) That portion of Texas Street lying between the easterly prolongation of the southerly line of Sixteenth Street and the Pueblo Line of 1883, as shown on Sheet 4 of the Burton Act Map.

(3) That portion of Custer Avenue lying southerly of a line parallel with, and distant 100 feet landward, from the mean High Water Line of San Francisco Bay.

(4) That portion of Evans Avenue lying easterly and northerly of the Line of Ordinary High Tide of 1868-1869 as shown on Sheet 6 of the Burton Act Map, and westerly of a line parallel with, and distant 100 feet landward, from the mean High Water Line of San Francisco Bay.

(5) That portion of Davidson Avenue lying easterly of the Line of Ordinary High Tide of 1868-1869 as shown on Sheet 6 of the Burton Act Map, and westerly of a line parallel with, and distant 100 feet landward, from the mean High Water Line of San Francisco Bay.

(6) That portion of Ingalls Street lying southerly of the westerly prolongation of the southerly line of Custer Avenue, northeasterly of the

Ordinary High Tide Line of 1869, and southeasterly of a line parallel with, and distant 100 feet landward, from the mean High Water Line of San Francisco Bay.

(7) Subject to approval by the commission, any portion of former Arthur Avenue lying southwesterly of the southwesterly line of Cargo Way, as dedicated on November 10, 1978, by Resolution Number 834-78 of the Board of Supervisors of the city, and as shown on Map T-27-85 on file in the office of the County Surveyor of the city, lying easterly of the easterly line of Third Street, abutting Assessor Parcel Numbers 5203-023, 5203-025, 5203-038, 5203-046, 5203-047, 5203-048, 5203-049, 5203-050, 5203-051, 5203-052, 5203-053, 5203-054, 5203-055, 5203-056, and 5203-057, inclusive, and Assessor Parcel Number 4570-019, excepting therefrom that portion thereof lying between the northeasterly prolongations of the northwesterly and southeasterly lines of Mendell Avenue; the foregoing shall include, without limitation, any portion of Arthur Avenue shown as lying outside of Parcel “A” as depicted on the Burton Act Map, provided that the commission finds and declares that there is uncertainty as to the nature or extent of the state’s sovereign interest in these lands and that the public interest would be served by the resolution of that uncertainty by a settlement.

(q) “Person” means any private person, corporation, limited liability company, partnership, joint venture, business entity, business trust, association or other private organization or private entity, or any governmental entity or agency.

(r) “Port of San Francisco” or “port” means the city acting by and through the San Francisco Port Commission.

(s) “Preservation” means the rehabilitation, restoration, or preservation of historic piers or other historic structures in accordance with the Secretary of the Interior’s Standards for Rehabilitation. Preservation includes seismic retrofitting, substructure repair, and other structural and life-safety improvements, provided that the improvements are necessary for and in furtherance of the preservation of historic piers or other historic structures.

(t) “Public trust” or “trust” means the common law public trust for commerce, navigation, and fisheries.

(u) “San Francisco waterfront” means those lands placed by the city under the management, supervision, and control of the port.

(v) “Seaport plan” means the San Francisco Bay Area Seaport Plan, adopted by BCDC and the Metropolitan Transportation Commission, as amended in 2003, and as may be amended from time to time.

(w) “Special area plan” means the San Francisco Waterfront Special Area Plan, dated July 20, 2000, adopted by BCDC, as amended in 2002, and as may be amended from time to time.

(x) “State” means the State of California.

(y) “Subarea” or “subareas” means one or more of the waterfront subareas identified in the Waterfront land use plan, as may be amended from time to time, except as otherwise provided in this act.

(z) “Tidelands” means the lands lying below the elevation of ordinary high water, whether filled or unfilled, and includes submerged lands.

(aa) “Waterfront land use plan” means the Port of San Francisco Waterfront Land Use Plan, including, but not limited to, the waterfront design and access element, adopted by the port under Resolution No. 97-50, as may be amended from time to time.

SEC. 2. The Legislature finds and declares all of the following:

(a) Upon its admission to the United States of America on September 9, 1850, the state, by virtue of its sovereignty, received in trust for the purposes of commerce, navigation, and fisheries, all right, title, and interest in ungranted tidelands and beds of navigable waterways within its borders. The landward boundary of such waterways is the ordinary high water mark.

(b) In 1969, pursuant to the Burton Act and the Burton Act transfer agreement, the state conveyed certain state tidelands to the city in trust for public trust and Burton Act trust purposes. Under the Burton Act, the port is authorized to use, conduct, operate, maintain, manage, regulate, improve, and control the San Francisco waterfront consistent with the public trust and the Burton Act trust. The Burton Act trust requires that the moneys derived from the use of the transferred properties be used solely for the furtherance of the purposes set forth in the Burton Act. The transferred lands include the designated seawall lots, the paper streets, and the historic piers.

(c) The San Francisco waterfront, extending generally from Fisherman’s Wharf to Candlestick Point, is a valuable public trust asset of the state and provides special maritime, navigational, recreational, cultural, and historical benefits to the people of the region and the state. A unique attribute of the San Francisco waterfront is its historic piers along the northeastern edge of the city. The historic piers from Fisherman’s Wharf to China Basin within the Embarcadero Historic District have been listed on the National Register of Historic Places and represent one of the few remaining examples of breakbulk finger piers in the nation.

(d) The present-day San Francisco waterfront lies a significant distance from the historic shoreline of the city. Beginning in the 1850s, the tidelands at the historic shoreline were filled and reclaimed to create a functional harbor pursuant to a series of state statutes. Portions of the filled and reclaimed lands were cut off from the water as a result of these harbor improvements and were conveyed into private ownership pursuant to legislative authorization.

(e) Pursuant to Chapter 219 of the Statutes of 1878, the Legislature authorized the waterward expansion of the northern waterfront through the construction of a new seawall and the filling of the tidelands separated from the water by the seawall and the Embarcadero (formerly East Street). The new seawall, upon which the present-day Embarcadero roadway is built, established a permanent shoreline for the northeastern portion of the city. The construction of the new seawall allowed for the development of the finger piers that remain today. The San Francisco Belt Line Railroad was constructed on top of the new seawall to transport cargo into, out of, and between the finger pier cargo terminals. The filled and reclaimed lands

between the former waterfront line and the new seawall, generally known as the “seawall lots,” were retained in state ownership and were required by various statutes to be used for purposes related to commerce of the port. During the first half of the twentieth century, when the northern San Francisco waterfront was a major center of shipping activity, the seawall lots were used primarily as railyards or as backlands to support cargo operations on the finger piers.

(f) Over time, shipping activities in San Francisco diminished and shifted to the southern waterfront as break-bulk operations began to be replaced by containerized cargo. Because of its limited backland area, the northeastern waterfront was not suited for containerized shipping and was no longer a center of maritime and railroad operations. The seawall lots north of Second Street, separated from San Francisco Bay by the Embarcadero roadway, were further cut off from the water by light rail tracks that were recently constructed in the median of the roadway.

(g) Seawall lot 337 is located on former tidelands known as China Basin and was filled in the early 1900s pursuant to a lease authorized by the Legislature between the Board of State Harbor Commissioners and a railway company. The lease required the railway company to construct a seawall, reclaim tidelands, and construct a rail freight yard serving the waterfront. Railroad use of seawall lot 337 was eventually abandoned as cargo operations shifted to the southern waterfront.

(h) As a result of these developments, certain of the seawall lots or portions thereof, including the designated seawall lots addressed in this act, have ceased to be useful for the promotion of the public trust and the Burton Act trust, except for the production of revenue to support the purposes of the Burton Act trust and, with respect to seawall lot 337, for certain uses described in subdivision (i) of this section and in Section 6 of this act.

(i) Presently, the designated seawall lots are leased on an interim basis for commuter parking or are vacant land, with the exception of seawall lot 337, which is currently leased to the China Basin Ballpark Company for event-related parking. A portion of seawall lot 337 is also designated as a port priority use area under the seaport plan. Some public trust uses, including, but not limited to, public parks and walkways, may be feasible and appropriate for a part of seawall lot 337. This act requires that, prior to the lease of seawall lot 337 for nontrust uses, the port has undertaken and approved, and the commission has approved, a study analyzing the need to retain trust-consistent uses on the site, and BCDC has amended the seaport plan to remove the port priority use designation from lands to be leased for nontrust uses.

(j) The designated seawall lots constitute approximately 4 percent of the lands granted to the city under the Burton Act, not including lands currently subject to tidal action.

(k) The designated seawall lots were filled and reclaimed as part of a highly beneficial plan of harbor development, have ceased to be tidelands, and constitute a relatively small portion of the tidelands granted to the city.

(l) Given the foregoing lack of public trust use needs for the designated seawall lots, the designated seawall lots are not necessary for public trust or Burton Act trust purposes, with the exceptions described in subdivision (i) of this section and in Section 6 of this act.

(m) Under Section 3 of Article X of the California Constitution, the state may sell tidelands within two miles of any incorporated city, city and county, or town in the state, and fronting on the water of any harbor, estuary, bay, or inlet that were reserved to the state solely for street purposes, to any town, city, county, city and county, municipal corporations, private persons, partnerships, or corporations, subject to such conditions as the Legislature determines are necessary to be imposed in connection with the sales in order to protect the public interest, if the Legislature finds and declares that the tidelands are not used for navigation purposes and are not necessary for those purposes.

(n) Pursuant to several statutes, including, but not limited to, Chapter 41 of the Statutes of 1851, as amended, and Chapter 543 of the Statutes of 1867–68, as amended by Chapter 388 of the Statutes of 1869–70, the state sold certain tidelands in the city into private ownership. However, some of the tidelands in the city, including all of the paper streets, were withheld from sale and reserved to the state solely for street purposes. As with the designated seawall lots, the paper streets were conveyed to the city, in trust, pursuant to the Burton Act.

(o) Presently, none of the paper streets are used, suitable, or necessary for navigation or any other public trust purpose, other than revenue generation. The paper streets are fragments that have been cut off from direct access to the waters of San Francisco Bay by past filling of intervening property and do not provide and are not needed for public access to the waterfront. The lands adjoining the paper streets have been freed of the trust and have been or are proposed to be developed for nontrust uses. Certain of the paper streets, including those comprising portions of Texas, Custer, Ingalls, and Davidson Streets, as shown on the Burton Act Map, were either never constructed as streets or have ceased to be used for street purposes and are presently developed with structures, including warehouse facilities and the recently closed Hunters Point powerplant.

(p) Beginning in the early 1990s, in response to economic and land use needs of the port and as directed by the San Francisco electorate, the port undertook a public planning process related to the improvement and development of the San Francisco waterfront. This resulted in the adoption of the waterfront land use plan in 1997. The plan includes a waterfront design and public access element, which sets forth detailed policies relating to public access, views, historic preservation, and architectural design standards.

(q) The port and BCDC have resolved certain statutory and regulatory issues concerning land uses of the historic piers. Through a joint port and BCDC public planning process, with participation from the organization “Save The Bay” and other persons and organizations interested in the San

Francisco waterfront, the port and BCDC adopted amendments to the waterfront land use plan and special area plan in 2002.

(r) Pursuant to the San Francisco Administrative Code, the port has developed a capital plan identifying projects necessary and convenient to the improvement, operation, and conduct of the city's waterfront. Implementation of the port's capital plan is a matter of statewide importance and is essential to furthering the purposes of the public trust. Projects in the capital plan include, but are not limited to, all of the following:

(1) Seismic and life-safety improvements to existing buildings and other structures.

(2) Rehabilitation, restoration, and preservation of certain historic piers and other historic structures.

(3) Structural repairs and improvements to piers, seawalls, and wharves.

(4) Remediation of hazardous materials.

(5) Stormwater management facilities.

(6) Other utility infrastructures.

(7) Public access improvements, including improvements within and around the pier sheds and the construction of waterfront plazas and open space required by the special area plan.

(s) The estimated cost to implement the port's capital plan is approximately 1.4 billion dollars (\$1,400,000,000) in 2007 dollars. This amount substantially exceeds the projected revenues of the port available for these purposes, in part due to the port's inability to make optimal use of the designated seawall lots and the paper streets.

(t) The implementation of the capital plan, including the preservation of the historic piers and other historic structures and the construction of waterfront plazas and open space, is a matter of statewide importance and furthers the purposes of the public trust and the Burton Act trust.

(u) Future revenues from the development and leasing of the designated seawall lots are an essential source of funds to preserve historic piers and historic structures and construct and maintain waterfront plazas and open space as identified in the capital plan. The expenditure of revenues for these purposes will serve the public trust and the Burton Act trust and will improve access to the waterfront for visitors and residents.

(v) It is the intent of the Legislature that the designated seawall lots, with the protections related to seawall lot 337 provided in Section 6, should be freed of the use requirements of the public trust, the Burton Act trust, and the Burton Act transfer agreement, but should otherwise continue to be held by the port subject to the terms and conditions of the public trust, the Burton Act trust, and the Burton Act transfer agreement, provided that revenue derived from the leasing of the designated seawall lots be deposited in the harbor fund to be used to fund the preservation of the historic piers and other historic structures and the construction and maintenance of waterfront plazas and open space.

(w) It is further the intent of the Legislature, subject to the terms and conditions set forth in this act, to terminate the public trust over the paper streets, to authorize the city to sell or otherwise dispose of those lands free

from the trust, and to require that the revenues derived from the use, administration, or transfer of those lands be used in furtherance of trust purposes. The Legislature recognizes and acknowledges that the port's revenue needs, as reflected in part in its capital plan, will remain considerable even after obtaining additional revenues from the sale of the paper streets and the lease of the designated seawall lots.

SEC. 3. Subject to the terms and conditions in Section 4 pertaining to leases, and in Section 6 pertaining to seawall lot 337, the designated seawall lots are declared to be free from the use requirements of the public trust, the Burton Act trust, and the Burton Act transfer agreement for the period between the effective date of this act and January 1, 2094. The designated seawall lots shall remain subject to all other terms, provisions, and requirements of the public trust, the Burton Act trust, and the Burton Act transfer agreement, and any additional requirements set forth in this act, as applicable.

SEC. 4. Subject to the applicable terms and conditions in Section 6 pertaining to seawall lot 337, the port may enter into a lease of all or any portion of the designated seawall lots free from the use requirements established by the public trust, the Burton Act trust, and the Burton Act transfer agreement (nontrust lease), provided all of the following conditions are met:

(a) Notwithstanding the Burton Act, Section 718 of the Civil Code, Section 37384 of the Government Code, or any other provision of law to the contrary, the term of any individual nontrust lease, including any extension of the term allowed by right of renewal, does not exceed 75 years, and the nontrust lease will terminate no later than January 1, 2094. Nothing in this section shall be construed as limiting the term of any lease, or portion thereof, that is for uses consistent with the public trust and the Burton Act.

(b) (1) Except as provided in this subdivision, all revenues received by the port from the nontrust lease will be deposited in a separate account in the harbor fund to be expended for the preservation of historic piers and historic structures, or for the construction and maintenance of waterfront plazas and open space required by the special area plan. Revenues shall not be expended under this subdivision for historic piers or historic structures on land subject to public trust use restrictions unless the executive officer of the commission has approved the proposed uses of the pier or structure.

(2) The port may annually transfer from the separate account and deposit in the general account of the harbor fund, to be used for any purpose consistent with the public trust and the Burton Act, an amount equal to the sum of the baseline revenue streams for each designated seawall lot subject to a nontrust lease (hereafter leased seawall lot), less any revenues received by the port, for the year preceding the transfer of funds, from any portion or portions of the leased seawall lots that were not subject to a nontrust lease. For purposes of this subdivision, the baseline revenue stream for a designated seawall lot is the average annual revenue received by the port from that seawall lot over the five years prior to January 1, 2008, adjusted for inflation.

(3) For purposes of this subdivision, the term “revenue” shall exclude any costs incurred by the port to administer the lease and to operate and maintain the leased property and any improvements thereon.

(4) For each nontrust lease of a designated seawall lot, the port shall maintain a separate accounting of all revenues transferred pursuant to paragraph (2), all costs excluded pursuant to paragraph (3), and all revenues deposited into the separate account.

(5) If the funds in the separate account exceed the amount needed for the preservation of historic piers and historic structures and for construction of waterfront plazas and open space, the excess funds shall be deposited in the harbor fund to be used for purposes consistent with the public trust and the Burton Act.

(c) The nontrust lease is for fair market value and on terms consistent with prudent land management practices as determined by the port and subject to approval by the commission as provided in paragraph (1).

(1) Prior to executing the nontrust lease, the port shall submit the proposed lease to the commission for its consideration, and the commission shall grant its approval or disapproval in writing within 90 days of receipt of the lease and supporting documentation, including documentation related to value. In approving a nontrust lease, the commission shall find that the lease meets all of the following:

(A) Is for fair market value.

(B) Is consistent with the terms of the public trust and the Burton Act trust, other than their restrictions on uses.

(C) Is otherwise in the best interest of the state.

(2) Whenever a nontrust lease is submitted to the commission for its consideration, the costs of any study or investigation undertaken by or at the request of the commission, including reasonable reimbursement for time incurred by commission staff in processing, investigating, and analyzing such submittal, shall be borne by the port; however, the port may seek payment or reimbursement for these costs from the proposed lessee.

SEC. 5. Nothing in this act shall be construed as limiting the port’s existing authority to use or lease the designated seawall lots under the Burton Act, subject to any applicable limitations of state law.

SEC. 6. Seawall lot 337 shall remain subject to the use requirements of the public trust, the Burton Act trust, and the Burton Act transfer agreement until all of the following conditions are met:

(a) BCDC has approved an amendment to the seaport plan priority use designation now applicable to a portion of seawall lot 337. Any areas within seawall lot 337 that remain subject to a seaport plan priority use designation following an amendment to the seaport plan shall remain subject to the existing use requirements of the public trust, the Burton Act trust, and the Burton Act transfer agreement.

(b) The port has undertaken and approved a study to determine land uses and the location of those uses within seawall lot 337 and the adjacent Piers 48 and 50. The study shall include public outreach and participation and shall analyze the need to retain land uses within seawall lot 337 that comply

with the public trust, the Burton Act trust, and the Burton Act transfer agreement. Trust uses to be considered in the study shall include, without limitation, public parks and walkways, restaurants, hotels, maritime training, sales and rentals, waterfront visitor serving retail services, and other trust uses. The study shall also address the transportation needs of the Giants Ballpark and trust uses on port property in the vicinity. The study shall, at a minimum, reserve sufficient areas along the northern and eastern sides of seawall lot 337 to accommodate needed public trust uses.

(c) The commission has approved the conclusions of the port study. The port shall submit the study to the commission prior to its submittal of any lease of the property, and the commission shall indicate its approval or disapproval of the study's conclusions in writing within 90 days of receipt of the study.

SEC. 7. Sections 3, 4, and 6 of this act shall be inoperative on January 1, 2094, after which date the use of the designated seawall lots shall be consistent with the public trust, the Burton Act trust, and the Burton Act transfer agreement. No later than January 1, 2094, all structures, buildings, and appurtenances on the designated seawall lots not consistent with the purposes of the public trust, the Burton Act trust, and Burton Act transfer agreement shall be removed or modified, including any necessary restoration or remediation of the seawall lots, to facilitate public trust uses.

SEC. 8. (a) The Legislature hereby finds in accordance with Section 3 of Article X of the California Constitution that the interest of the state in the paper streets was reserved to the state solely for street purposes, and that the paper streets are no longer used or necessary for navigation purposes.

(b) The city may, pursuant to Section 3 of Article X of the California Constitution, lease, sell, or otherwise transfer all or any portion of the paper streets, or any interest therein, to any person free of the public trust, the Burton Act trust, and any additional restrictions on use or alienability created by the Burton Act transfer agreement. A lease, sale, or other transfer made pursuant to this section shall not be effective unless and until the commission, at a regular open meeting with the proposed transaction as a properly scheduled agenda item, does or has done both of the following:

(1) Finds, or has found, that the consideration for lease, sale, or other transfer of the paper streets or interest therein shall be the fair market value of the land or interest sold.

(2) Adopts, or has adopted, a resolution approving the lease, sale, or other transfer that finds and declares that the paper street or streets to be transferred have been filled and reclaimed, are cut off from access to the waters of San Francisco Bay, and are no longer needed or required for the promotion of the public trust, and that no substantial interference with the public trust uses and purposes will ensue by virtue of the transfer. The resolution shall also declare that the transfer is consistent with the findings and declarations in Section 2 of this act and is in the best interests of the state. Upon adoption of the resolution, or at a time that is specified in the resolution, and the recordation of lease, transfer, or sale documents, the street shall thereupon be free from the public trust, Burton Act trust, and

any additional restrictions on use or alienability created by the Burton Act transfer agreement.

(c) All revenues derived from the lease, sale, or other transfer of the paper streets pursuant to this section shall be deposited in a separate account in the harbor fund and shall be expended solely for purposes of implementing the port's capital plan, consistent with the Burton Act and the public trust.

(d) To effectuate the lease, sale, or other transfer of the paper streets authorized by this section, the commission may convey to the city by patent all of the right, title, and interest in the paper streets held by the state by virtue of its sovereignty, including any public trust interest or Burton Act reservation not previously conveyed, free of the public trust, the Burton Act trust, and any additional restrictions on use or alienability created by the Burton Act transfer agreement, and subject to any reservations the commission determines appropriate.

(e) The Legislature finds and declares that the conditions set forth in this section will protect the public interest in accordance with Section 3 of Article X of the California Constitution.

SEC. 9. In the case where the state conveys tidelands or any interest therein pursuant to this act, the state shall reserve all minerals and all mineral rights in the lands of every kind and character now known to exist or hereafter discovered, including, but not limited to, oil and gas and rights thereto, together with the sole, exclusive, and perpetual right to explore for, remove, and dispose of those minerals by any means or methods suitable to the state or to its successors and assignees, except that, notwithstanding the grant or Section 6401 of the Public Resources Code, any reservation shall not include the right of the state or its successors or assignees in connection with any mineral exploration, removal, or disposal activity, to do either of the following:

(a) Enter upon, use, or damage the surface of the lands or interfere with the use of the surface by the city or by the city's successors or assignees.

(b) Conduct mining activities of any nature whatsoever above a plane located 500 feet below the surface of the lands without the prior written permission of the city or the city's successors or assignees.

SEC. 10. Any lease of the designated seawall lots entered into pursuant to this act shall be conclusively presumed to be valid unless held to be invalid in an appropriate proceeding to determine its validity in a court of competent jurisdiction filed within 60 days after the commission's approval of the lease. Any agreement or any deed, patent, or other instrument, involving the conveyance of an interest in the paper streets, executed or entered into pursuant to this act, shall be conclusively presumed to be valid unless held to be invalid in an appropriate proceeding to determine its validity in a court of competent jurisdiction commenced within 60 days after the recording of the agreement or instrument.

SEC. 11. (a) An action may be brought under Chapter 9 (commencing with Section 860) of Title 10 of Part 2 of the Code of Civil Procedure to determine the legality and validity of any lease of the designated seawall lots. Prior to the filing of any such action, the Attorney General and the

executive officer of the commission shall be provided written notice of the action and a copy of the complaint.

(b) An action may be brought under Chapter 4 (commencing with Section 760.010) of Title 10 of Part 2 of the Code of Civil Procedure to establish title to any lands conveyed pursuant to this act, or by the parties to an agreement entered into pursuant to Section 8 of this act to confirm the validity of the agreement. Notwithstanding Section 764.080 of the Code of Civil Procedure, the statement of decision in the action shall include a recitation of the underlying facts and a determination as to whether the conveyance or agreement meets the requirements of this act, Sections 3 and 4 of Article X of the California Constitution, and any other law applicable to the validity of the agreement.

(c) For purposes of Section 764.080 of the Code of Civil Procedure and unless otherwise agreed in writing, an agreement entered into pursuant to Section 8 of this act shall be deemed to be entered into on the date it is executed by the executive officer of the commission, who shall be the last of the parties to sign prior to the signature of the Governor. The effective date of the agreement shall be deemed to be the date on which it is executed by the Governor pursuant to Section 6107 of the Public Resources Code.

SEC. 12. The city may modify any description and plat prepared and recorded under Section 2 of the Burton Act and Section 11 of the Burton Act transfer agreement to reflect the disposition of any property pursuant to this act, and may record the modified description and plat in the Official Records of the City and County of San Francisco.

SEC. 13. The Legislature finds and declares that any lease, conveyance, sale, exchange, boundary settlement, confirmation of title, or agreed ordinary high water mark made, established, or accomplished pursuant to this act is of statewide importance, and, therefore, an ordinance, charter provision, or other provision of local law inconsistent with this act shall not be applicable thereto.

SEC. 14. The Legislature finds and declares that unique circumstances exist at the San Francisco waterfront as described in Section 2 of this act, and that therefore this act sets no precedent for any other location or project in the state.

SEC. 15. The following map is a part of this act: [Map of Designated Seawall Lots to be provided]

SEC. 16. Section 2.1 of Chapter 1333 of the Statutes of 1968, as amended by Section 14 of Chapter 898 of the Statutes of 1997, is amended to read:

Sec. 2.1. This act shall not apply to any lands or interests granted to the Treasure Island Development Authority pursuant to Chapter 898 of the Statutes of 1997, as amended.

SEC. 17. Section 2 of Chapter 543 of the Statutes of 2004 is amended to read:

Sec. 2. The following definitions apply for purposes of this act:

(a) “Authority” or “TIDA” means the Treasure Island Development Authority, a nonprofit public benefit corporation established by the legislative body of the City and County of San Francisco and the conversion

act, or, if TIDA is dissolved, the City and County of San Francisco, acting by and through its Port Commission.

(b) “City” means the City and County of San Francisco.

(c) “Commission” means the State Lands Commission.

(d) “Conversion act” means the Treasure Island Conversion Act of 1997 (Chapter 898 of the Statutes of 1997).

(e) “Job Corps parcel” means that property lying within the city comprising that portion of the TIDA property commonly referred to as the Job Corps Center, Treasure Island, which was transferred to the United States Department of Labor by that certain document entitled “Transfer and Acceptance of Military Real Property,” dated March 3, 1998.

(f) “Public trust” or “trust” means the public trust for commerce, navigation, and fisheries.

(g) “Statutory trust” means those requirements for and limitations on the use, management, and disposition of trust lands imposed by Sections 6 through 11, inclusive, of the conversion act.

(h) “TIDA property ” means that property comprised of portions of the lands commonly known as Treasure Island and Yerba Buena Island lying within the City and County of San Francisco, State of California and more particularly described as follows:

That portion of the lands described in that certain Presidential Reservation of Goat Island (now Yerba Buena Island), dated November 6, 1850, lying northwesterly of Parcel 57935-1 as described in that certain Quitclaim Deed, recorded October 26, 2000, as Document Number 2000G855531, in the office of the Recorder of the said City and County of San Francisco (hereinafter referred to as Doc. 2000G855531), together with all of the underlying fee to Parcel 57935-5 as described in said Quitclaim Deed (Doc. 2000G855531), and also together with all of the underlying fee to Parcel 57935-6 as described in said Quitclaim Deed (Doc. 2000G855531), and also together with that portion of the tide and submerged lands in San Francisco Bay, relinquished to the United States of America by that certain act of the Legislature of the State of California by Statutes of the State of California of 1897, Chapter 81 (hereinafter referred to as Stat. 1897, Ch. 81), and also together with all of the Tidelands and Submerged Lands in San Francisco Bay known as Treasure Island, together with all improvements thereon and appurtenances thereto, as described in that certain Final Judgment of Condemnation, filed April 3, 1944, in the District Court of the United States in and for the Northern District of California, Southern Division, Case Number 22164-G (hereinafter referred to as Case 22164-G), excepting therefrom, that portion of the said Tide and Submerged Lands in San Francisco Bay, relinquished to the United States of America (Stat. 1897, Ch. 81), within the “Army Reservation, Occupied by U.S. Light House Service under Permit from Secretary of War dated May 27, 1872” as shown and described upon that certain map entitled “Plat of Army and Navy reservations on Yerba Buena (Goat) Island, San Francisco Bay, California”, and also excepting therefrom, that portion of the Tide and Submerged Lands in San Francisco Bay, relinquished to the United States of America (Stat.

1897, Ch. 81) which were transferred to the United States Coast Guard by that certain document entitled “Transfer and Acceptance of Military Real Property”, dated November 26, 2002.

(i) “Tidelands” means lands below the mean high tide line and includes submerged lands.

(j) “Trust exchange” or “exchange” means the exchange of trust lands on Treasure Island for lands on Yerba Buena Island not presently subject to the trust, as authorized by this act.

(k) “Trust lands” means all lands, including, but not limited to, tidelands, within the TIDA property that are presently subject to the public trust or will be subject to the trust upon conveyance out of federal ownership. Following a trust exchange, trust lands shall include all lands impressed with the trust pursuant to the exchange, and shall not include any lands removed from the trust pursuant to the exchange.

(l) “Trustee” means the authority and any successor agency authorized under the conversion act and this act to administer the trust over any or all of the trust lands.

SEC. 18. Section 3 of Chapter 543 of the Statutes of 2004 is amended to read:

Sec. 3. The Legislature finds and declares all of the following:

(a) The purpose of this act is to facilitate the productive reuse of the TIDA property in a manner that will further the purposes of the public trust and the statutory trust. To effectuate this purpose, this act approves and authorizes the commission to carry out an exchange of lands under which certain nontrust lands on Yerba Buena Island with substantial value for the public trust would become subject to the public trust and statutory trust, and certain trust lands on Treasure Island that are no longer useful for trust purposes would be freed from public trust and statutory trust restrictions.

(b) Treasure Island includes lands that were historically tidelands subject to the public trust. In 1933, the Legislature granted the tidelands that would become Treasure Island to the city for construction of an airport (Chapter 912 of the Statutes of 1933), and amended the grant in 1935 to authorize use of the lands for the Golden Gate International Exposition (Chapter 162 of the Statutes of 1935). The city built Treasure Island between 1936 and 1939 by depositing sand and gravel on shoals north of Yerba Buena Island and surrounding that fill with a rock retaining wall.

(c) Yerba Buena Island was acquired by the United States Navy in 1898. In 1941, the city leased Treasure Island to the United States, and Treasure Island and Yerba Buena Island became a military base known as Naval Station Treasure Island. In 1942, the Navy initiated federal court proceedings to condemn Treasure Island and portions of the surrounding tidelands. In 1944, the Navy took title to Treasure Island and certain adjacent tidelands pursuant to a consent judgment in the condemnation action.

(d) Pursuant to a decision of the federal Base Realignment and Closure Commission in 1993, Naval Station Treasure Island was officially closed on September 30, 1997. That same year, the Legislature enacted the conversion act, authorizing the San Francisco Board of Supervisors to

designate the authority as the redevelopment authority for the TIDA property. Under the conversion act, the authority is the only entity that may lawfully accept from the federal government title to trust lands on the TIDA property. The Navy is presently in negotiations with the city and the authority for the transfer of the Navy-owned portion of the TIDA property to the authority.

(e) Redevelopment will require substantial investment in seismic improvements on Treasure Island, including seismic reinforcement of the perimeter of the island, to reduce the risk that buildings and other facilities on the island will experience structural failure caused by liquefaction and lateral spreading during a severe earthquake. Redevelopment will also require replacement or upgrading of all of the infrastructure and utility systems on the islands, and completion of hazardous materials remediation. In addition, several historic buildings, including those commonly known as Buildings 1, 2, and 3, the Nimitz Mansion (Quarters 1), and Quarters 2 to 7, inclusive, and 10, will require substantial renovation to preserve their integrity and historic character. Redevelopment must generate sufficient revenue to render the needed seismic and infrastructure improvements and historic renovations financially feasible.

(f) The conversion act grants in trust to the authority the state's sovereign interest in former and existing tidelands within the TIDA property, including the Job Corps parcel, and establishes the authority as the trust administrator for those lands. These lands are subject to the public trust upon their transfer from federal ownership.

(g) The federal government has asserted that the fact and manner of its acquisition and ownership of the TIDA property have created uncertainty as to the nature and extent of the state's sovereign interest in the TIDA property. It is in the best interests of the people of this state to resolve this alleged uncertainty in a manner that furthers trust purposes.

(h) The existing configuration of trust and nontrust lands within the TIDA property is such that the purposes of the public trust cannot be fully realized. Certain uplands on Yerba Buena Island of high value to the public trust due to their existing or potential recreational, scenic, and habitat uses are currently not subject to the public trust. Specifically, upper portions of the island afford dramatic views of the bay and its environs, including Mount Tamalpais and the Marin Headlands, Alcatraz, Angel, and Treasure Islands, downtown San Francisco, the cities of the south bay and east bay, and all five of the bay's bridges. The island provides habitat for a variety of special status bird species, such as the American peregrine falcon, black-crowned night heron, black oystercatcher, Brandt's cormorant, and California brown pelican, and parts of the lower reaches of the island provide haulout sites for the harbor seal. In addition, there are lower areas of Yerba Buena Island developed with structures, including the Nimitz Mansion, that are useful for service to visitors.

(i) A substantial portion of the trust lands on Treasure Island are lands that have been cut off from access to navigable waters and are not useful for public trust purposes. Other lands, due to their location and attributes, remain useful to the trust for future open space and other trust uses, including

the following: a wetland creation site; a pedestrian corridor around the shoreline of the island linked with a major open space and recreational park in the northern and eastern portions of the island; a proposed ferry terminal and plaza, a marina, and other public waterfront amenities; and other public ways that will provide waterfront access and enhance water views across the island. The remaining lands that are cut off from water access do not have these capabilities and are no longer needed or useful for trust purposes. Development of those lands for nontrust uses that are consistent with the redevelopment goals of the conversion act and state redevelopment law will not interfere with trust purposes and will provide revenues needed to improve the trust lands in a manner that will maximize their value to the trust.

(j) Absent a trust exchange, the uncertainties alleged by the federal government regarding the sovereign trust title of lands within Treasure Island would remain, and most of the lands on Yerba Buena Island that are of high value to the public trust would remain free of the public trust, and could thereby be cut off from public access and developed for nontrust uses. In addition, the interior lands on Treasure Island not useful for trust purposes could not be used for residential or other nontrust uses essential for the economic redevelopment of the island and for the financial feasibility of needed seismic upgrades, historic preservation, and the development of the Treasure Island waterfront and adjacent open space for public purposes in furtherance of the trust. An exchange will render redevelopment of Treasure Island economically feasible and will allow the trust lands within the TIDA property to be successfully transferred out of federal ownership and to be used to the greatest benefit of the people of the state.

(k) A trust exchange resulting in the configuration of trust lands substantially similar to that depicted on the diagram in Section 12 of this act maximizes the overall benefits to the trust, and does not interfere with trust uses or purposes. Following the exchange, all lands within the TIDA property adjacent to the waterfront, as well as certain lands on Yerba Buena Island that have high trust values, will be subject to the public trust and the statutory trust. The lands that will be removed from the trust and the statutory trust pursuant to the exchange have been filled and cut off from navigable waters and are no longer needed or required for the promotion of the public trust. These lands constitute a relatively small portion of the granted tidelands within the city. This act requires that the commission ensure that the lands added to the trust pursuant to the exchange have a value equal to or greater than the value of the lands taken out of the trust.

(l) The Job Corps parcel is a 36-acre parcel of land on Treasure Island that is presently owned and administered by the United States Department of Labor. The Job Corps parcel is surrounded by and generally shoreward of the Navy-owned lands proposed to be transferred to TIDA. There are no immediate plans to transfer the Job Corps parcel out of federal ownership. However, depending on future plans of the federal government for the Job Corps parcel, there may be opportunities for transferring all or a portion of the lands out of federal ownership all at once or in phases. This act provides that Job Corps parcel lands may be incorporated into the exchange authorized

by this act, either as part of the main exchange or in one or more subsequent phases, in accordance with the conditions set forth in this act.

(m) This act advances the purposes of the Community Redevelopment Law (Part 1 (commencing with Section 33000) of Division 24 of the Health and Safety Code) and the public trust, and is in the best interests of the people of this state.

SEC. 19. Section 4 of Chapter 543 of the Statutes of 2004 is amended to read:

Sec. 4. The Legislature hereby approves an exchange of trust lands, as approved by the commission under Section 7 of this act, between Treasure Island and Yerba Buena Island, whereby certain Treasure Island trust lands that meet the criteria set forth in this act and therefore are not now useful for public trust purposes will be freed from the public trust and the statutory trust and may be conveyed into private ownership, and certain other lands on Yerba Buena Island that are not now subject to the public trust and that are useful for public trust purposes will be made subject to the public trust and the statutory trust, provided all of the following conditions are met:

(a) The exchange results in a configuration of trust lands substantially similar to that shown on the diagram in Section 12 of this act.

(b) The lands to be subject to the public trust are configured so as to be accessible from the streets as finally configured within the TIDA property.

(c) The exchange otherwise complies with the requirements of this act.

(d) The exchange is consistent with and furthers the purposes of the public trust.

SEC. 20. Section 7 of Chapter 543 of the Statutes of 2004 is amended to read:

Sec. 7. (a) The commission is authorized to approve an exchange of trust lands between Treasure Island and Yerba Buena Island that meets the requirements of this act. Pursuant to this authority, the commission shall establish appropriate procedures for effectuating the exchange. The procedures shall include provisions for ensuring that lands are not exchanged into the trust until either of the following have occurred:

(1) All remedial action necessary to protect human health and the environment with respect to hazardous substances on the land has been completed as determined by the United States Environmental Protection Agency, the California Department of Toxics Substances Control, and the Regional Water Quality Control Board, pursuant to the Federal Facilities Agreement for the Naval Station Treasure Island dated September 29, 1992, as amended, and the United States has provided a warranty in accordance with Section 9620(h)(3)(A) of Title 42 of the United States Code.

(2) The United States has obtained a warranty deferral, approved by the Governor in accordance with Section 9620(h)(3)(C) of Title 42 of the United States Code, involving land for which the commission has determined to execute a certificate of acceptance of title. Prior to approving a warranty deferral, the Governor, the California Department of Toxics Substances Control, and the Regional Water Quality Control Board shall confer and consult with the commission to reasonably ensure that the terms of the

warranty deferral and underlying documents and agreements provide sufficient standards and financial assurances to ensure that the remediation of any affected trust lands will be completed in a manner consistent with the intended public trust use of these lands and in a reasonable period of time.

(b) The commission shall not approve an exchange of trust lands pursuant to this act unless it finds all of the following:

(1) The configuration of trust lands upon completion of the exchange will do all of the following:

(A) Not differ significantly from the configuration shown on the diagram in Section 12 of this act.

(B) Include all lands within the TIDA property that are presently below the line of mean high tide and subject to tidal action.

(C) Consist of lands suitable to be impressed with the public trust.

(2) The final layout of streets within the TIDA property will provide access to the public trust lands and be consistent with the beneficial use of the public trust lands, including, but not limited to, roadway access to serve the public along the western shoreline of Treasure Island.

(3) The value of the lands to be exchanged into the trust is equal to or greater than the value of the lands to be exchanged out of the trust, as the exchange is finally configured and phased. The commission may take into consideration any uncertainties concerning whether the lands to be exchanged are currently subject to the public trust.

(4) The lands to be taken out of the trust have been filled and reclaimed, are cut off from access to navigable waters, are no longer needed or required for the promotion of the public trust, and constitute a relatively small portion of the tidelands granted by the state within the city, and the exchange will not result in substantial interference with trust uses and purposes.

(5) Sufficient building height limitations are in place to ensure that views from public areas at Yerba Buena Island are not obstructed.

(6) The trustee has approved the exchange and will hold fee title to all lands to be subject to the trust upon completion of the exchange.

(c) Any portion of the Job Corps parcel may be added to or removed from the trust, all at once or in phases, as part of the exchange authorized by this act, provided all of the following conditions are met:

(1) No Job Corps parcel lands are removed from the trust in advance of the exchange of lands authorized in subdivision (b) of this section.

(2) The commission finds all of the following:

(A) Any Job Corps parcel lands to be exchanged into the trust will enhance the configuration of trust lands on Treasure Island.

(B) Any Job Corps parcel lands to be exchanged out of the trust have been filled and reclaimed, are cut off from access to navigable waters, are no longer needed or required for the promotion of the public trust, and constitute a relatively small portion of the granted tidelands within the city.

(C) The inclusion of the Job Corps parcel lands in the exchange will not result in substantial interference with trust uses and purposes.

(D) Any Job Corps parcel lands to be subject to the trust are accessible from the streets as finally configured within the TIDA property, consistent with the beneficial use of those lands.

(E) The cumulative value of all of the TIDA property exchanged into the trust is equal to or greater than the cumulative value of all of the TIDA property exchanged out of the trust, after the Job Corps parcel lands are included in the exchange. The following shall apply to the determination of cumulative value by the commission:

(i) For purposes of calculating the value of any lands added to or removed from the trust in an earlier phase of the exchange, the commission shall utilize the value of those lands as determined by the commission at the time of the commission's approval of the earlier phase, adjusted to account for any apportionment of development costs pursuant to clause (ii) and adjusted for inflation in a manner approved by the commission.

(ii) For purposes of calculating value of the Job Corps parcel lands to be added to or removed from the trust, the commission shall apportion to those lands a prorated share of any direct or indirect development, project requirement, and other costs accepted by the commission in its valuation of any lands involved in an earlier phase of the exchange where such costs are for activities or improvements not borne by the United States that benefit the Job Corps parcel lands, including, but not limited to, the direct and indirect costs of shoreline stabilization, environmental remediation, infrastructure, transportation facilities, and open-space improvements, adjusted for inflation in a manner approved by the commission.

(iii) The commission may take into consideration any uncertainties concerning whether the Job Corps parcel lands are currently subject to the trust.

(F) The trustee will hold fee title to all lands to be subject to the trust upon completion of the exchange.

(3) The commission and the trustee have approved the addition of the Job Corps parcel lands to the exchange.

(d) The commission shall impose additional conditions on its approval of the exchange if the commission determines that these conditions are necessary for the protection of the public trust. These conditions may include a contribution to the Land Bank Fund, established pursuant to Division 7 (commencing with Section 8600) of the Public Resources Code, or exchanging lands into the trust in addition to those on Yerba Buena Island, if the value of the land brought into the public trust does not equal or exceed the value of the land removed from the public trust.

(e) For purposes of effectuating the exchange authorized by this act, the commission is authorized to do all of the following:

(1) Receive and accept on behalf of the state any lands or interest in lands conveyed to the state by the trustee, including lands that are now and that will remain subject to the public trust and the statutory trust.

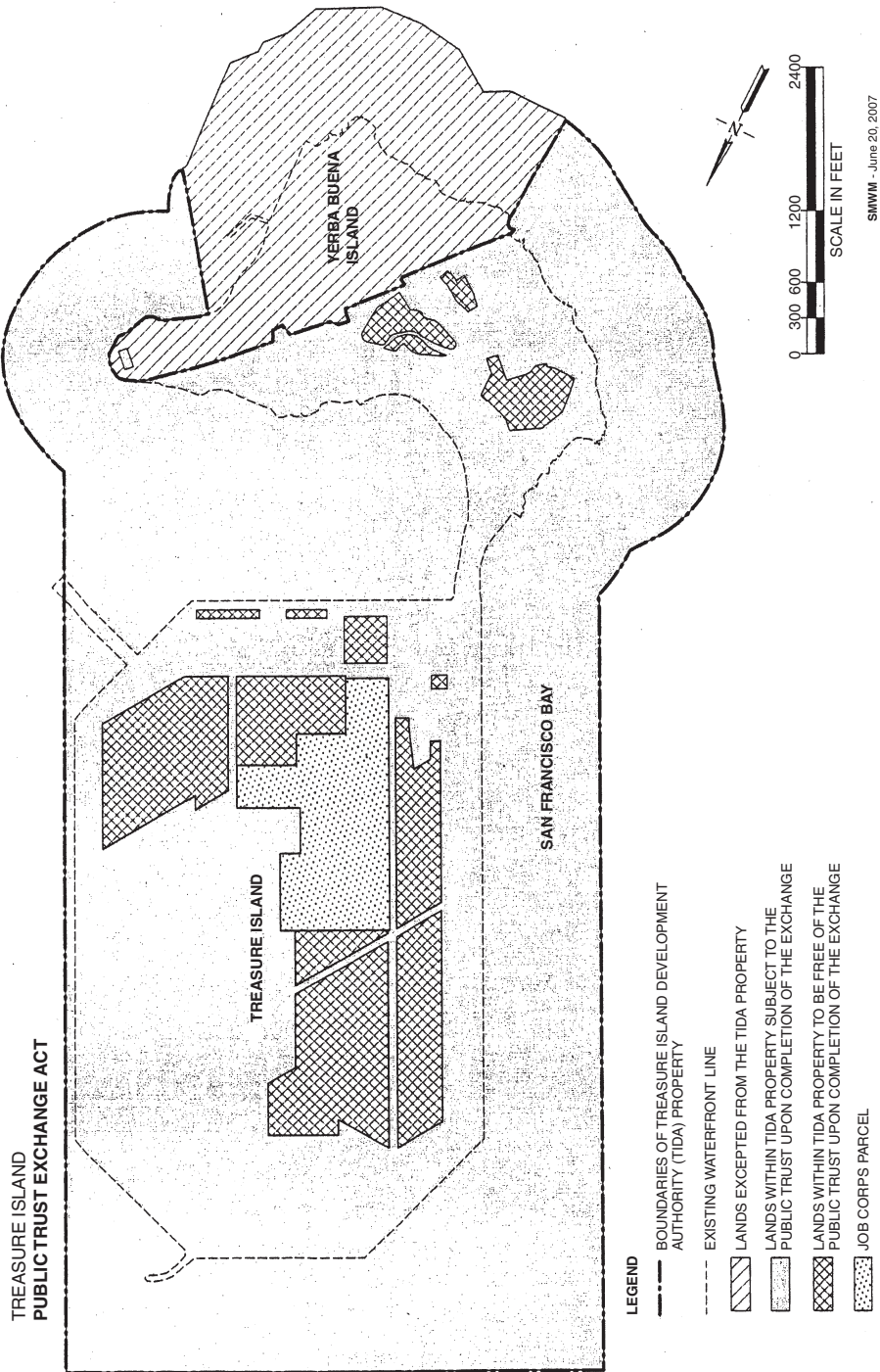
(2) Convey to the trustee by patent all of the right, title, and interest of the state in lands that are to be free of the public trust and the statutory trust upon completion of the exchange.

(3) Convey to the trustee by patent all of the right, title, and interest of the state in lands that are to be subject to the public trust and the statutory trust and the terms of this act upon completion of the trust exchange, subject to the terms, conditions, and reservations as the commission may determine are necessary to meet the requirements of this act.

(f) Following the completion of any phase of the trust exchange, the resulting configuration of trust lands within the TIDA property shall constitute the “trust property” for purposes of the conversion act, notwithstanding subdivision (b) of Section 4 of that act.

SEC. 21. Section 12 of Chapter 543 of the Statutes of 2004 is amended to read:

Sec. 12. The following diagram is a part of this act:



SEC. 22. The Legislature finds and declares that, because of the unique circumstances applicable only to the lands described in this act, a statute of general applicability cannot be enacted within the meaning of subdivision (b) of Section 16 of Article IV of the California Constitution. Therefore, this special statute is necessary.

SEC. 23. If any provision of this act, or its application to any person, property, or circumstance, is held invalid by any court, the invalidity or inapplicability of such provision shall not affect any other provision of this act or the application of that provision to any other person, property, or circumstance, and the remaining portions of this act shall continue in full force and effect, unless enforcement of this act as so modified by and in response to that invalidation would be grossly inequitable under all of the circumstances, or would frustrate the fundamental purposes of this act.