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**From:** Niccolo De Luca <ndeluca@townsendpa.com>  
**To:** Maybrun, Molly; Lake, Betsy  
**Sent:** 7/4/2019 8:16:24 AM  
**Subject:** Fwd: AB 1191 amends in print

Niccolo De Luca  
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Sent from my iPhone

Begin forwarded message:

**From:** Chris Micheli <cmicheli@apreamicheli.com>  
**Date:** July 3, 2019 at 11:04:39 PM PDT  
**To:** "Viviana Becerra ([viviana.becerra@asm.ca.gov](mailto:viviana.becerra@asm.ca.gov))" <[viviana.becerra@asm.ca.gov](mailto:viviana.becerra@asm.ca.gov)>, "Drake, Graham" <[Graham.Drake@asm.ca.gov](mailto:Graham.Drake@asm.ca.gov)>  
**Cc:** Niccolo De Luca <ndeluca@townsendpa.com>  
**Subject:** AB 1191 amends in print

AMENDED IN SENATE JULY 03, 2019

AMENDED IN SENATE JUNE 13, 2019

AMENDED IN ASSEMBLY APRIL 11, 2019

AMENDED IN ASSEMBLY MARCH 19, 2019

CALIFORNIA LEGISLATURE— 2019–2020 REGULAR SESSION

## ASSEMBLY BILL

**NO. 1191**

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**Introduced by Assembly Member Bonta**  
**(Coauthors: Assembly Members Bauer-Kahan, Kalra, and Wicks)**  
**(Coauthor: Senator Wieckowski)**

**February 21, 2019**

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An act relating to the grant of public trust lands to the City of Oakland.

# LEGISLATIVE COUNSEL'S DIGEST

AB 1191, as amended, Bonta. State Lands Commission: exchange of trust lands: City of Oakland: Howard Terminal property: Oakland Waterfront Sports and Mixed-Use Project, Waterfront Access, Environmental Justice, and Revitalization Act.

(1) Under existing law, the State Lands Commission has jurisdiction over certain public lands in the state, including tidelands and submerged lands. Existing law authorizes the commission to enter into an exchange, with any person or any private or public entity, of filled or reclaimed tidelands 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, for other lands or interests in lands, if the commission finds that specified conditions are met, as prescribed.

This bill would enact the Oakland Waterfront Sports and Mixed-Use Project, Waterfront Access, Environmental Justice, and Revitalization Act and would authorize the State Lands Commission and the San Francisco Bay Conservation and Development Commission to take certain actions related to the development of the Howard Terminal property located in the City of Oakland for the Oakland Sports and Mixed-Used Project, as defined. The bill would require the San Francisco Bay Conservation and Development Commission and the Metropolitan Transportation Commission to take certain actions related to the San Francisco Bay Seaport Plan and San Francisco Bay Plan. By imposing additional duties on the Metropolitan Transportation Commission, this bill would impose a state-mandated local program.

(2) This bill would make legislative findings and declarations as to the necessity of a special statute governing public trust lands at the Howard Terminal property in the City of Oakland.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

## DIGEST KEY

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

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## BILL TEXT

### THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

#### SECTION 1.

This act shall be known, and may be cited, as the Oakland Waterfront Sports and Mixed-Use Project, Waterfront Access, Environmental Justice, and Revitalization Act.

#### SEC. 2.

(a) The Legislature finds and declares all of the following:

(1) The Oakland Coliseum is an aging facility and one of the oldest ballparks in the nation.

(2) The City of Oakland wishes to retain the Oakland Athletics professional baseball franchise in the city, and, along with the Oakland Athletics, has identified the Howard Terminal property as a potential site for a new, state-of-the-art Major League Baseball park.

(3) The city seeks to capitalize on the development of a new baseball park to maximize the benefits of the team and its facilities to the city, the Port of Oakland, the region, and the West Oakland community. The proposed Oakland Sports and Mixed-Use Project has the potential to create new public open space and recreational opportunities on the Oakland waterfront, incorporate transit and transportation infrastructure improvements consistent with city and regional goals for sustainable, transit-oriented development, and result in an increased supply of housing, including affordable housing. In addition to these benefits, in accordance with subdivision (d) of Section 21168.6.7 of the Public Resources Code, the proposed project is expected to include a comprehensive package of community benefits that may include local employment and job training programs, and healthy development measures for the surrounding community. The Oakland Athletics anticipate that the proposed project will directly generate many thousands of full-time jobs, including employees hired during construction and operation.

(4) The Howard Terminal property is located near bus, rail, and water transit facilities and is proposed to be designed to maximize opportunities for nonautomobile modes of travel pursuant to the policies and regional vision included in the sustainable communities strategy Plan Bay Area 2040 that the Metropolitan Transportation Commission and the Association of Bay Area Governments adopted pursuant to Section 65080 of the

Government Code.

(5) Chapter 959 of the Statutes of 2018 established special procedures and expedited judicial review under the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) for the Oakland Sports and Mixed-Use Project, if the project meets certain conditions, as detailed in that statute.

(6) The Howard Terminal property is roughly 50 acres of land and includes two deep-water berths adjacent to the Inner Harbor channel. It is bounded approximately by the Inner Harbor to the south, Schnitzer Steel Industries, Inc., to the west, Embarcadero West to the north, and Clay Street to the east. Marine terminal operations at the Howard Terminal property ended in 2014 when SSA Terminals relocated the operations of the former APL/EMS Terminal. Because of its size and shallow water depth relative to other modern container terminals, older container gantry cranes, and limited room for expansion, Howard Terminal is not desirable for loading and unloading of the larger container ships that call the port. The Howard Terminal property has been used since 2014 for ancillary maritime operations, including truck parking, loaded and empty container storage and staging, transloading logistics facilities, the Pacific Maritime Association's International Longshore and Warehouse Union longshoreperson training facilities, and berthing vessels, all of which operate under short-term agreements with the port. The site is inaccessible to the public.

(7) The Howard Terminal property abuts the estuary and has historically been used for industrial purposes, including a marine terminal. The Howard Terminal property directly adjoins Jack London Square, an area that has undergone a transformation from industrial maritime use to a vibrant and active mixed-use area that includes pedestrian-oriented retail, dining, and entertainment uses and a ferry terminal, which reinforce the connections between the waterfront and the city, draw local and regional visitors to the waterfront, and link the area to the region.

(8) The state conveyed portions of the Howard Terminal property to the city by legislative grants to hold and manage in trust for the benefit of the statewide public. In 1927, the Port of Oakland was established by amendment to the charter of the City of Oakland. The port controls and manages more than 4,000 acres of land on which it operates marine cargo terminals, an international airport, and substantial public access and visitor-serving amenities. The port is required to manage its public lands consistent with the terms and obligations of its grants, constitutional, common law, and statutory fiduciary duties, including the requirements of Sections 6006, 6009, and 6009.1 of the Public Resources Code.

(9) Portions of the Howard Terminal property consist of Rancho Uplands that the city or port acquired from private owners over the years. Rancho Uplands are held by the port as assets of the public trust, but they can be sold into private ownership for fair market value if they are no longer useful or needed for trust purposes. The port must use proceeds from the sale of those lands as trust assets to be used only for trust purposes.

(10) The tidelands granted to the city in trust pursuant to Chapter 107 of the Statutes of 1852 (1852 Tidelands) lie landward of the lands granted to the city in trust pursuant to Chapter 174 of the Statutes of 1923, as amended, (1923 Tidelands) and waterward of the Rancho Uplands. Shortly after being granted the 1852 Tidelands, the city attempted to convey them to private parties. The city later disputed the validity of this conveyance. Pursuant to legislative authorization, Chapter 230 of the Statutes of 1867–68, the city and the private parties settled these title disputes in a compromise that the California Supreme Court upheld in *City of Oakland v. Oakland Water-Front Co.* (1897) 118 Cal. 160. Over the past 110 years, the city and port reacquired all of the 1852 Tidelands at the Howard Terminal property.

(11) The city's conveyance of the 1852 Tidelands to private parties in 1852 did not terminate the state's sovereign interest in these lands or remove them from the public trust. However, the *Oakland Water-Front Co.* case held that, pursuant to a settlement confirmed by later enacted statutes, the city's conveyance to private parties of the 1852 Tidelands was valid. The legal effect of this holding on the 1852 Tidelands is the subject of a bona fide title dispute. The 1852 Tidelands have been filled and reclaimed through dredging the estuary and the construction of the 1910 quay wall, the Grove Street Pier, and a concrete wharf in 1981. Due to this history of human influences to the Oakland waterfront, the boundary between the Rancho Uplands and the 1852 Tidelands has not been located with precision, nor has this boundary been fixed by agreement. Although a portion of the boundary between the 1852 Tidelands and the 1923 Tidelands was fixed by agreement between the city and private parties, the validity of this agreement is also subject to dispute.

(b) The Legislature further finds and declares both of the following:

(1) The Ballpark and Public Lands Development is intended to further public use, access, and enjoyment of the public lands and navigable waters at the Howard Terminal property by providing an open-air ballpark designed in a manner that is consistent with the public trust and that can also be used for events and public assembly, coupled with public access, open space, water-oriented recreational activities, preservation of maritime resources, and other potentially public trust-consistent uses, such as hotels, visitor-serving retail, restaurants, and parking to promote public trust purposes. The Ballpark and Public Lands Development is proposed to include:

- (A) Waterfront improvements, event programming, and parks.
- (B) Significant infrastructure investments throughout the entire Howard Terminal property to address sea-level rise threats.
- (C) Improved access from the surrounding neighborhood and other areas and regional transportation networks that will open new connections to the Howard Terminal property and the entire waterfront.
- (D) A new network of public streets and sidewalks that provide connectivity to and through the Howard Terminal property, with streetscapes that provide safe pedestrian access and are bike-friendly, and public pathways that lead visitors directly to the waterfront and related amenities.
- (E) The preservation and integration of historic maritime features associated with the port and existing container cranes to honor the port's maritime history and provide educational opportunities related to port and maritime functions.
- (F) A continuous waterfront trail that connects the Howard Terminal property to the San Francisco Bay Trail.
- (G) Dedication of the waterward edge of Howard Terminal for ongoing water-dependent or maritime use, which may include access for excursion boats, recreational watercraft, and industrial small vessel mooring.
- (2) Due to its location adjacent to Jack London Square, which is served by bus, rail, and regional ferry, and its prime waterfront location, the Ballpark and Public Lands Development is anticipated to attract visitors from the region and the state to the waterfront. If appropriately and properly designed, the Ballpark and Public Lands Development has the potential to provide substantial views of the bay from waterfront public access areas and raised areas around the ballpark that will be publicly accessible.
- (c) The Legislature further finds and declares that, because of the unique circumstances existing at the Howard Terminal property and described in this section, this act does not set a precedent for any other location or project in the state.
- (d) It is the intent of the Legislature in enacting this act to authorize the State Lands Commission to approve an exchange subject to the terms and conditions of this act that will settle these disputes over boundary locations and the title status of the 1852 Tidelands. It is the further intent of the Legislature in enacting this act to authorize the commission to establish the ordinary high or ordinary low water mark and to fix the boundary between public trust lands and the Rancho Uplands. The Legislature finds that an exchange meeting the requirements of this act meets the purposes enumerated in subdivision (c) of Section 6307 of the Public Resources Code.

### **SEC. 3.**

The Legislature also finds and declares all of the following with respect to the Seaport Plan port priority use designation at the Howard Terminal property:

- (a) The San Francisco Bay Conservation and Development Commission's (BCDC's) San Francisco Area Seaport Plan (Seaport Plan) designates certain areas of the port for port priority use, including the Inner Harbor area that includes the Howard Terminal property. The Seaport Plan documents that in 1996, when the Seaport Plan was last updated, the cargoes handled at the Howard Terminal property included containers, break bulk, and steel. The Howard Terminal property ceased use as a container terminal in 2014, but continues to be used for maritime commerce, including container storage, truck parking, and ancillary services.
- (b) In response to, among other things, regional and local environmental concerns, the increased size of container vessels and containers that cannot use more shallow berth depths, and the need for greater efficiency in moving containers to their destinations with the least relative environmental impact, the port has been consolidating, reconfiguring, and expanding its existing marine terminals pursuant to port improvement plans.
- (c) BCDC is updating the Seaport Plan to forecast through 2050 future needs to throughput marine cargo through the San Francisco Bay region's ports and the throughput capacity of the ports, given present and anticipated efficiency. BCDC has also initiated, at the request of the Oakland Athletics, the planning process to determine whether the Howard Terminal property is needed to help provide projected regional cargo throughput needs.

### **SEC. 4.**

The Legislature also finds and declares all of the following with respect to the ~~San Francisco Bay Conservation and Development Commission's (BCDC's)~~ BCDC's jurisdiction within the Howard Terminal property:

- (a) In 1965, the Legislature adopted the McAteer-Petris Act (Title 7.2 (commencing with Section 66600) of the Government Code) to protect and enhance the San Francisco Bay, including the estuary, and its natural resources. Among other things, the McAteer-Petris Act grants BCDC regulatory authority over fill in San Francisco Bay through exercise of its bay jurisdiction, and limits that activity to water-oriented uses that meet specified criteria, or minor fill that improves shoreline appearance or public access. The McAteer-Petris Act further provides that BCDC should authorize projects on bay fill only when no alternative upland location is available and the fill is the minimum necessary. BCDC can alternatively find that certain activities are necessary for the health, safety, and welfare of the public in the entire San Francisco Bay area. The McAteer-Petris Act also mandates BCDC to require the provision of maximum feasible access to the bay and its shoreline consistent with a project.

(b) In 1969, the Legislature received and acted upon BCDC's report and recommendations from a three-year study of the San Francisco Bay. The resulting San Francisco Bay Plan ~~(Bay Plan)~~ adopted by BCDC pursuant to the McAteer-Petris Act contains, among other things, BCDC's policies to guide use and protection of all areas within BCDC's jurisdiction, including the bay and the 100-foot shoreline band, and ensures that proposed projects, among other things, minimize bay fill and provide maximum feasible public access to the bay.

(c) Portions of the Howard Terminal property include the former Grove Street Pier, which consisted of pile-supported fill that predated the adoption of the McAteer-Petris Act. In 1979, BCDC issued Permit No. 13-78 that resulted in the removal of portions of the Grove Street Pier and the placement of new bay fill at the property located waterward of the 1910 quay wall to allow use of the Howard Terminal property as a maritime terminal. Permit No. 13-78 provides that an area that is within BCDC's jurisdiction under subdivision (a) of Section 66610 of the Government Code remains within that jurisdiction even after fill or a substantial change in use authorized by BCDC may have changed the character of the area, and that further permit action will be required prior to any future changes of use or work within the filled area. ~~In addition,~~ Section 10710 of Title 14 of the California Code of Regulations provides: "[a]reas once subject to Commission jurisdiction remain subject to that same jurisdiction even if filled or otherwise artificially altered whether pursuant to Commission permit or not."

(d) Portions of the Howard Terminal property ~~currently~~ consist of areas that were part of the bay that were filled before BCDC was formed ~~on September 17, in~~ 1965, and BCDC jurisdictional bay fill lands. The Oakland Sports and Mixed-Use Project is not expected to involve new fill that would reduce the existing surface area of the bay other than minor improvements to improve public access or access to the water. However, the project would involve a substantial change in use of, and structural improvements to, BCDC jurisdictional bay fill lands for development of the ballpark, water-oriented commercial recreation, and bay-oriented public assembly uses.

(e) Under the McAteer-Petris Act, BCDC must grant a permit for a project if it finds that the project is either necessary to the health, safety, or welfare of the public in the entire San Francisco Bay area, or of such a nature that it will be consistent with the provisions of the McAteer-Petris Act and the provisions of the Bay Plan then in effect. A proposed substantial change of use and structural improvements on the BCDC jurisdictional bay fill lands associated with construction of the Oakland Sports and Mixed-Use Project would trigger BCDC's bay jurisdiction. The McAteer-Petris Act and existing Bay Plan policies applicable to its bay jurisdiction may not allow the project, as proposed, on BCDC jurisdictional bay fill lands.

## **SEC. 5.**

For purposes of this act, the following definitions apply:

(a) "1852 Grant" means Chapter 107 of the Statutes of 1852.

(b) "1852 Tidelands" means all or any portion of the tidelands granted to the city in trust for the purposes in the 1852 Grant.

(c) "1923 Grant" means Chapter 174 of the Statutes of 1923, as amended.

(d) "1923 Tidelands" means all or any portion of the tidelands or submerged lands granted to the city in trust for the purposes in the 1923 Grant.

(e) "Ballpark and Public Lands Development" or "ballpark project" means a baseball park that ~~may~~ *shall* become the new home to the Oakland Athletics, along with other potentially public trust-consistent uses, such as visitor-serving ~~retail uses, hotel uses, retail, hotels,~~ public access improvements, visitor-serving or water-oriented recreation, cultural and entertainment uses, and other uses to be developed on the final trust lands at the Howard Terminal property, consistent with the public trust and 1923 Grant, as determined by the ~~commission pursuant to this act and other applicable law.~~ *commission*. The Ballpark and Public Lands Development is a component of the larger Oakland Sports and Mixed-Use Project.

(f) "Bay" means the San Francisco Bay, including the estuary.

(g) "Bay Plan" means the San Francisco Bay Plan as adopted and administered by the San Francisco Bay Conservation and Development Commission pursuant to the McAteer-Petris Act (Title 7.2 (commencing with Section 66600) of the Government Code).

(h) "BCDC" means the San Francisco Bay Conservation and Development Commission.

(i) "BCDC jurisdictional bay fill lands" means those portions of the Howard Terminal property that were part of San Francisco Bay and on which fill was placed for water-oriented port use on or after September 17, ~~1956,~~ 1965, pursuant to BCDC Permit No. 13-78 and subsequent permit and amendments issued by BCDC.

(j) "City" means the City of Oakland or the Town of Oakland, as applicable.

(k) "Commission" means the State Lands Commission.

(l) "Estuary" means that arm of San Francisco Bay being a body of tidal water lying between the city on the east and north and the City of Alameda on the west and south.

(m) "Exchange" means all or any of a boundary line agreement, title settlement, trust exchange, or quitclaim at the Howard Terminal property pursuant to Section 6 of this act.

- (n) "Final trust lands" means those lands that are subject to the public trust and the terms, conditions, reservations, and restrictions of the 1923 Grant upon completion of an exchange pursuant to this act and other applicable laws.
- (o) "Howard Terminal property" or "property" means an approximately 55-acre site located within the port area of the city, including berths 67 and 68, bounded by the estuary on the south, Jack London Square to the east, and the parallel Union Pacific railroad tracks and Embarcadero West roadway on the north.
- (p) "Inner Harbor turning basin" means the portion of the estuary adjacent to the southeast corner of the Howard Terminal property and north of the City of Alameda used for the turning of vessels in the estuary, as it currently exists or as may be expanded.
- (q) "Legislative grants" means those grants of tidelands and submerged lands by the Legislature to the city in trust for public trust purposes, including the 1852 Grant and the 1923 Grant.
- (r) "Liability measures" means measures intended to protect the commission, the state, and public trust funds from increased responsibility or liability associated with hazardous materials at, on, or under, the Howard Terminal property. Liability measures may include, without limitation, the commission's right to approve the remedial plan, applicable indemnities, or insurance policies.
- (s) "Maritime reservation area" means an area located within the southwest corner of Howard Terminal reserved by the port under transaction documents for the Oakland Sports and Mixed-Use Project to accommodate a potential expansion or reconfiguration of the Inner Harbor turning basin.
- (t) "Oakland Sports and Mixed-Use Project" has the meaning defined in Section 21168.6.7 of the Public Resources Code. The Oakland Sports and Mixed-Use Project includes the Ballpark and Public Lands Development.
- (u) "Port" means the Port of Oakland established by the charter of the City of Oakland, exclusive control and management of which the charter of the City of Oakland vests in the board of port commissioners, acting pursuant to city charter as the trustee for the lands granted pursuant to the legislative grants and any improvements or related assets and any other lands owned by the city that are located in the port area, including any portion of the Rancho Uplands within the port area, or any successor trustee for those lands.
- (v) "Port area" means lands that are under the jurisdiction of the board of port commissioners for the port in accordance with the charter of the city.
- (w) "Public trust" or "trust" means the constitutional and common law doctrine providing the state's sovereign authority over the navigable waters of the state, including the tidelands and submerged lands underlying those waters that are held in trust for the benefit of all the people of the state and for purposes that include maritime or water-dependent commerce, navigation, fisheries, the preservation of the lands in their natural state for scientific study, open space, wildlife habitat, and water-oriented recreation.
- (x) "Rancho Uplands" means lands within the Howard Terminal property that were never owned by the state, were within the rancho grant confirmed and patented by the United States to Vincente and Domingo Peralta, and are generally located landward of the ordinary high water mark in its last natural location.
- (y) "Remedial plan" means the written plan approved by the *Department of Toxic Substances Control acting as the* oversight agency for investigation and remediation of hazardous materials at, on, or under the Howard Terminal property, including the establishment of screening and remediation goals therefor.
- (z) "Seaport Plan" means the San Francisco Bay Area Seaport Plan adopted by BCDC and the Metropolitan Transportation Commission, as updated April 18, 1996, and amended through January 2012, *and as may be amended from time to time.*
- (aa) "Trust addition lands" means those portions of the 1852 Tidelands, the Rancho Uplands, the 1923 Tidelands, or other lands, or interests in those lands, approved by the commission that meet the criteria set forth in Section 6 of this act for lands to be confirmed in or impressed with the public trust and the terms, conditions, reservations, and restrictions of the 1923 Grant.
- (ab) "Trust termination lands" means those portions of the 1852 Tidelands, Rancho Uplands, the 1923 Tidelands, or interests in those lands, approved by the commission that meet the criteria set forth in Section 6 for lands to be removed from the public trust and the terms, conditions, reservations, and restrictions of the legislative grants.

## **SEC. 6.**

- (a) The Legislature hereby authorizes the commission to approve an exchange at the Howard Terminal property, if the commission finds that the exchange meets the terms and conditions of this section.
- (b) ~~The commission~~ *commission, as part of the exchange*, may settle by exchange any dispute as to the boundary or title status of the 1852 Tidelands, 1923 Tidelands, and Rancho Uplands within the Howard Terminal property. In the settlement of that dispute, the commission may establish the ordinary high water mark or the ordinary low water mark of tidelands and submerged lands at the Howard Terminal property.
- (c) The final trust lands resulting from any exchange that the commission may approve pursuant to this act will be held by the port, as granted sovereign lands subject to the public trust and the terms, conditions, reservations, and restrictions of the 1923 Grant.

(d) No exchange shall be effective unless and until the commission, at a properly noticed public meeting, approves the exchange. The commission shall not approve an exchange pursuant to this act unless it finds all of the following:

(1) The trust termination lands have been filled and reclaimed, are cut off from access to tidelands, submerged lands, and navigable waters, are no longer in fact tidelands or navigable waterways, and are relatively useless for public trust purposes.

(2) The trust addition lands have a monetary value equal to or greater than the monetary value of the trust termination lands. If the trust addition lands have a value insufficient to meet this requirement, the commission may consider a deposit of funds into the Land Bank Fund established under Section 8610 of the Public Resources Code to be held for acquisition of property, in an amount at least equal to the difference in value between the trust termination lands and trust addition lands, for purposes of making the finding required by this paragraph.

(3) The exchange will not substantially interfere with public trust uses and purposes, including public rights of navigation and fishing.

(4) The trust termination lands are a relatively small portion of the tidelands and submerged lands granted to the city.

(5) The trust termination lands do not include any lands located within the BCDC jurisdictional bay fill lands.

(6) The final trust lands will provide a significant benefit to the public trust and are useful for public trust purposes.

(7) The final trust lands are configured so they are accessible from the streets as finally configured within the Howard Terminal property.

(8) BCDC has approved an amendment to the Seaport Plan and removed the port priority use designation from the Howard Terminal property or portions of the Howard Terminal property. Any areas within the Howard Terminal property that remain subject to the port priority use designation shall remain subject to the public trust and the terms, conditions, reservations, and restrictions of the legislative grants, and shall not be included within the trust termination lands.

(9) The Governor has certified the Oakland Sports and Mixed-Use Project for streamlining pursuant to subdivision (d) of Section 21168.6.7 of the Public Resources Code.

(10) The exchange, considering the entire Oakland Sports and Mixed-Use Project, will not interfere with existing or planned port operations, including, but not limited to, commercial navigation and shipping. In making this finding, the commission may consider, without limitation, transportation and circulation plans, physical measures, such as barriers and buffer zones along the western end of the Howard Terminal property, and institutional controls, such as land use covenants, easements, conditions, releases, waivers, mandatory disclosures, restrictions, and lease terms.

(11) The exchange, considering the entire Oakland Sports and Mixed-Use Project, is consistent with the commission's Environmental Justice and Tribal Consultation policies.

(12) The exchange, considering the entire Oakland Sports and Mixed-Use Project, includes a band of final trust lands along the estuary side of the Howard Terminal property that will accommodate open space, public access, and water-dependent public recreational amenities, including free or low-cost amenities. The width of the band shall take into account the maximum potential expansion of the Inner Harbor turning basin.

(13) The final trust lands are preserved, improved, and enhanced for public trust uses, including, but not limited to: open space; plant and animal habitat; public access to and unobstructed views of the water; *a estuary, the San Francisco skyline, and the port's working waterfront*; water-oriented recreation; preservation of historical maritime resources; pedestrian, bicycle, and vehicular circulation to and along the waterfront; and *commercial services amenities* for waterfront visitors, such as restaurants and public trust-consistent *visitor-serving* retail and hotels and other overnight accommodations, such as hostels or other lower cost accommodations.

(14) Development of the final trust lands is consistent with state policy and guidance regarding sea-level rise resiliency planning and adaptation, such as the Ocean Protection Council's 2018 State of California Sea-Level Rise Guidance. The Legislature finds that the Oakland Sports and Mixed-Use Project ~~qualifies for~~ *shall use* the medium-high risk aversion for the high-risk emissions scenario through 2100, and plans for the Oakland Sports and Mixed-Use Project shall account for 100-year storm events, wave run-ups, king tides, and other extreme high tides associated with those scenarios. Plans to address sea-level rise associated with the Oakland Sports and Mixed-Use Project shall include enforceable strategies incorporating an adaptive management approach to sea-level rise for the duration of the ground lease term for the final trust lands. ~~If needed to comply with state policy and guidance regarding the plausible high-end climate change scenarios, otherwise known as H++ scenarios,~~ *the* The plan shall include consideration of the H++ scenarios, for purposes of risk management, by outlining adaptation pathways that would be implemented as contingency plans to ensure resiliency if H++ scenarios occur.

(15) The appropriate state ~~agencies~~ *agencies, including the Department of Toxic Substances Control as the oversight agency,* have approved an environmental site investigation and risk assessment of the Howard Terminal

property, and agreed on subsequent actions and development standards needed to ensure appropriate management of potential risks from hazardous materials through development of a risk management plan and a remedial plan. The exchange shall ensure that sufficient liability measures that protect the state will be in place when the exchange is complete.

(16) Public streets and other transportation facilities on the final trust lands are designed to be compatible with the public trust and to serve primarily public trust purposes of public access to shoreline improvements and shoreline circulation, and other public trust amenities, rather than serving nontrust purposes. Parking on the final trust lands is limited to public parking and shall not be restricted to residential or commuter parking. Management strategies for the public parking, including, but not limited to, time limits and rates, shall be structured to ensure that parking is accessible to visitors to the Ballpark and Public Lands Development year-round and that use for residential or commuter parking is discouraged.

(17) The removal of existing interim uses, as necessary, to accommodate the Oakland Sports and Mixed-Use Project will not significantly impair the port's maritime functions or cause materially adverse consequences on the livability of residential communities in the surrounding region.

(18) The board of port commissioners has approved the exchange after at least one properly noticed public meeting and has found that the final trust lands provide a significant benefit to the public trust and are useful for public trust purposes.

(19) The commission has approved the Ballpark and Public Lands Development on the final trust lands pursuant to Section 7 of this act.

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

(21) The exchange is consistent with and furthers the purpose of the public trust and this act.

(22) The exchange is otherwise in the best interests of the statewide public.

(e) The commission may impose additional conditions on an exchange authorized by this act if the commission determines that those conditions are necessary to protect and further the purpose of the public trust or are in the best interests of the state.

(f) Any surveys or legal descriptions required for the parcels in conjunction with an exchange shall be approved by the commission or its executive officer.

(g) Any sale or lease of trust termination lands or Rancho Uplands, or interest in those lands shall be for fair market value. All revenue resulting from that sale or lease shall be retained and used only for purposes consistent with the public trust, the 1923 grant, *Grant*, and this act, and shall be accounted for in compliance with Section 6306 of the Public Resources Code.

## **SEC. 7.**

~~(a) The Legislature, in the exercise of its retained power as trustee of the public trust, and in view of the unique circumstances existing at the Howard Terminal property, hereby authorizes the commission to approve the Ballpark and Public Lands Development on the final trust lands, if the commission finds, at a properly noticed public meeting, that all of the following conditions are met: The commission is authorized to approve a Ballpark and Public Lands Development on the final trust lands that meets the requirements of this act. The commission shall not approve the Ballpark and Public Lands Development unless it finds that all of the following conditions have been met:~~

~~(1) The ballpark project is designed to attract people~~ *the statewide public* ~~to the waterfront, increase public enjoyment of the waterfront, encourage public trust activities, and maximize public use of trust assets and resources on the waterfront.~~

~~(2) The ballpark project provides multiple significant views presently unavailable to the public of the estuary~~ *estuary, the San Francisco skyline, and the port's working waterfront from a variety of elevations and vantage points within the baseball park, including significant views from various seating and viewing areas. An upper-level area around the perimeter of the baseball park will be publicly accessible year-round on nongame and nonevent days.* ~~In addition, to encourage the statewide public to come to visit the waterfront, the ballpark design shall provide free public views of the field from the outside, and the operator of the ballpark operator shall be required to allow the public to view the field from these outside areas during games and events.~~

~~(3) The ballpark project allows and promotes free public access to exterior portions of the baseball park and to areas from which the public can view the estuary and the port's working waterfront, subject to reasonable limitations based on security.~~

~~(4) Buildings, other than the ballpark, that are located on the BCDC jurisdictional bay fill lands are designed to allow significant and important views from the upper-level~~ *upper-level park, such as views of the bay, the estuary, the San Francisco skyline, and Oakland's the port's working waterfront.*

~~(5) The ballpark project includes significant public plazas open to the public year-round, including on game and event days, that can be accessed via public pedestrian promenades at the site that encourage public use of the~~

Howard Terminal property and provide a variety of views of the estuary, the San Francisco skyline, and the port's working waterfront.

(6) The ballpark project will not involve any new fill that would reduce the existing surface area of the bay other than minor improvements to improve public access and access to the water.

(7) The design, construction, and operation of the ballpark project will not interfere with navigation of commercial vessels or the operations of the San Francisco Bar Pilots in piloting those vessels, the safe operation of ongoing maritime activities in navigable waters, or the construction and operation of a potentially expanded Inner Harbor turning basin.

(8) The ballpark project includes continuous public access along the estuary frontage of the Howard Terminal property that is open to the public year-round and includes an interpretive program to enhance the public's enjoyment and connection with the port's maritime history.

(9) Public trust-consistent events, uses, and programming are offered regularly at the ballpark project, regularly, including free and low-cost visitor-serving events.

(10) A public community room will be made available within the ballpark project for free or low cost to members of the statewide public, without preference to local residents or organizations, if the commission or BCDC finds that there is a demand or need for those facilities.

(11) The Oakland Sports and Mixed-Use Project will allow for hotels and other overnight accommodations, such as hostels or other lower cost accommodations, and visitor-serving uses that will materially enhance public access and public trust uses on the Howard Terminal property.

(12) Accessory office use within the ballpark project shall be occupied only by public trust-consistent tenants that may include the primary tenants and users of the ballpark project, and office space necessary for the operation and management of the open space and other public facilities on the ballpark project, except that relatively small amounts of incidental nonpublic trust uses located on floors above the ground floor of the ballpark project may be provided, with the maximum amount of those uses be approved by the commission.

(13) A notice of determination for the Oakland Sports and Mixed-Use Project has been filed pursuant to the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code), and the city or the port has approved the project at a properly noticed public meeting, including an enforceable comprehensive package of community benefits as required pursuant to subdivision (d) of given the project its necessary local discretionary approvals, each following at least one public hearing, and the approvals include an enforceable comprehensive package of community benefits consistent with Section 21168.6.7 of the Public Resources Code.

(14) A major permit application for the Oakland Sports and Mixed-Use Project has been submitted to BCDC.

(15) If the public lands development is approved and constructed on Howard Terminal property, the port shall submit and present at a properly noticed public commission meeting a trust program report no later than one year from the date of the opening of the ballpark project, and every five years thereafter through the term of the ground lease for the ballpark project, that contains the following information:

(A) A list and description of the trust-related events and the programming that have occurred at the Ballpark and Public Lands Development over the preceding one-year or five-year period, including the dates on which the events occurred, and identifying free or low-cost visitor-serving events.

(B) A detailed narrative statement regarding the uses of the Ballpark and Public Lands Development, including a list of subtenants.

(C) Any other information specifically requested by the commission that pertains to the program of trust uses for the ballpark project.

(14)

(16) In consideration of the conditions described in paragraphs (1) to (13), (15), inclusive, and all other relevant information known to the commission, the ballpark project is otherwise consistent with the public trust and the terms, conditions, reservations, and restrictions of the legislative grants.

(15)

(17) The ballpark project is in the best interests of the state.

(b) Notwithstanding the 1923 grants, Grants, the ballpark project shall be an allowed use of the final trust lands if the commission approves the project pursuant to subdivision (a).

(c) Commission staff shall coordinate and consult with BCDC staff to ensure that all appropriate information is available to the commission for its consideration of the conditions in subdivision (a). The commission and BCDC shall closely coordinate the scheduling of public meetings related to the determinations under this act.

(d) Notwithstanding subdivision (a), if the port and the Oakland Athletics do not enter into a binding agreement that allows for the construction of the Oakland Sports and Mixed-Use Project on all or any portion of the Howard Terminal property or if the agreement is subsequently terminated before construction has commenced on all or any

portion of the Howard Terminal property, then the port may use and operate any portion of the Howard Terminal property pursuant to the 1923 grant and for any trust consistent use, including marine terminal and ancillary uses, without further approvals or restriction in place on the Oakland Sports and Mixed-Use Project.

## **SEC. 8.**

The Legislature, in the exercise of its retained power as trustee of the public trust, and in view of the unique circumstances existing at the Howard Terminal property, hereby authorizes the following:

(a) BCDC shall determine by February 28, 2020, or 100 days after the certification by the City of Oakland of a project-level environmental impact report for the Oakland Sports and Mixed-Use Project, whichever is later, whether the Howard Terminal property and adjacent areas currently designated for port priority use, or portions of them, are no longer required for port priority use and shall be deemed free of the port priority use area designation for purposes of the Oakland Sports and Mixed-Use Project, or whether these areas are needed for port priority use and should continue in port priority use designation. If BCDC determines that these areas are no longer required for port priority use, BCDC and the Metropolitan Transportation Commission shall reprint the Seaport Plan and Bay Plan to reflect deletion of the port priority use designation on these areas.

(b) Notwithstanding subdivision (a), if the port and the Oakland Athletics have not entered into a binding agreement by January 1, 2025, that allows for the construction of the Oakland Sports and Mixed-Use Project, the port priority use designation shall be automatically reinstated on the Howard Terminal property as if it had previously not been deleted pursuant to BCDC's Seaport Plan and Bay Plan amendment process. In addition, if the port and the Oakland Athletics have entered into a binding agreement by January 1, 2025, that allows for the development of the project, but that agreement is subsequently terminated before construction has commenced on all or any portion of the Howard Terminal property, then the port priority use designation shall be automatically reinstated, if it had previously been deleted pursuant to BCDC's Seaport Plan and Bay Plan amendment process, on the undeveloped portions of the Howard Terminal property for which the agreement has terminated without further legislative action. In either case, BCDC and the Metropolitan Transportation Commission shall reprint the Seaport Plan and Bay Plan to reflect the reinstatement of the port priority use designation on the applicable areas, but this subdivision shall apply regardless of whether the conforming changes have been made.

(c) Except as otherwise provided, this section does not limit the authority or the discretion of BCDC to consider amendments to the Seaport Plan or the Bay Plan to retain or remove Seaport Plan or Bay Plan port priority use designations from the Howard Terminal property and adjacent areas currently designated for port priority use.

## **SEC. 9.**

(a) The Legislature finds and declares that unique circumstances exist at the site to be used for the Oakland Sports and Mixed-Use Project, including that the BCDC jurisdictional bay fill land, while still considered to be a part of the bay were filled for port use, and that considerable public benefits could be realized by the Oakland Sports and Mixed-Use Project that are substantially greater than could be obtained otherwise through the BCDC's permit process.

(b) In light of subdivision (a), in the exercise of its retained powers as trustee of the public trust, the Legislature hereby authorizes BCDC, in granting considering permits for those aspects of the Oakland Sports and Mixed-Use Project that lie within the BCDC's jurisdiction, to find that the ballpark, public trust, and public open-space uses that lie within the BCDC jurisdictional bay fill lands are water-oriented uses within the meaning of subdivision (a) of Section 66605 of the Government Code if BCDC finds, at a properly noticed public meeting, that all of the following conditions exist, and further provided that BCDC shall not issue permits for those aspects of the Oakland Sports and Mixed-Use Project that lie within BCDC's jurisdiction unless it finds that all of following conditions are met:

(1) The ballpark stadium has been designed using the bay as a design asset to attract large numbers of people to enjoy the bay, including a substantial quantity of high-quality open space and public access that serves the surrounding district and the region, and view of the bay from a rooftop park ringing the top of the stadium that will be publicly accessible on nongame and nonevent days subject to reasonable limitations based on security.

(2) Buildings on BCDC jurisdictional bay fill lands other than the ballpark stadium are designed using the bay as a design asset, including providing water views from public spaces within and around those buildings.

(3) Buildings developed on BCDC jurisdictional bay fill lands are designed to allow for significant and important view from the upper-level park within the ballpark stadium, such as views of the bay, the estuary, the San Francisco skyline, and Oakland's port's working waterfront.

(4) Public trust uses on BCDC jurisdictional bay fill lands are designed to promote activation of the adjacent public open spaces, significantly contribute to the public's use and enjoyment of the waterfront, and enhance rather than privatize the public realm.

(c) The Legislature further authorizes BCDC to grant a permit for those aspects of the Oakland Sports and

Mixed-Use Project that lie within BCDC jurisdiction, including the substantial change of use of the BCDC jurisdictional bay fill lands, notwithstanding the findings and declarations set forth in subdivisions ~~(b) to (f), inclusive, (b), (c), (d), and (f)~~ of Section 66605 of the Government Code and the San Francisco Bay Plan policies on "Fills in Accord with Bay Plan," "Fill for Bay-Oriented Commercial Recreation and Bay-Oriented Public Assembly on Privately-Owned or Publicly-Owned Property," and "Filling for Public Trust Uses on Publicly-Owned Property Granted in Trust to a Public Agency by the Legislature," if BCDC finds, at a properly noticed public meeting, that the Oakland Sports and Mixed-Use Project is otherwise consistent with all other applicable BCDC laws and policies and both of the following:

(1) The Oakland Sports and Mixed-Use Project will provide a substantial quantity of high-quality open space and public access, and will provide the public with views from and along major thoroughfares that invite the public to the waterfront.

(2) The Oakland Sports and Mixed-Use Project will provide significant pedestrian and bicycle improvements both onsite and offsite in the vicinity of the project site to promote and encourage public access to, and public assembly at, the shoreline of the bay.

*(d) Nothing in this act limits the authority or discretion of BCDC to approve or deny permits for those aspects of the Oakland Sports and Mixed-Use Project described in this act that are within BCDC's jurisdiction in a manner consistent with the McAteer-Petris Act (Title 7.2 (commencing with Section 66600) of the Government Code) and the Bay Plan except as otherwise provided in this act, including the authority and discretion of BCDC to impose terms and conditions on the permits for the project.*

~~(d)~~

(e) BCDC's findings pursuant to this section shall be made independently from the commission's findings pursuant to Sections 6 and 7.

#### **SEC. 10.**

Nothing in this act limits the authority or discretion of the commission.

#### **SEC. 11.**

Any exchange entered into pursuant to Section 6 shall be conclusively presumed valid unless held to be invalid in an appropriate proceeding in a court of competent jurisdiction to determine the validity of the transaction commenced within 60 days after the recording of the ~~transaction~~ exchange.

#### **SEC. 12.**

(a) 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 by the parties to any exchange entered into pursuant to this act to confirm the validity of the transaction. 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 whether the transaction meets the requirements of this act, Sections 3 and 4 of Article X of the California Constitution, the public trust, the 1923 ~~grant~~, *Grant*, applicable provisions of the Public Resources Code, and any other law applicable to the validity of the transaction.

(b) For purposes of Section 764.080 of the Code of Civil Procedure and unless otherwise agreed in writing, any exchange entered into pursuant to 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 ~~transaction~~ exchange 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. 13.**

The Legislature finds and declares that a special statute is necessary and that a general statute cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution because of the findings and declarations set forth in Sections 2 to 4, inclusive, of this act.

#### **SEC. 14.**

If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

