

## STAFF REPORT

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### **CONSIDER A PARCEL BOUNDARY ADJUSTMENT, A REVISED PHASING PLAN, A DEVIATION FROM THE TRUST STREETS DIAGRAM, AND A HAZARDOUS MATERIAL REMEDIATION FINDING FOR THE SECOND AND THIRD CLOSING PHASES OF THE COMPROMISE TITLE SETTLEMENT AND LAND EXCHANGE AGREEMENT FOR TREASURE ISLAND AND YERBA BUENA ISLAND IN THE CITY AND COUNTY OF SAN FRANCISCO**

#### **PARTIES:**

Treasure Island Development Authority

State of California, acting by and through the California State Lands Commission

#### **BACKGROUND:**

In October 2014, the Commission approved a Title Settlement and Land Exchange Agreement for Treasure Island and Yerba Buena Island (Agreement) ([Item 102, October 14, 2014](#)) with the Treasure Island Development Authority (TIDA), the local entity authorized under state and federal law to accept and manage the lands making up the former Naval Station Treasure Island. The Agreement contemplated that land conveyances would occur in a series of phased closings as TIDA acquired portions of the property from the United States. The Agreement also contemplated that the United States would remediate all the lands within the Treasure Island and Yerba Buena Island Agreement area before they were transferred. The Commission approved a hazardous remediation finding for the first closing in April 2015 ([Item 115, April 23, 2015](#)).

Now, TIDA is requesting four Commission actions, which are addressed in this staff report. The first is approval of a parcel boundary adjustment that would modify the boundary between the Public Trust and Trust Termination lands on Treasure Island. The second is approval of a Revised Phasing Plan. The third is approval of a deviation from the Trust Streets Diagram. The fourth is for a Commission finding relating to the hazardous material remediation involving the property to be exchanged in the second and third closing phases.

## STAFF REPORT NO. 75 (CONT'D)

### **PARCEL BOUNDARY ADJUSTMENT**

The proposed Parcel Boundary Adjustment would change the boundary between what is or will be Public Trust and non-Trust lands. Section 4 of the Agreement allows the Commission to approve a parcel boundary adjustment if it determines the configuration of Public Trust parcels and Trust Termination parcels after the adjustment would be consistent with the configuration shown in the Exchange Diagram in Section 12 of Chapter 543 (Exchange Act).<sup>1</sup> If the Commission determines that the resulting configuration is inconsistent with the Exchange Diagram (i.e., materially differs from the Exchange Diagram), it may still approve the adjustment if it finds that the proposed configuration is substantially similar to the configuration in the Exchange Act and if it makes all other statutorily required findings relating to the proposed configuration.

The Parcel Boundary Adjustment would shift 6.9 acres of Public Trust land on the northeast side of Treasure Island to Trust Termination Land to accommodate a wastewater treatment plant and electric switchyard associated with the broader development. It would also shift 0.08 acres of Trust Termination land to Public Trust land for re-aligned rights-of-way as Trust Streets on Treasure Island. These changes are illustrated in Exhibit B. The Parcel Boundary Adjustment will be effectuated through Closing Phase 3, as illustrated in the proposed Revised Phasing Plan, Exhibit F, in the Agreement (attached to this Staff Report as Exhibit C). The proposed Adjustment does not affect boundaries on Yerba Buena Island.

Staff believes that the proposed Parcel Boundary Adjustment is a large enough change so that the proposed configuration materially differs from the Exchange Diagram, but is, nonetheless, substantially similar to the Exchange Diagram. Therefore, the Commission may approve the Parcel Boundary Adjustment if it makes the required findings, which are as follows:

1. The post-exchange configuration of Trust lands will do all of the following:
  - a. Not differ significantly from the configuration shown on the Exchange Diagram in Section 12 of the Exchange Act.
  - b. Include all lands within the TIDA property that are presently below the mean high tide line 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

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<sup>1</sup> Section 12 of Chapter 543, Statutes of 2004, as amended by Chapter 660, Statutes of 2007; Chapter 208, Statutes of 2009; and Chapter 429, Statutes of 2011

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Public Trust lands, including, 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.
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, are a relatively small portion of the granted tidelands, and the exchange will not result in substantial interference with Trust uses and purposes.
5. The trustee has approved the exchange and will hold fee title to all the land that will be subject to the Trust when the exchange is complete.

### **REVISED PHASING PLAN**

The Revised Phasing Plan would harmonize the trust exchange phasing with TIDA's acquisition of lands from the Navy. The original phasing was based on the order that TIDA then expected to receive Navy lands. The remaining phases were revised to reflect future acquisitions from the Navy in roughly the order TIDA expects to receive the land. The Revised Phasing Plan also affects the proposed Parcel Boundary Adjustment in Phase 3. As mentioned above, Phase 1 closed in mid-2015.

Pursuant to Section 3 of the Agreement, the Commission may approve a Revised Phasing Plan if it finds that:

6. The completion of all phases will result in a configuration of Public Trust lands substantially similar to that shown in the Exchange Diagram. (This finding is essentially identical to finding 1a above required to approve the Parcel Boundary Adjustment.)
7. After each closing phase under the revised phase area boundaries, the cumulative lands or interests in lands that have been exchanged into the Public Trust will be configured in a way that furthers the purposes of the overall exchange, including street access.

### **DEVIATION FROM TRUST STREETS DIAGRAM**

The Agreement included a Trust Streets Diagram that detailed the permanent street rights-of-way that the public will be able to use to access Public Trust

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lands on Treasure Island. Current planning for the overall Treasure Island development has increased the extent of Public Trust street access. The Parcel Boundary Adjustment would realign some street rights-of-way. The proposed Trust Streets Diagram, Exhibit N to the Agreement, is attached as Exhibit F to this Staff Report.

Pursuant to Sections 7 and 9 of the Agreement, the Commission may approve a deviation from the Trust Streets Diagram if it finds that 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, roadway access to serve the public along the western shoreline of Treasure Island. This finding is identical to finding 2 above required to approve the Parcel Boundary Adjustment.

### **HAZARDOUS MATERIAL REMEDIATION FINDING**

A condition precedent to each closing phase is that the Commission find that 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 California Department of Toxic Substances Control (DTSC). Another condition is that the United States has provided an environmental warranty in compliance with federal law.

### **STAFF ANALYSIS AND RECOMMENDATION:**

In October 2014, the Commission made findings 1 through 5 for the Agreement, including the original Public Trust lands boundaries and phase areas. The configuration of trust parcels after the proposed Parcel Boundary Adjustment will be substantially similar to the previous configuration and within the same Agreement area. The most significant change is the new trust termination area, which will encompass the wastewater treatment plant and electric switchyard. These municipal uses cannot be located on Public Trust lands. The exact area of the utility lands was previously unknown but was contemplated before the Agreement was executed.

Following the Parcel Boundary Adjustment, the project area will include 837 acres of Public Trust lands (approximately 525 acres of which are submerged) and 157 acres of Trust Termination lands. This would be a net addition of approximately 7 acres of additional Trust Termination lands. The entire shoreline of Treasure Island will remain in the Public Trust, providing continuous public access. All Trust Termination lands 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 City's granted lands. The exchange will not result in substantial interference with Trust uses and purposes. A 2014 appraisal provided a unitary value for the lands, and

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the additional Public Trust land acreage after the parcel boundary adjustment remain net positive. Staff thus concludes that the cumulative monetary value of all of the land or interests in land that have been exchanged into the Trust will be equal to or greater than the cumulative monetary value of all of the lands or interests in lands exchanged out of the Trust. The 0.08 acre to be added to the Public Trust are a reconfigured right-of-way for public streets that will provide access to the Public Trust Lands. TIDA will continue to hold fee title to all lands subject to the Trust when the exchange is complete.

TIDA also requests that the Commission approve a Revised Phasing Plan, replacing Exhibit F of the Agreement. As described above, the configuration of Public Trust lands after the exchange will be substantially similar to the Exchange Diagram. According to Section 3, subdivision (i), of the Exchange Act, the purposes of the Agreement are, among other things, to allow wetland creation, pedestrian and bicycle corridors around the shoreline, public waterfront amenities, and public ways for access and water views. The Revised Phasing Plan sequence ensures that closing and development of Public Trust and Trust Termination Land proceeds in a contiguous fashion, along with the streets the serve them, and allows for land to be developed as TIDA receives them from the Navy. By the Revised Phasing Plan, Phases 2 and 3 will connect directly to the existing Public Trust lands in completed Phase 1, expanding access on Yerba Buena Island and along the southern shore of Treasure Island. Later phases move generally from south to north along the island, connecting to earlier completed phases. Thus, after each phase, the cumulative land or interests in land exchanged into the Public Trust will be configured in a way that furthers the purposes of the exchange. Staff believes the Revised Phasing Plan furthers the overall purpose of the exchange, and recommends approval and replacement of Exhibit F.

Staff and TIDA are preparing for the second and third closing phases, as depicted in the Revised Phasing Plan. Detailed views of the Phase 2 and Phase 3 closing areas are attached as Exhibits D and E. A condition precedent to each closing phase is that the Commission find that all remedial action necessary to protect human health and the environment regarding hazardous substances on the land has been completed as determined by DTSC and that the United States has provided an environmental warranty in compliance with federal law (tit. 42, U.S. Code, § 9620(h)(3)(A)). The Agreement includes protections for the public and the Commission, including a requirement that no land will be impressed with the Public Trust until the Navy finds that it is safe for its intended purpose, and State indemnification for any harms related to hazardous materials. Before the conveyance of Public Trust land, federal and state environmental regulators, including the U.S. Environmental Protection Agency and the California Environmental Protection Agency, must review and concur that remediation is

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complete. The Navy is required to covenant that all required remediation has been completed. If additional remediation action is required, it will be the Navy's responsibility.

To document its remediation and approval activities, the Navy prepares a Finding of Suitability to Transfer (FOST) before each parcel is deeded out of federal ownership. The following FOSTs include all the Treasure Island and Yerba Buena Island lands that will transfer in revised Phases 2 and 3:

- FOST for Property on Treasure Island (FOST 1; February 15, 2006, as amended on January 21, 2015)
- FOST for Parcels A through I (FOST 4; October 30, 2014)
- FOST for Building 3, Site 21 and Site 27 (FOST 5; August 2016)
- FOST for Building 233, UC 1 & UC 2 (FOST 6; May 2017)
- FOST for Property on Yerba Buena Island (FOST 2; March 22, 2006)
- FOST for Property on Yerba Buena Island – the Battery Site, Torpedo Building, Site 28, Site 29 Artifacts 1, 2 and 3, and East Side Freeway On-Off Ramps (FOST 3; January 3, 2012)

The Department of Toxic Substance Control concurred in each of these findings of suitability for transfer by letters dated May 22, 2006; February 24, 2012; November 21, 2014; November 25, 2014; August 26, 2016; and May 10, 2017. The terms of the FOSTs and the deeds from the Navy to TIDA contain the required environmental warranty.

### **OTHER PERTINENT INFORMATION:**

1. Approval or denial of the Parcel Boundary Adjustment, Revised Phasing Plan, and deviation from Trust Streets Diagram are discretionary actions by the Commission. Each time the Commission approves or rejects a use of sovereign land, it exercises legislatively delegated authority and responsibility as trustee of the State's Public Trust lands as authorized by law.
2. This proposed action is consistent with Strategy 1.2 of the Commission's Strategic Plan to provide that the current and future management of ungranted sovereign lands and resources and granted lands, including through strategic partnerships with trustee ports and harbor districts, are consistent with evolving Public Trust principles and values.
3. Staff recommends that the Commission find that approval of the Parcel Boundary Adjustment, Revised Phasing Plan, and deviation from Trust Streets Diagram are exempt from the requirements of CEQA as a statutorily exempt project. The project is exempt because it involves

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settlement of title and boundary disputes. The project is a component of the implementation of the Agreement that settles a good faith and bona fide dispute as to the State's interest within the TIDA property. The Agreement is a compromise of the contested issues of law and evidence upon which the dispute is based, and is in lieu of the costs, delay, and uncertainties of title and boundary litigation, and is consistent with and authorized by the requirements of law.

Authority: Public Resources Code section 21080.11.

**EXHIBITS:**

- A. Site and Location Map
- B. Parcel Boundary Adjustment Diagram
- C. Revised Exhibit F (Phasing Plan)
- D. Phase 2 Closure Diagram
- E. Phase 3 Closure Diagram
- F. Revised Exhibit N (Trust Streets Diagram)

**RECOMMENDED ACTION:**

It is recommended that the Commission:

**CEQA FINDING:**

Find that the activity is exempt from the requirements of CEQA pursuant to California Code of Regulations, title 14, section 15061 as a statutorily exempt project pursuant to Public Resources Code section 21080.11, settlement of title and boundary disputes; that the project is a component of the implementation of the Agreement that settles a good faith and bona fide dispute as to the State's interest within the TIDA property; and that the Agreement is a compromise of the contested issues of law and evidence upon which the dispute is based, and is in lieu of the costs, delay, and uncertainties of title and boundary litigation, and is consistent with and authorized by the requirements of law.

**AUTHORIZATION:**

1. Approve the Parcel Boundary Adjustment, Revised Phasing Plan, and deviation from Trust Streets Diagram, and find that:
  - a. The configuration of Trust lands upon completion of the exchange will do all of the following:
    - i. Not differ significantly from the configuration shown on the Exchange Diagram in Section 12 of the Exchange Act.
    - ii. Include all lands within the TIDA property that are presently below the line of mean high tide and subject to tidal action.

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- iii. Consist of lands suitable to be impressed with the Public Trust.
  - b. The final layout of streets within the TIDA property will provide access to the Public Trust land and be consistent with the beneficial use of the Public Trust land, including, roadway access to serve the public along the western shoreline of Treasure Island.
  - c. 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.
  - d. The land to be taken out of the Trust is filled and reclaimed, cut off from access to navigable waters, is no longer needed or required for the promotion of the Public Trust, is a relatively small portion of the granted tidelands, and the exchange will not result in substantial interference with Trust uses and purposes.
  - e. The trustee has approved the exchange and will hold fee title to all lands to be subject to the Public Trust when the exchange is complete.
  - f. After each closing phase under the Revised Phasing Plan, the cumulative land or interests in land that have been exchanged into the Public Trust will be configured in a way that furthers the purposes of the overall exchange, including having access to streets.
- 2. Authorize the Executive Officer, on behalf of the Commission, to approve exhibits and to execute memoranda or other recordable instruments commemorating the Parcel Boundary Adjustment, Revised Phasing Plan, and deviation from the Trust Streets Diagram, in substantially the form of Exhibits B, C, and F, respectively, on file in the Commission's Sacramento office.
- 3. Find that all remedial action necessary to protect human health and the environment with respect to hazardous substances on the land proposed for the second and third closing phases in the Agreement has been completed as determined by the U.S. Environmental Protection Agency, DTSC, 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.



NO SCALE

## LOCATION



### TREASURE ISLAND/YERBA BUENA ISLAND TITLE SETTLEMENT & LAND EXCHANGE

MAP SOURCE: USGS QUAD

This Exhibit is solely for purposes of generally defining the other premises, is based on unverified information provided by the other parties and is not intended to be, nor shall it be construed as, a waiver or limitation of any State interest in the subject or any other property.

**SITE**

### Exhibit A

AD 599

TREASURE ISLAND/  
YERBA BUENA ISLAND  
SAN FRANCISCO CITY  
AND COUNTY



**SITE**



TS 10/01/19






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EXHIBIT B




FUTURE PUBLIC TRUST LANDS

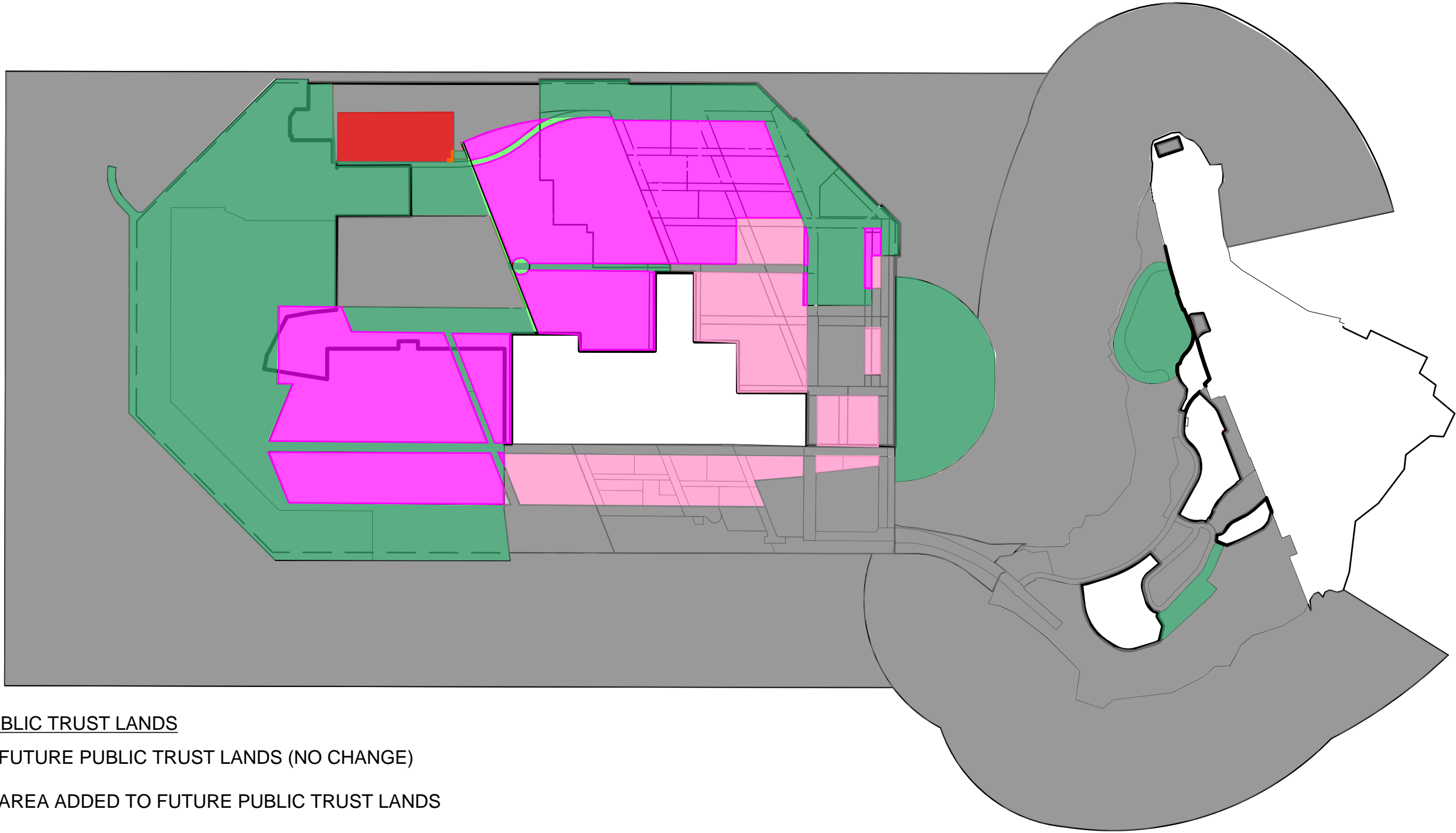
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-  AREA ADDED TO FUTURE PUBLIC TRUST LANDS

FUTURE TRUST TERMINATION LANDS

-  FUTURE TRUST TERMINATION LANDS (NO CHANGE)
-  AREA REMOVED FROM EXISTING PUBLIC TRUST LANDS
-  AREA REMOVED FROM FUTURE PUBLIC TRUST LANDS

POST EXCHANGE LANDS

-  PUBLIC TRUST LANDS (PHASE 1)
-  TRUST TERMINATION LANDS (PHASE 1)
-  NON-TRUST LANDS





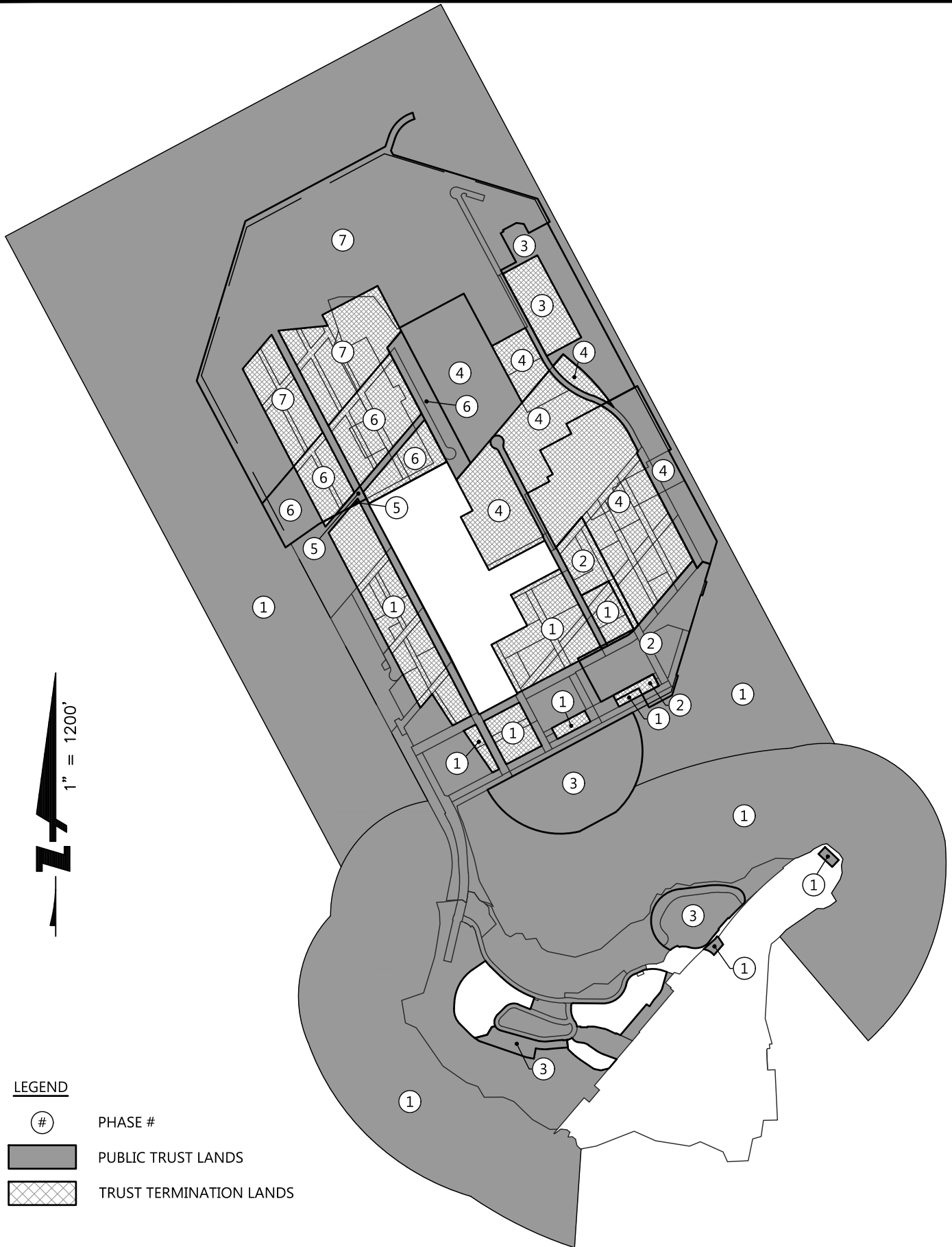
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FUTURE TRUST EXCHANGE  
ILLUSTRATIVE PLAT

SAN FRANCISCO      COUNTY      CALIFORNIA

Revisions		No.	
Date: 02-20-2019	NTS		
Scale:			
Design:	SOM		
Drawn:	DCJ		
Approved:			
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Drawing Number:			
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LEGEND

- # PHASE #
- PUBLIC TRUST LANDS
- TRUST TERMINATION LANDS



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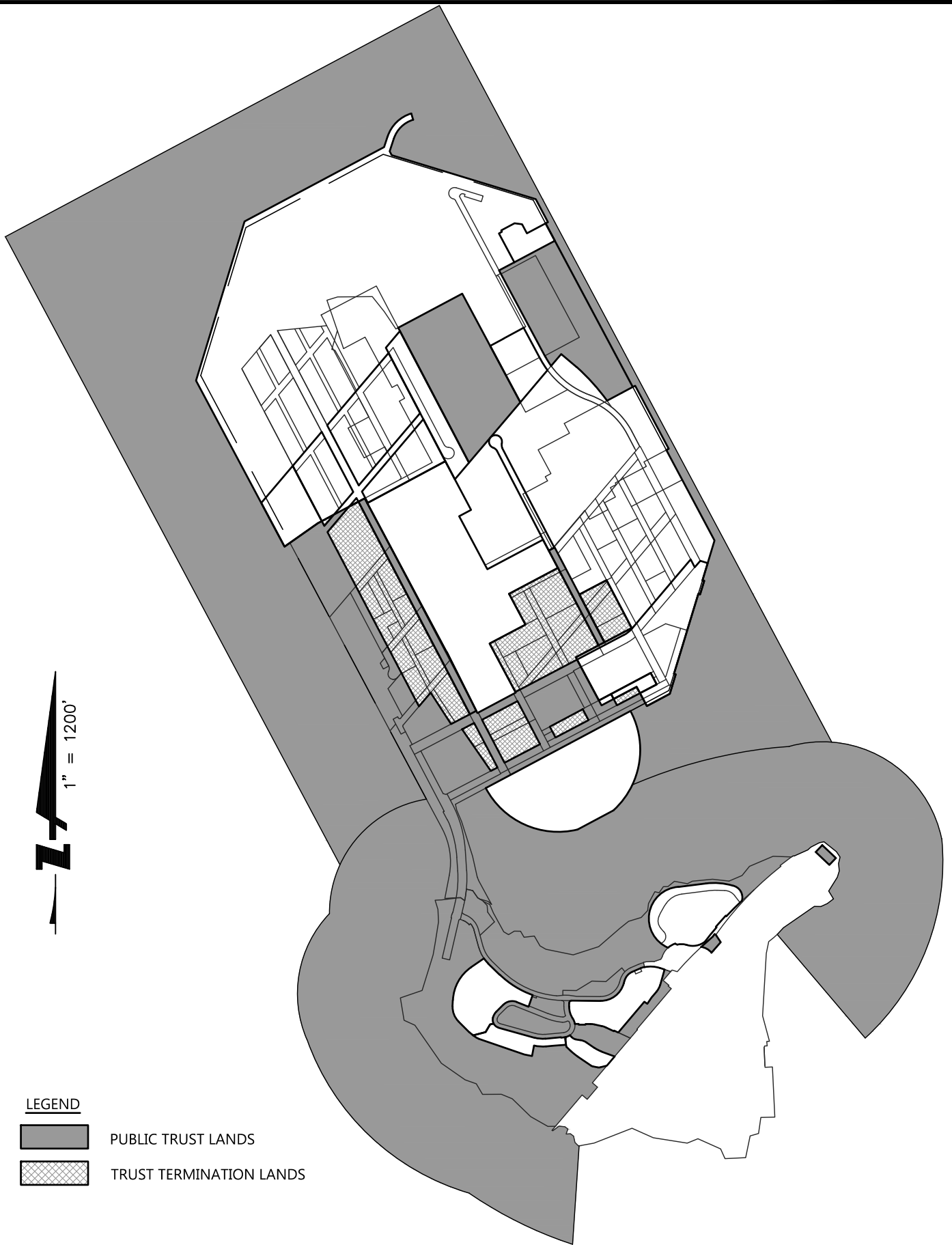
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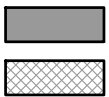
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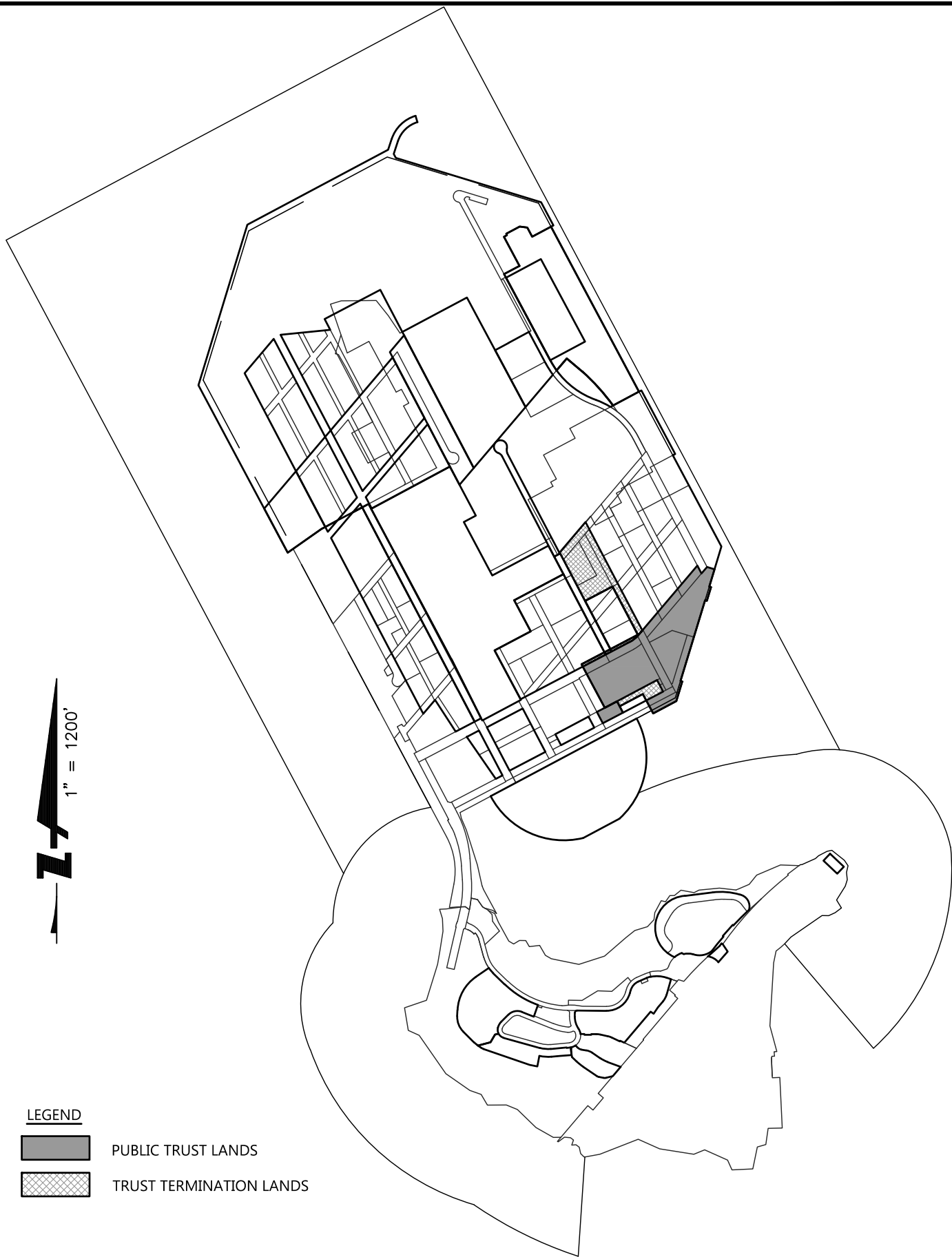
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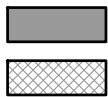
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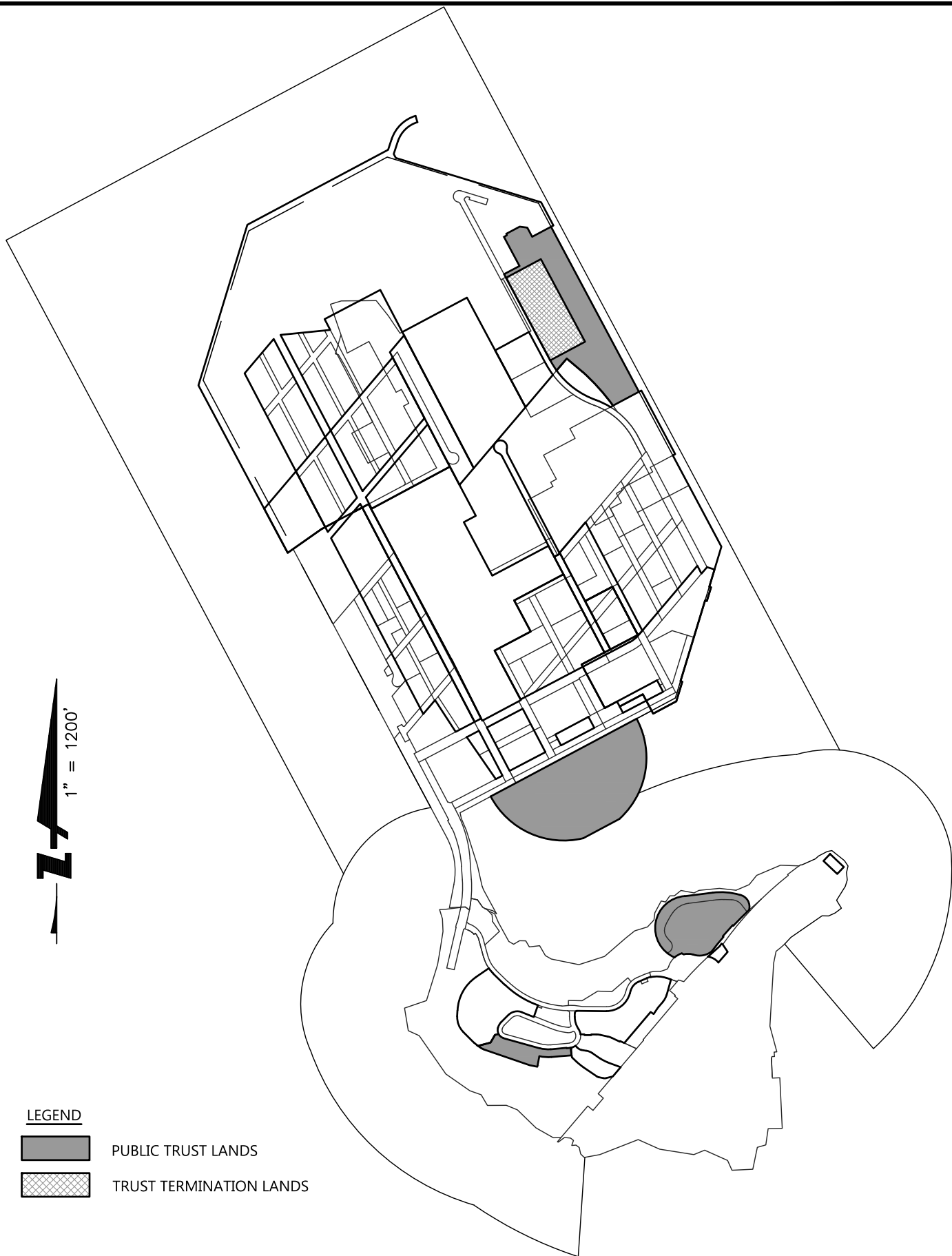
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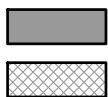
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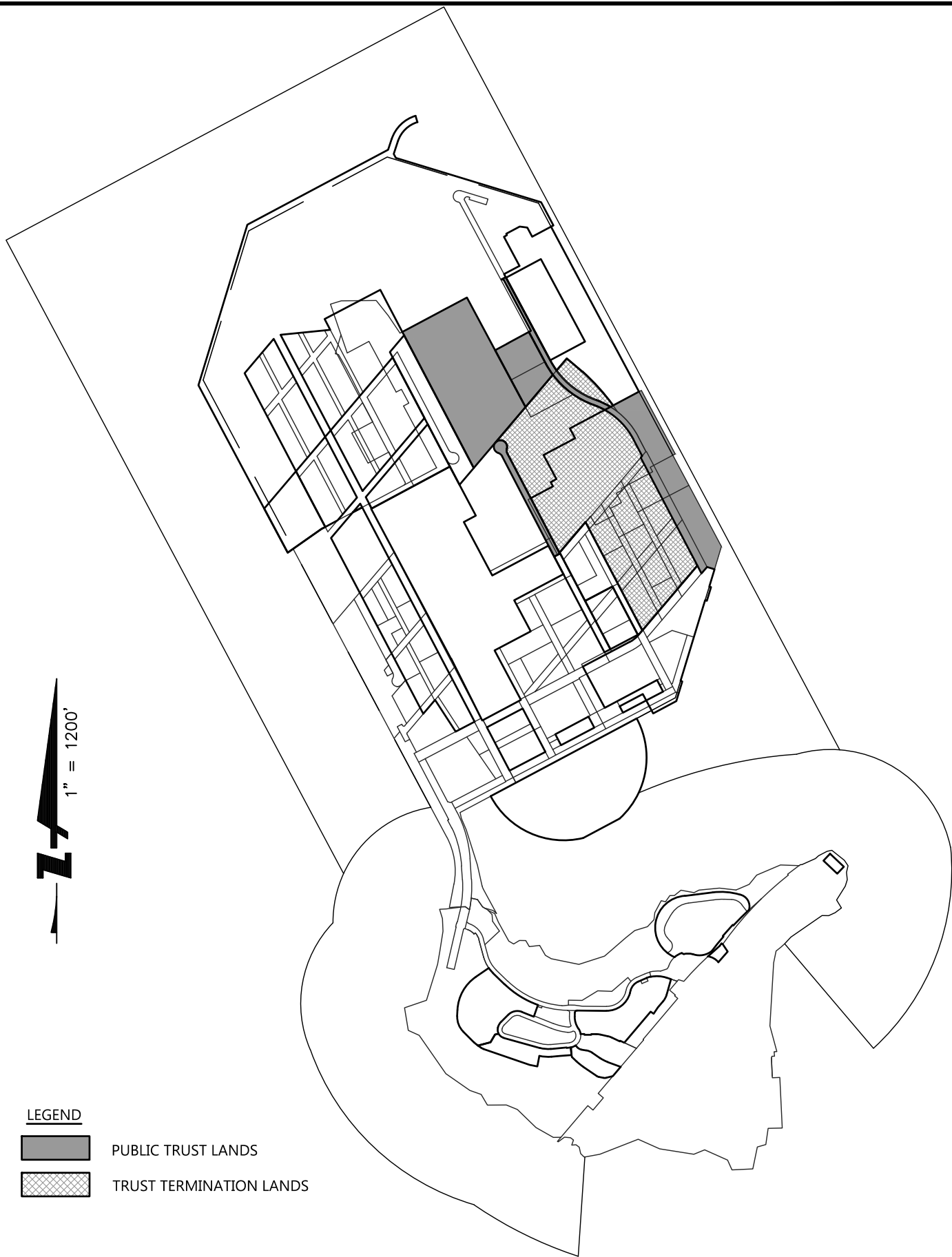
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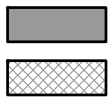
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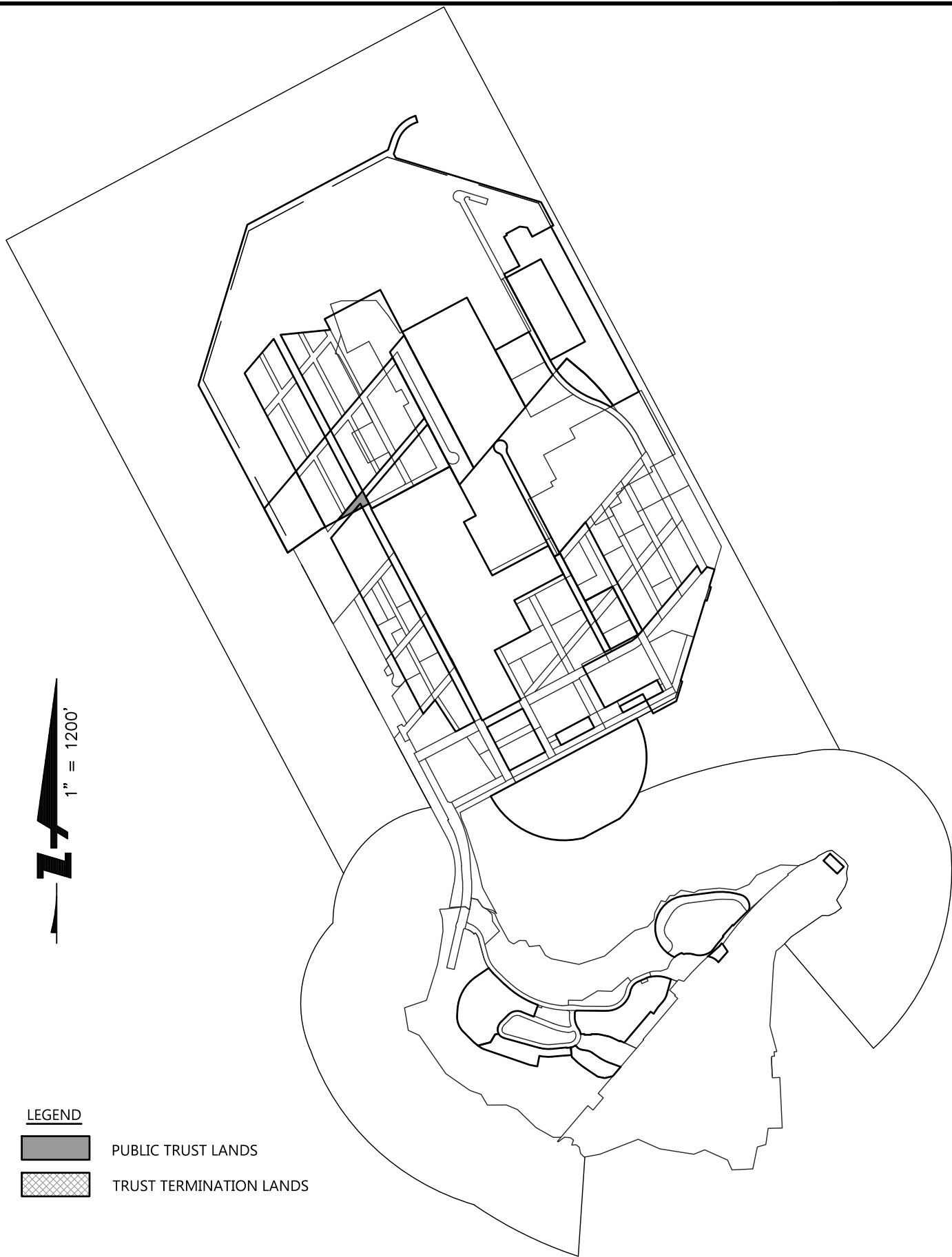
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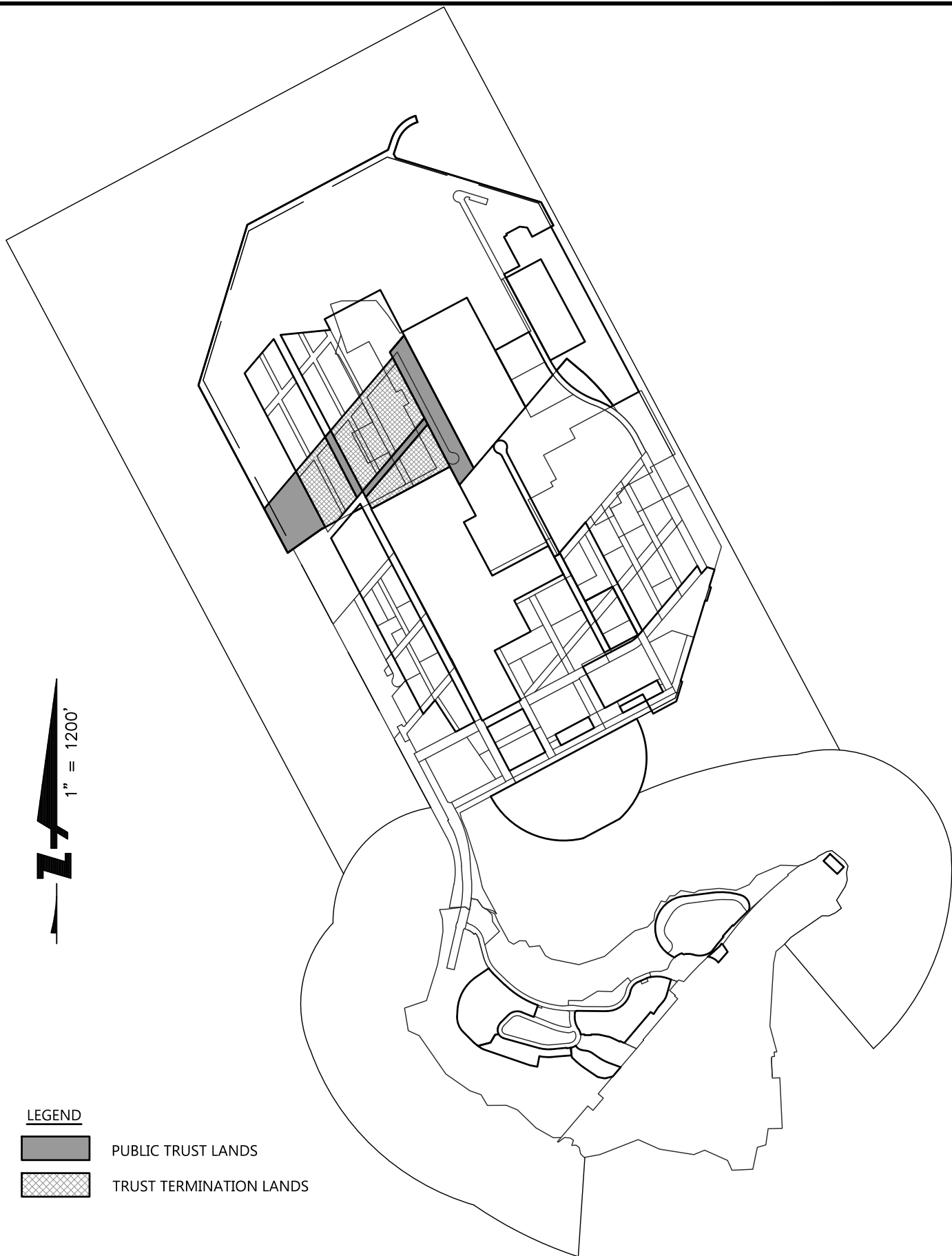
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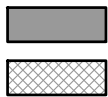
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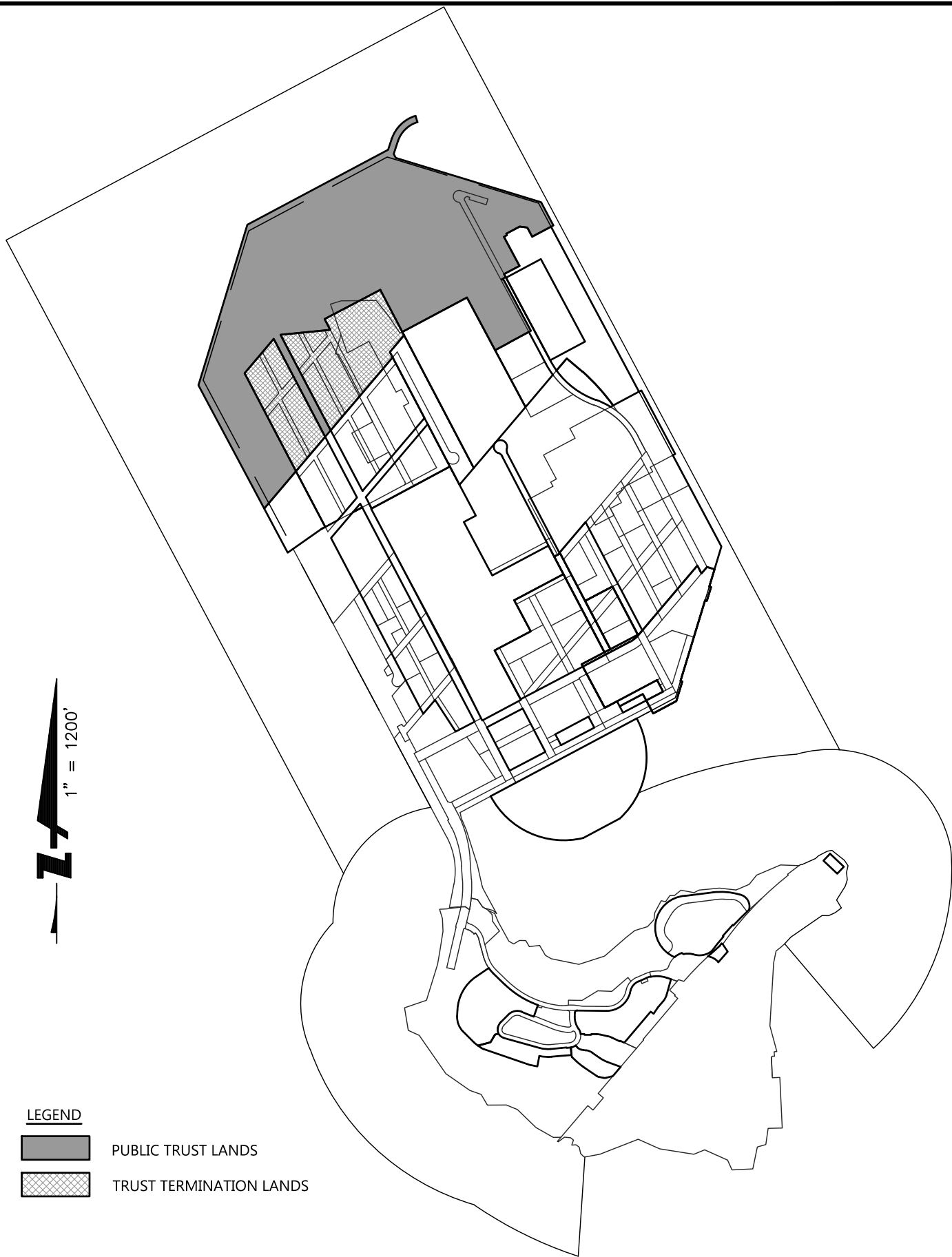
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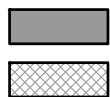
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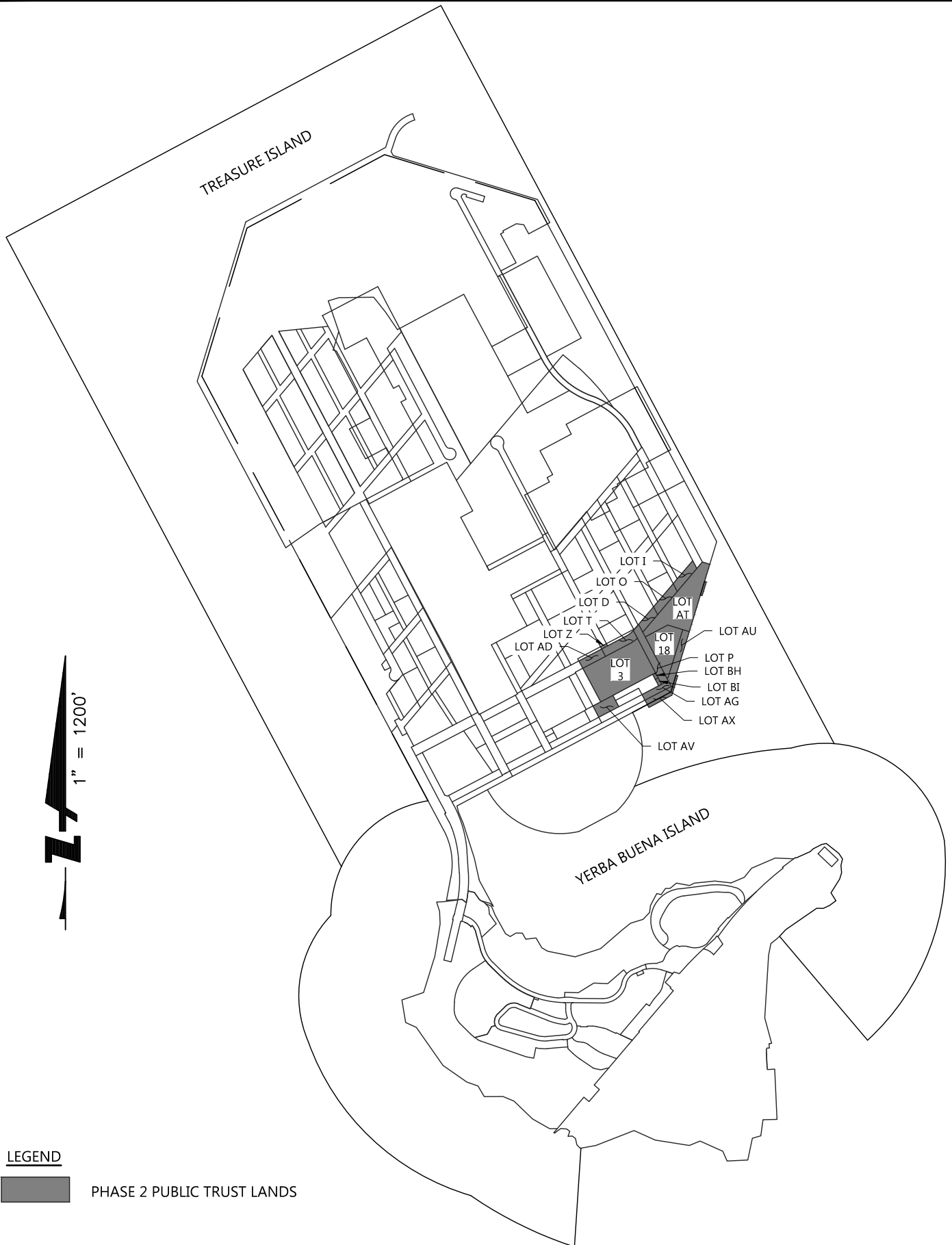
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# EXHIBIT D



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LEGAL DESCRIPTION**

Job No. **20140015**

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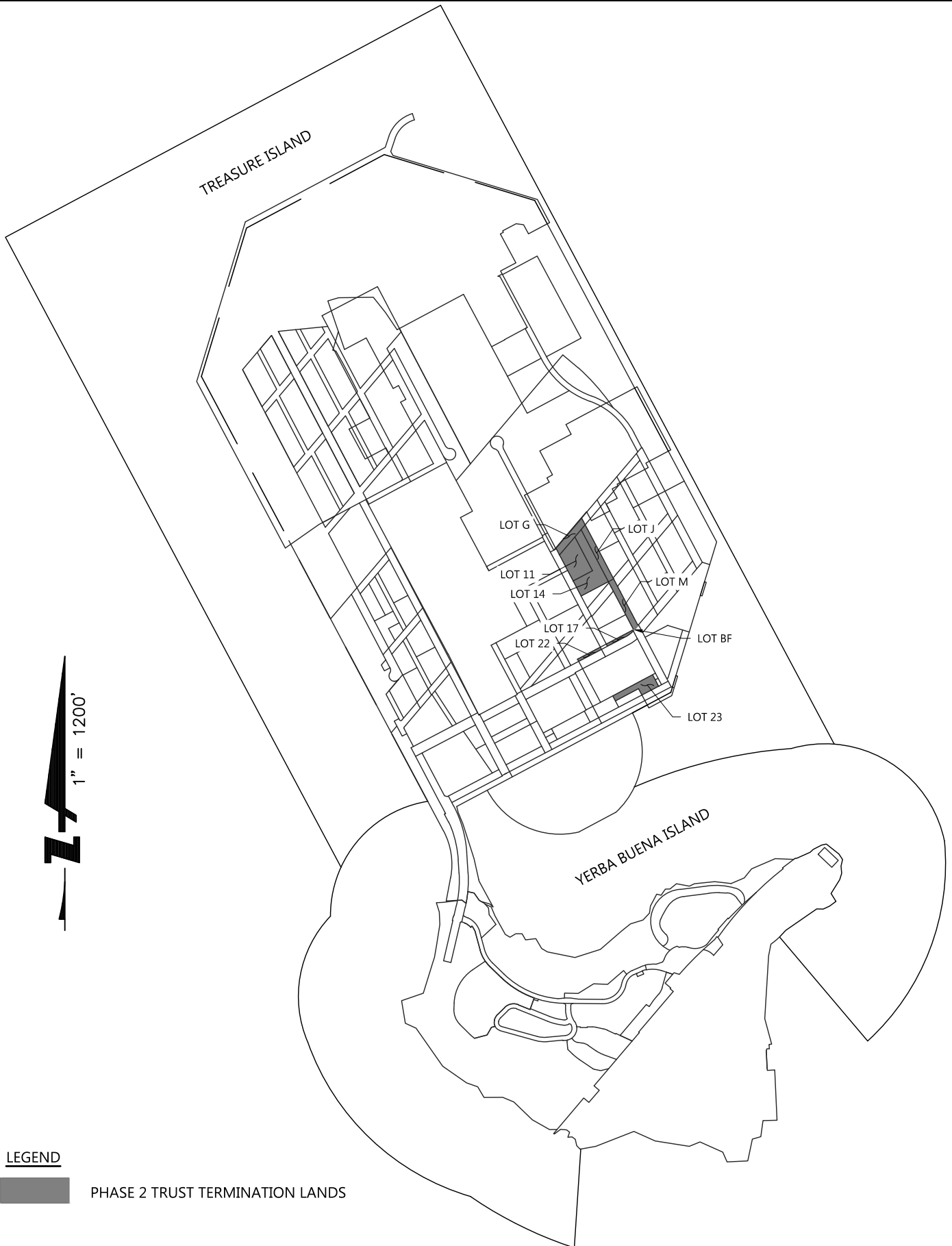
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PHASE 2 TRUST TERMINATION LANDS



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Job No. **20140015**

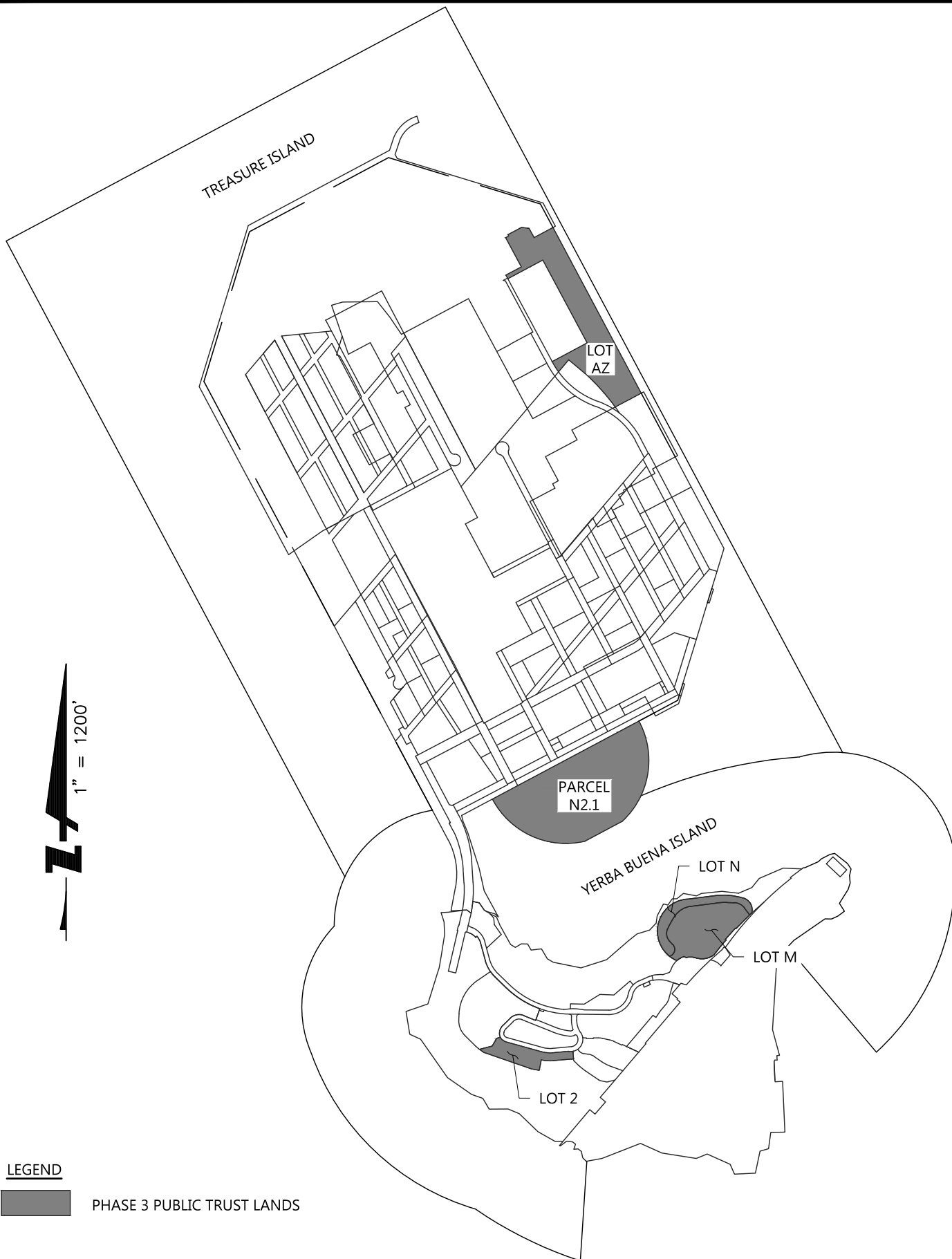
By **SGM**

Chkd. **DCJ**

Date **06/17/2019**

**2** OF **2**

# EXHIBIT E



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PLOT DATE: 06-25-19 PLOTTED BY: mpt



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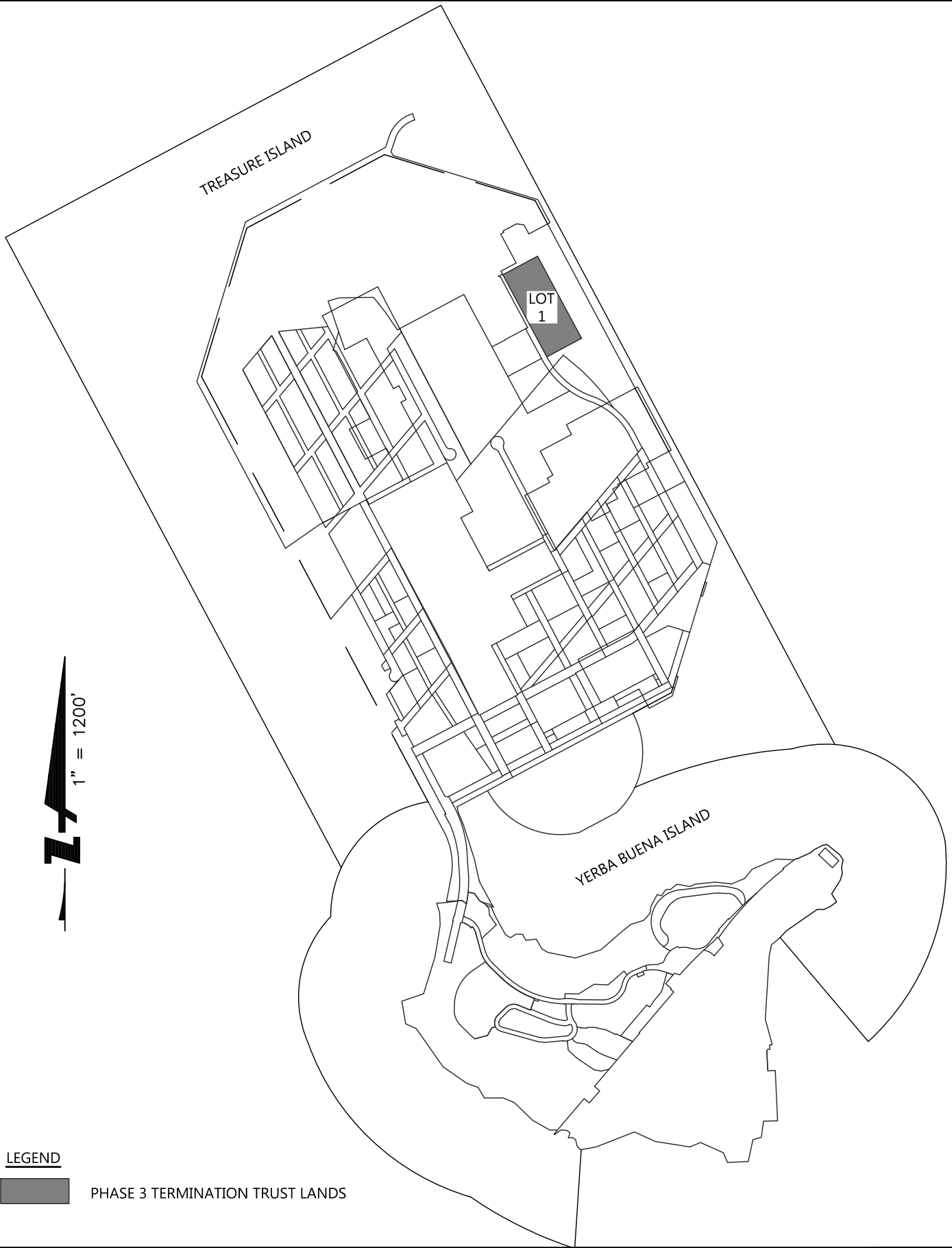
Subject **EXHIBIT 1 - PLAT TO ACCOMPANY**  
**LEGAL DESCRIPTION**

Job No. **20140015**

By **SGM** Chkd. **DCJ** Date **06/17/2019**

**2** OF **2**

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PLOT DATE: 06-17-19 PLOTTED BY: mpyt



**LEGEND**



PHASE 3 TERMINATION TRUST LANDS



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Subject **EXHIBIT 1 – PLAT TO ACCOMPANY**  
**LEGAL DESCRIPTION**

Job No. **20140015**

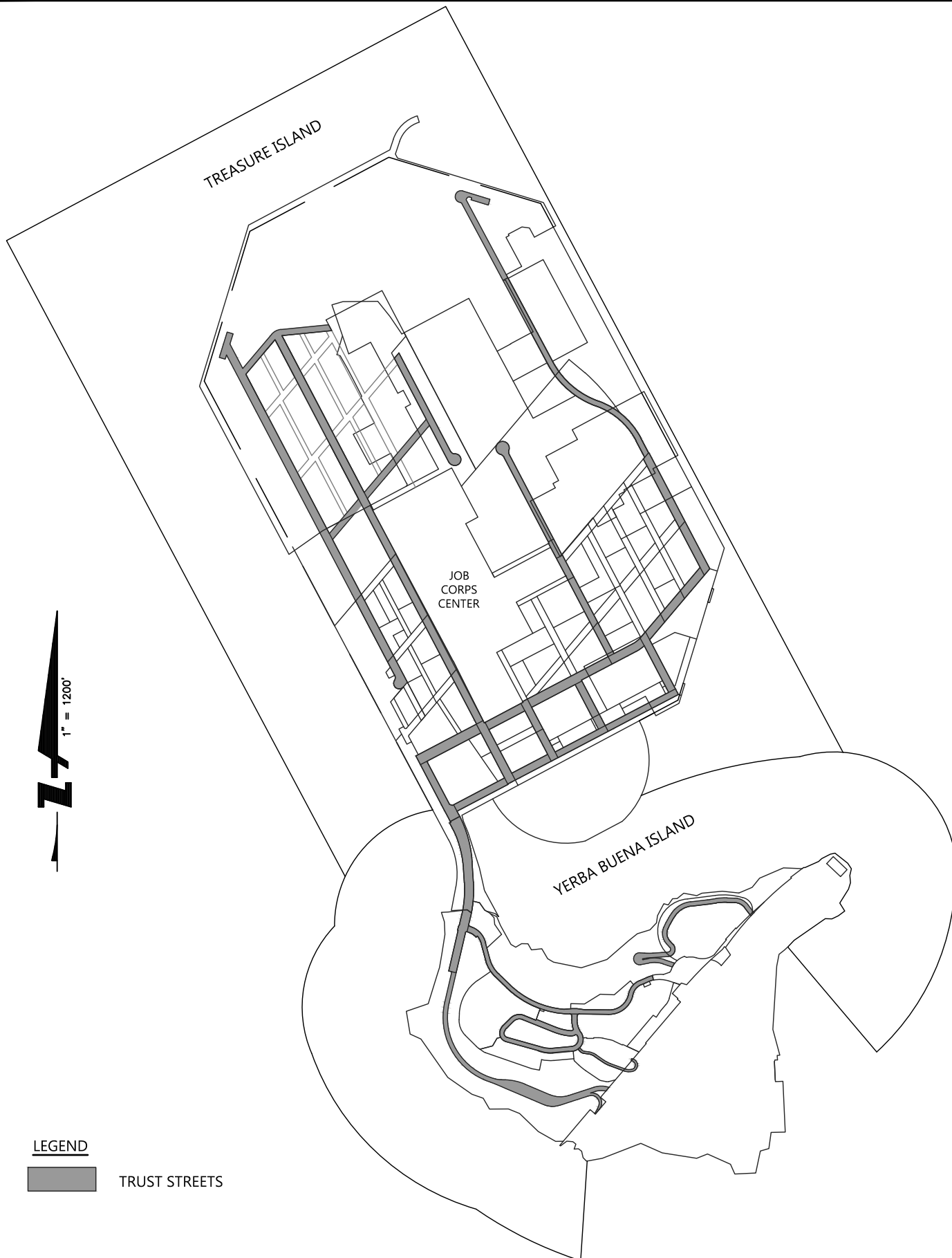
By **SGM**

Chkd. **DCJ**

Date **06/17/2019**

**2** OF **2**

# EXHIBIT F



## LEGEND



TRUST STREETS

DRAWING NAME: K:\Surf\140015\Plate and Legend\2019 T Trust Exchange\EXHIBIT N - PLAT.dwg  
PLOT DATE: 07-09-19 PLOTTED BY: mpyl



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Subject **EXHIBIT N - TRUST STREETS DIAGRAM**

Job No. **20140015**

By **SGM**

Chkd. **DCJ**

Date **07/09/2019**

1 OF 1