

# Staff Report 45

## **PROPOSED ACTION:**

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Consideration of a Land Exchange and Title Settlement Agreement between the State of California, acting by and through the California State Lands Commission, the City of Alameda, and North Waterfront Cove LLC for certain parcels located within and adjacent to the Oakland Estuary and Alaska Basin, in the city of Alameda, county of Alameda.

## **PARTIES:**

The State of California, acting by and through the California State Lands Commission (Commission)

The City of Alameda (City)

North Waterfront Cove LLC (Developer)

## **PROPOSED AGREEMENT:**

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The City has requested that the Commission consider and approve a Land Exchange and Title Settlement Agreement for the Encinal Terminals Project (Agreement) between the City, Developer, and the Commission. The purpose of the Agreement is to facilitate a mixed-use development including residential, a Bay-Trail waterfront promenade, park, and plazas, by settling disputed and unclear boundaries and by reconfiguring public and private lands. The Agreement concerns approximately 32 acres of land commonly known as Encinal Terminals (Project Area). The Project Area is located at 1521 Buena Vista Avenue within the city of Alameda. The Project Area is bounded by the Oakland-Alameda Estuary on the north, the Fortman Marina on the east, Alaska Basin—a dredged basin of privately owned submerged lands—on the west, and the upland of the City on the south.

The State will acquire or confirm approximately 19 acres of land in the public trust (Public Trust Lands) through the Agreement. In exchange, the Agreement will terminate the state's public trust interest on approximately 4.5 acres of land (Trust Termination Lands) within the Project Area. To accomplish the exchange, and to

ensure that title is settled to both the Public Trust Lands and Trust Termination Lands, all the Public Trust Lands and Trust Termination Lands outside of the State's ownership will be quitclaimed to the Commission. The Public Trust Lands and Trust Termination Lands are collectively referred to as the Exchange Lands.

Key terms of the proposed Agreement provide that:

1. The City will quitclaim its interests in the Exchange Lands to the Commission.
2. The Developer will quitclaim its interests in the Exchange Lands to the Commission.
3. The Commission will then confirm the Public Trust Lands within the public trust and quitclaim its interests, free of any public trust interests in the Trust Termination Lands, to the Developer.
4. Commission staff and the City will pursue obtaining necessary State legislation to include the Public Trust Lands in the City's statutory trust grant, or if granting legislation is not obtained, the City will apply for a lease to be considered at a future Commission meeting.

These conveyances will occur in a series of four phase areas, ensuring that public spaces are developed concurrently with or before the private developments.

## **LEGAL REQUIREMENTS:**

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### **PUBLIC RESOURCES CODE SECTION 6307**

Pursuant to Public Resources Code (PRC) section 6307, the Commission is authorized, under certain circumstances, to enter into land exchange agreements by which the State will accept or confirm land in the public trust and terminate the State's public trust interests in other lands of equal or lesser value. Because the City does not have the legal authority to terminate the State's public trust interest on trust property, the Commission must take title to the Trust Termination Lands to be exchanged for the interests in the Public Trust Lands, and, as part of that exchange, terminate the public trust interest in the Trust Termination Lands. The Commission, in order to approve the proposed Agreement, must make the following findings pursuant to PRC section 6307:

- 1) The exchange is for one or more of the following purposes:
  - a. To improve navigation or waterways
  - b. To aid in reclamation or flood control

- c. To enhance the physical configuration of the shoreline or trust land ownership
  - d. To enhance public access to or along the water
  - e. To enhance waterfront and nearshore development or redevelopment for public trust purposes
  - f. To preserve, enhance, or create wetlands, riparian or littoral habitat, or open space
  - g. To resolve boundary or title disputes
- 2) The lands or interests in lands to be acquired in the exchange will provide a significant benefit to the public trust.
  - 3) The exchange does not substantially interfere with public rights of navigation and fishing.
  - 4) The monetary value of the lands or interests in lands received by the trust in exchange is equal to or greater than that of the lands or interests in land given by the trust in exchange.
  - 5) The lands or interests in land given in exchange have been cut off from water access and no longer are in fact tidelands or submerged lands or navigable waterways, by virtue of having been filled and reclaimed, and are relatively useless for public trust purposes.
  - 6) The exchange is in the best interests of the State.

Entering into the Agreement is a discretionary decision for the Commission. In addition, the Governor must approve any settlement of claims before the Agreement become effective.

## **STAFF ANALYSIS AND RECOMMENDATION:**

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The City is trustee of over 7,700 acres of legislatively granted Public Trust lands on the Oakland-Alameda Estuary pursuant to Chapter 348, Statutes of 1913 (as amended). The City holds, in trust, approximately 6.4 acres of land within the Project Area that is presently inaccessible to the public. These public lands have been vacant for over 10 years. Prior to 2010, the property was leased to a shipping container storage and repair business. Today, the Project Area is paved and unused, with several derelict buildings and a dangerously decayed marginal wood and concrete wharf.

The current configuration of land ownership makes redevelopment of the property financially infeasible for public or private uses. Due to historical uses and human interventions, such as dredging and filling, the City parcel is partially enclosed by

the Developer's adjacent property. Providing public access and utilities to the site would require crossing adjacent private lands owned by the Developer.

The true boundary between the City's trust property and the Developer's private property cannot be located with certainty, creating a cloud on the City's and Developer's land titles. In 1871, two surveys of the area were performed on behalf of government agencies. Although both surveys purported to meander the shoreline of the Estuary, the surveyed lines conflict. Also, the legal consequences for land ownership or trust status based on the significant human interventions over the past 150 years are disputed. This uncertainty in title and boundaries inhibits investment and further undermines the site's development potential.

The proposed Agreement would resolve the boundary disputes and reconfigure the trust in the Project Area through a series of conveyances between the City, Developer, and the State. The Agreement would remove from the trust approximately 4.5 acres of interior lands, a relatively small portion of the lands granted to the City, and confirm or impress the trust on approximately 19 acres, including 13.2 acres of submerged lands, resulting in a net increase to the trust of about 14 acres. The portions of the Project Area having the greatest trust value would be brought into the trust. These are the entire shoreline in the Project Area, submerged lands in Alaska Basin, and a central accessway leading to the Estuary and public amenities. The Developer would combine the 4.5 acres of trust termination lands with about 7 acres of undisputed private lands for housing and commercial uses. All these private lands are interior to the site and away from the shoreline. The lands to be removed from the trust are filled, cut off from the water, and have no present or expected trust purposes.

The Agreement contemplates that the conveyances will occur in a series of four phased closings (Closing Phases). The City approvals for the development require the Developer to complete certain public access and waterfront improvements prior to each Closing Phase. The phasing plan is designed to ensure that at each phase of the project, public lands have been expanded and public improvements have been completed and open for public use. Trust Termination lands will not transfer to the Developer in each phase until the Developer has acquired all necessary permits, completed site clearing and grading, constructed a temporary Bay Trail, and provided vehicle access to the existing City property. The first phase is not expected to close for several years, and after initial site remediation, such as removal of the deteriorated wharf and shoreline stabilization, are complete.

The Developer will finance and maintain improvements to the Public Trust Lands, The improvements include over 7 acres of waterfront land for the Bay Trail, public promenades and plazas, public roads through the center of the site, removal and

reconstruction of the wharf, a public kayak launch, and a public water-shuttle landing. Continuous public access, incorporating the Bay Trail, will be provided around the perimeter of the site. The new public access will provide opportunities for a range of recreational activities including walking, running, bicycling, fishing, watercraft launch, and vista point viewing. The shoreline public areas would be raised to account for expected sea level rise. The conveyance of over 13 acres of submerged lands to the City will enable the City to enter into a future lease with a third party to develop and operate a marina in the Alaska Basin, or combine the new submerged lands with the Fortman Marina, already operated by the City on its granted lands. The land exchange will enhance public access to the water, enhance waterfront and nearshore development for public trust purposes, and create open space.

After execution of the Agreement, the parties agree to pursue state legislation that would grant the Public Trust Lands not previously granted to the City to hold in trust. If legislation is not in effect before the first Closing Phase, staff will recommend at a future public meeting following or contemporaneous with the Closing that the Commission enter into an interim lease with the City until the City's statutory trust grant can be amended to include the Public Trust Lands.

The Parties have conducted independent studies and valuations of their respective factual and legal positions relating to the disputed title and boundary claims. Based on these analyses and an appraisal prepared for the Commission, Commission staff recommend finding that the monetary value of the lands and interests to be exchanged into the public trust under this Agreement are equal to or greater than the monetary value of the lands and interests to be exchanged out of the public trust.

**CONCLUSION:**

As described in the preceding paragraphs and in the proposed Agreement, the facts support each of the necessary findings the Commission must make. Commission staff and the Attorney General's Office have reviewed the proposed Agreement and believe all necessary legal elements have been met. Staff therefore recommends that the Commission approve the Agreement, in substantially the form on file at the Commission's Sacramento Office, and authorize its execution and the execution and recordation of all documents necessary to implement it.

## **OTHER PERTINENT INFORMATION:**

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1. The State, acting by and through the Commission, is authorized under Division 6 of the Public Resources Code, and specifically section 6307 of that code, to enter into land exchange agreements.
2. The City is the State's trustee of the legislatively granted sovereign tide and submerged lands pursuant to Chapter 348, Statutes of 1913, as amended.
3. This action is consistent with the "Meeting Evolving Public Trust Needs" and "Committing to Collaborative Leadership" Strategy Strategic Focus Areas of the Commission's 2021–2025 Strategic Plan.
4. Staff recommends that the Commission find that this activity is exempt from the requirements of the California Environmental Quality Act (CEQA) as a statutorily exempt project. The project is exempt because it involves settlement of title and boundary problems and an exchange in connection with the settlement.

Authority: Public Resources Code section 21080.11.

5. A Final Focused Supplemental Environmental Impact Report (FSEIR), State Clearinghouse No. 2016042076, was prepared by the City of Alameda and certified on December 19, 2017. Staff has reviewed this document and found that the Land Exchange and Title Settlement Agreement was included as part of the project and analyzed under Land Use Consistency and Compatibility, specifically Impact 4.C--2. The FSEIR found the impact to be less than significant, ensuring consistency with the City's General Plan and purposes of the Public Trust.

## **EXHIBIT:**

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- A. Location and Site Map of Public Trust Lands and Trust Termination Lands

## **RECOMMENDED ACTION:**

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It is recommended that the Commission:

### **CEQA FINDINGS:**

Find that the activity is exempt from the requirements of CEQA pursuant to Public Resources Code section 21080.11 as a statutorily exempt project.

Find that a FSEIR, State Clearinghouse No. 2016042076, was prepared for this project by the City of Alameda and certified on December 19, 2017, and that the Commission has reviewed and considered the information contained therein; that in the Commission's independent judgement, the scope of the Land Exchange and Title Settlement Agreement under this authorization has been adequately analyzed; that none of the events specified in Public Resources Code section 21166 or the State CEQA Guidelines section 15162 resulting in any new or substantially more severe significant impact has occurred; and, therefore, no additional CEQA analysis is required.

**PUBLIC TRUST AND STATE'S BEST INTEREST:**

Find that the Agreement, consistent with the authorizations below, will confirm in trust the lands with greatest value to the public trust and remove from the trust lands that have been filled, reclaimed, and cut off from access to the water, limiting their relative value for the promotion of the public trust; that the property interests confirmed into the trust will promote and enhance trust uses along the shoreline and have an equal or greater value than the lands removed from the trust; that the Agreement will settle a bona fide dispute and avoid costly and uncertain litigation; and that the Agreement is therefore consistent with the Public Trust Doctrine and in the best interests of the State.

**AUTHORIZATION:**

1. Find that, with respect to the proposed Land Exchange and Title Settlement Agreement for the Encinal Terminals Project, which findings shall be effective upon recordation as provided in the Agreement:
  - a. There is a bona fide dispute as to the State's interests and boundaries between public and private lands in the Project Area. This Agreement is a settlement of the contested issues of law and evidence on which the dispute is based, is to resolve title and boundary problems, and is consistent with and authorized by law.
  - b. The Trust Termination Lands are a relatively small portion of the lands granted to the City.
  - c. The exchange is for the purposes of resolving boundary and title disputes; creating and enhancing open space; enhancing the physical configuration of the shoreline and trust land ownership; enhancing public access to and along the water; and enhancing waterfront and nearshore development and redevelopment for public trust purposes.

- d. The Public Trust Lands provide a significant benefit to the public trust, including public access and uses consistent with the common law Public Trust Doctrine.
  - e. The exchange provided for in this Agreement does not substantially interfere with public rights of navigation and fishing.
  - f. The lands or interests in lands received into the trust (the Public Trust Lands) have a monetary value equal to or greater than the value of the lands or interests in lands given in exchange (the Trust Termination Lands).
  - g. The Trust Termination Lands are cut off from water access and are no longer in fact tidelands or submerged lands or navigable waterways, by virtue of being filled or reclaimed, and are relatively useless for public trust purposes.
  - h. The Agreement is in the best interests of the State.
2. Approve and authorize the execution, acknowledgment, and recordation of the Land Exchange and Title Settlement Agreement for the Encinal Terminals Project, in substantially the form of the copy on file with the Commission, and the acceptance, execution, acknowledgment, and recordation of all associated deeds on behalf of the Commission.
  3. Authorize and direct Commission staff and the California Attorney General to take all necessary or appropriate actions on behalf of the Commission, including the execution, acknowledgment, acceptance, and recordation of all documents as may be necessary or convenient to carry out the Agreement; and to appear on behalf of the Commission in any legal proceedings relating to the subject matter of the Agreement.



NO SCALE

# SITE

OAKLAND INNER HARBOR

APPROXIMATE SHORELINE



ALASKA BASIN

PUBLIC TRUST LANDS

SUBMERGED PUBLIC TRUST LANDS

FORTMANN BASIN

TRUST TERMINATION LANDS PARCEL THREE

TRUST TERMINATION LANDS PARCEL FOUR

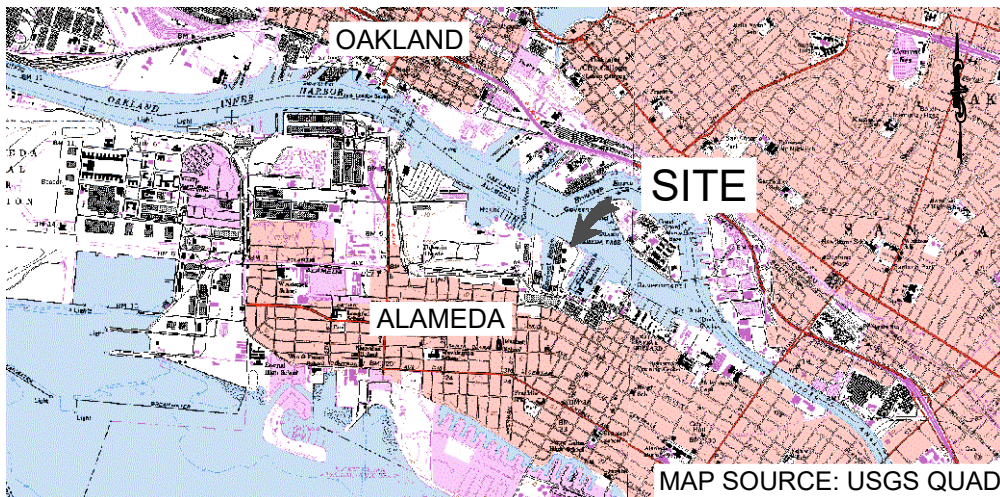
TRUST TERMINATION LANDS PARCEL ONE

TRUST TERMINATION LANDS PARCEL TWO

## ENCINAL TERMINALS PUBLIC TRUST LANDS AND TRUST TERMINATION LANDS FINAL CONFIGURATION

NO SCALE

# LOCATION



# EXHIBIT A

G01-01/ AD 690  
TITLE SETTLEMENT AND  
EXCHANGE AGREEMENT  
CITY OF ALAMEDA  
ALAMEDA COUNTY



THIS EXHIBIT IS SOLELY FOR PURPOSES OF GENERALLY DEFINING THE TITLE SETTLEMENT AND EXCHANGE AGREEMENT PREMISES, IS BASED ON UNVERIFIED INFORMATION PROVIDED BY 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.

JWP 08/09/2022