

# Staff Report 86

## **PROPOSED ACTION:**

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Consider co-sponsoring legislation that would authorize the California State Lands Commission (to convey to the City of Alameda (City), in trust, any lands to be exchanged into the Public Trust through an exchange agreement to which the City is a party, and authorize the Commission to convey new Public Trust lands to the City as trustee in accordance with the Encinal Terminals Project Land Exchange and Title Settlement Agreement.

## **BACKGROUND AND PURPOSE:**

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Encinal Terminals was built in 1925 on the City's northern waterfront. The property overlooks the Oakland Estuary and is surrounded on three sides by water, with the Alaska Basin on the west, the Oakland Estuary on the north, the Fortman Marina on the east, and the future Atlantic/Clement Avenue on the south. In the 1950s, Encinal Terminals was a major port for various goods and in 1959, the first high-speed container-handling gantry crane in the United States was installed there. By the 1980s, the larger container ports such as Oakland and Long Beach had taken the lead and Encinal Terminals could not compete as a shipping terminal. The gantry cranes were disassembled later that decade and the Encinal Terminals ceased port operations. The City used the site for container storage until about 2010. The land has been vacant since then. The area now consists of a few vacant warehouses and shed buildings amid asphalt and concrete paving. The waterfront wharves are in disrepair and require seismic upgrading and/or demolition. There is no public access to the site.

In 2008, the City adopted the Northern Waterfront General Plan Element, laying out its vision for a waterfront mixed-use neighborhood along the Northern Waterfront and designating the Encinal Terminals site for residential, open space, and commercial mixed-use. The Encinal Terminals site is within the Northern Waterfront area. In 2016, a Developer called North Waterfront Cove, LLC, proposed a waterfront mixed-use development with residential at the Encinal Terminals property.

The Encinal Terminals property is a 32-acre site consisting of four parcels, three of which are owned in fee by North Waterfront Cove, LLC, and one, a 6.4-acre parcel, that is a state tidelands parcel held in trust by the City. The Legislature granted the City the tidelands parcels many decades ago, together with other tide and submerged lands in the City, for Public Trust purposes. The land ownership configuration, with one parcel having Public Trust use restrictions, hindered redevelopment of the property. The tidelands 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. Additionally, the true boundary between the City's parcel and the Developer's private property could not be ascertained with certainty, creating a cloud on land titles.

Existing law<sup>1</sup> authorizes the Commission to exchange land subject to the Public Trust in order to resolve title disputes and to reshape state ownership of Public Trust lands in a manner that appropriately configures these lands for water-related development and public access. This authorization includes imposing the Public Trust on certain lands while terminating the Public Trust on other lands. In August 2022, the Commission approved a [Land Exchange and Title Settlement Agreement](#) that will resolve the boundary disputes and reconfigure the Public Trust lands in the Project Area through a series of conveyances between the City, Developer, and the State. The Agreement will also facilitate the mixed-use development at the waterfront site, which includes residential (589 homes), a bay-trail waterfront promenade, park, and plazas, commonly referred to as the Encinal Terminals Project. The City of Alameda approved the Encinal Terminals Project in January 2022.

Pursuant to the Agreement, the trust will be removed from approximately 4.5 acres of interior lands and confirmed or impressed 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

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<sup>1</sup> Public Resources Code section 6307 provides that the Commission may enter into an exchange, with any private or public entity, of filled or reclaimed tide and submerged lands that are subject to the Public Trust, for other lands or interests in lands, if the exchange is made for certain purposes, including: to enhance the physical configuration of the shoreline or trust land ownership; to enhance public access to or along the water; to enhance waterfront and nearshore development or redevelopment for public trust purposes; and to preserve, enhance or create open space; and to resolve boundary or title disputes. The Commission must also find that the exchange meets certain enumerated conditions.

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 Encinal Terminals Project will supply much needed housing, including 80 new affordable housing units, that is necessary to meet the City's regional housing need allocation. It will create a publicly accessible waterfront with an array of amenities that include over 4 acres of waterfront parks and Bay Trail and over 13 acres of public land for future marinas and for a kayak launch and public water shuttle. The project site is currently served by existing private utilities that are deteriorated and at the end of their service life. Many of these existing utilities do not meet current codes or standards. The project will replace the existing infrastructure with new utility systems that include stormwater, wastewater, potable water, electrical, natural gas and telecommunications that will be designed in accordance with current standards. The project will also include sea level rise protections and seismic upgrades.

The exchange will occur in a series of four phase areas over the next five to 15 years, ensuring that public spaces are developed concurrently with or before the private developments. One of the Agreement's components is that the Commission, the City, and the Developer will promptly seek legislation to include the newly acquired Public Trust lands (that portion of the Public Trust lands not previously granted in trust to the City) in the City's statutory trust grant. If legislation is not in effect at the time of a closing phase, then the Commission must consider at a public meeting executing an interim lease in lieu of a Public Trust patent for the new trust lands to be conveyed at that closing phase. If, at the time of the first closing phase, the Commission has not approved an interim trust lease and legislation is not in effect, then the Commission would be required to convey to the City, in lieu of a Public Trust patent for the new trust lands, a quitclaim deed to portions of the phase 1 lands. The quitclaim deed would reserve to the Commission a Public Trust easement.

The proposed legislation would authorize the Commission to convey to the City, in trust, and authorize the City to accept, any lands to be exchanged into the Public Trust pursuant to an exchange agreement to which the City is a party. Lands conveyed under this authorization would be deemed as included in the City's statutory trust grant and the City must hold the lands subject to the terms and conditions of its statutory trust grant and the common law Public Trust Doctrine. The legislation would also authorize the Commission to convey new Public Trust lands

acquired through the Encinal Terminals Land Exchange and Title Settlement Agreement to the City to hold in trust.

Typically, when the Commission exchanges land with a local trustee, legislation follows to grant the newly acquired Public Trust land back to the local trustee. That legislation conveys a specific parcel or parcels with a land description. The legislature has in specific circumstances granted the Commission and a grantee the power to vest newly exchange lands in the grantee. Examples include [Chapter 310, Statutes of 1987](#) (City and County of San Francisco) and [Chapter 588, Statutes of 2004](#) (City of Vallejo). Doing so saves the Legislature, the trustee, and the Commission administrative time and ensures that the trustee will immediately begin managing the lands pursuant to its grant statute and as intended in the land exchange agreement. Because the Encinal Terminals exchange will occur in phases, it is necessary to authorize the conveyances more broadly. Otherwise, the Commission and the City would have to seek four separate pieces of legislation after each phase closes.

As explained above, the Land Exchange and Title Settlement Agreement benefits the Public Trust and the State of California. The Exchange enables construction of new housing in the Bay Area and creates new public access at no cost to the State or the City. This legislation is necessary to authorize the State to convey new Public Trust lands to the City as trustee and to ensure that the Encinal Terminals Project proceeds as planned.

## **OTHER PERTINENT INFORMATION:**

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1. The Legislature has granted state-owned Public Trust lands to over 70 local public agencies to be managed for the benefit of all the people of California and pursuant to the common law Public Trust Doctrine and the terms of the applicable granting statutes.
2. The City is trustee of roughly 7,700 acres of legislatively granted Public Trust lands on the Oakland-Alameda Estuary pursuant to Chapter 348, Statutes of 1913 (as amended). Most of these Public Trust lands are submerged.

## **EXHIBIT:**

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- A. Location Map

## **RECOMMENDED ACTION:**

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It is recommended that the Commission:

Consider co-sponsoring legislation that would authorize the California State Lands Commission to convey to the City of Alameda (City), in trust, any lands to be exchanged into the Public Trust through an exchange agreement, to which the City is a party, and authorize the Commission to convey new Public Trust lands to the City as trustee in accordance with the Encinal Terminals Project Land Exchange and Title Settlement Agreement.

THIS PLAT IS FOR GENERAL REFERENCE ONLY.

## Exhibit A

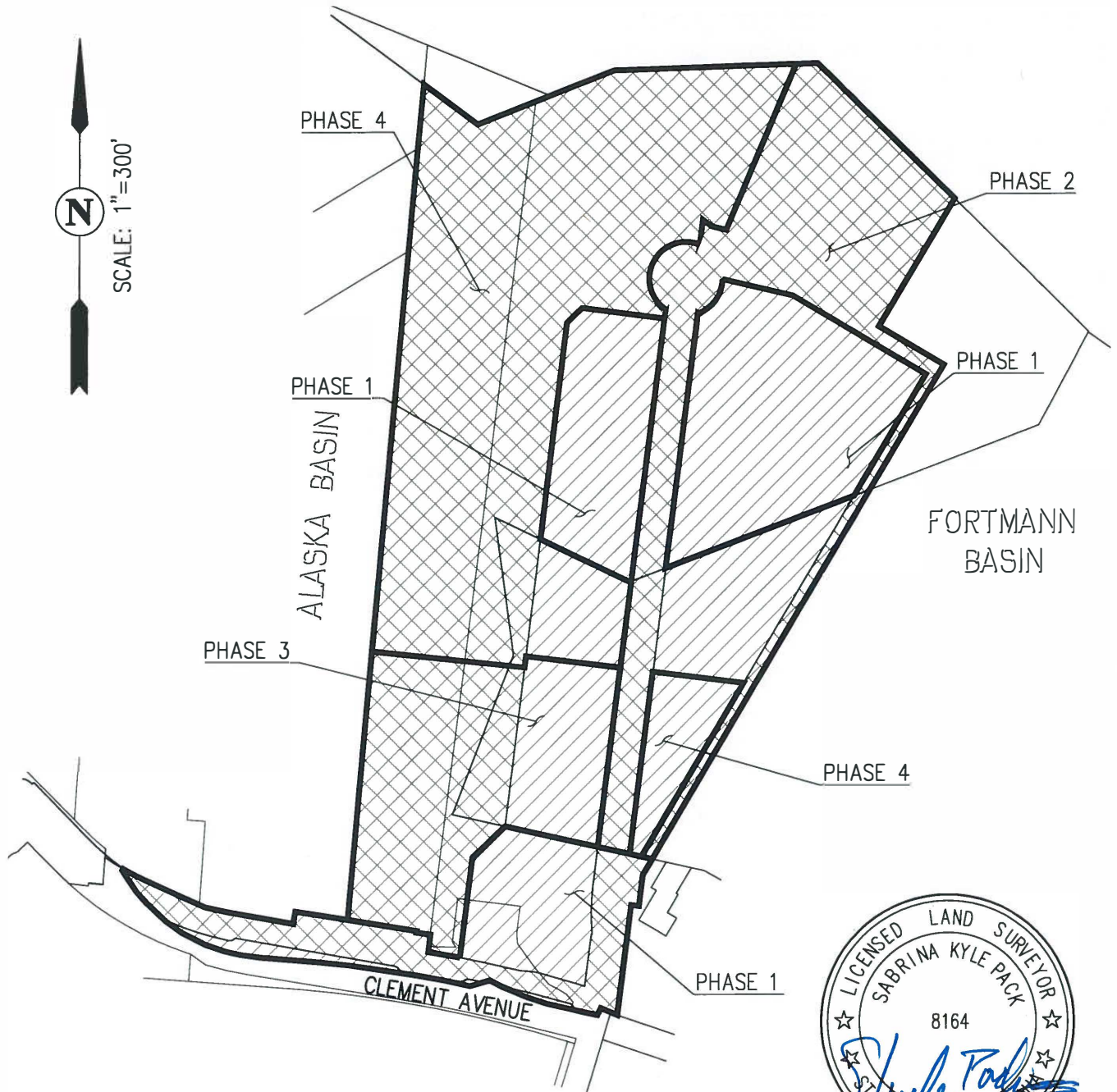
### LEGEND



PUBLIC TRUST LANDS

TRUST TERMINATION LANDS

## OAKLAND INNER HARBOR



### EXHIBIT C

# ILLUSTRATIVE PLAT OF PHASE AREAS - PHASES 1- 4

ALAMEDA, CALIFORNIA

OCTOBER 26, 2022

SHEET 1 OF 5

THIS PLAT IS FOR GENERAL REFERENCE ONLY.

## Exhibit A

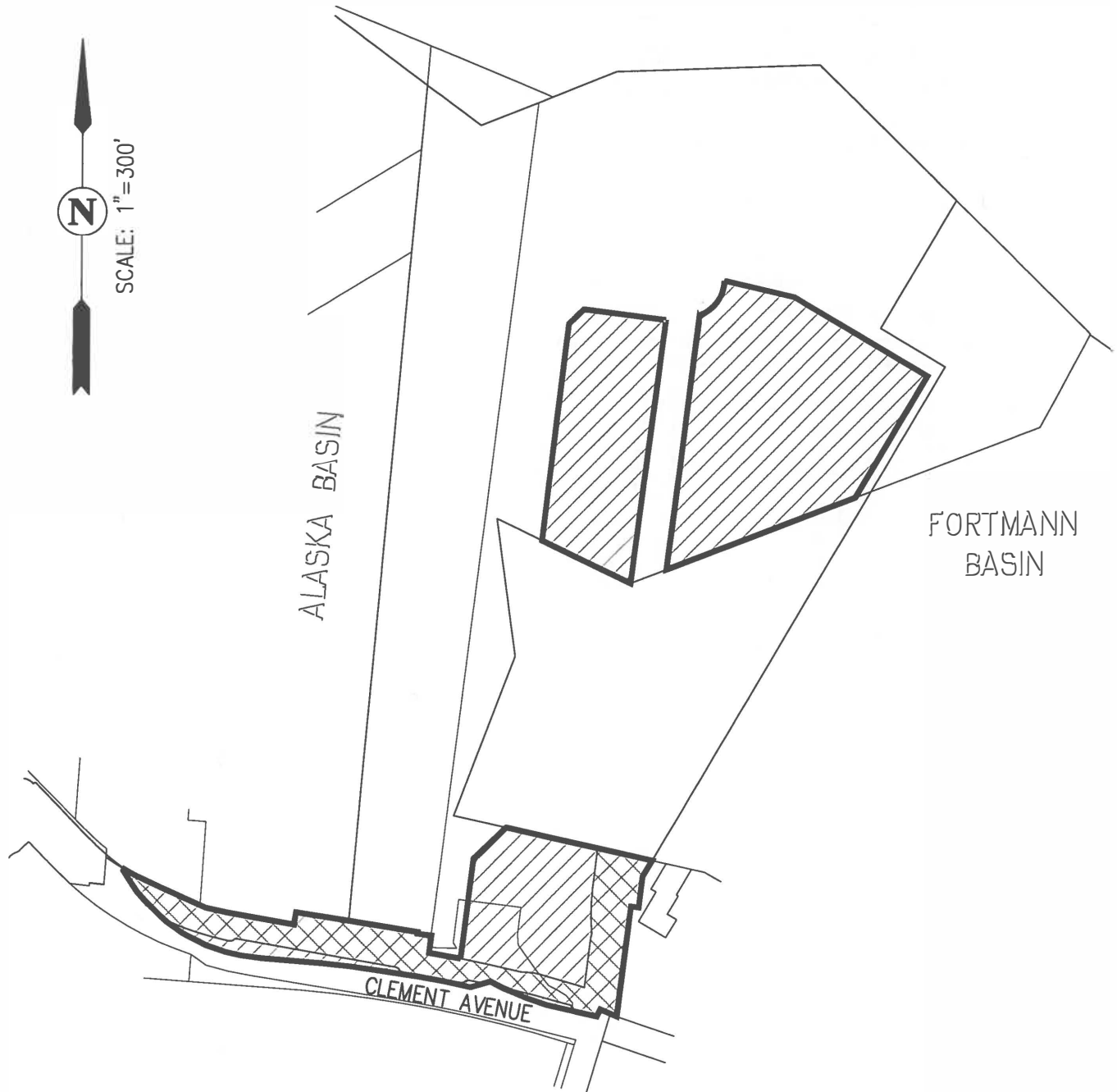
### LEGEND



PUBLIC TRUST LANDS

TRUST TERMINATION LANDS

## OAKLAND INNER HARBOR



### EXHIBIT C

## ILLUSTRATIVE PLAT OF PHASE AREAS - PHASE 1

ALAMEDA, CALIFORNIA

OCTOBER 26, 2022

SHEET 2 OF 5



THIS PLAT IS FOR GENERAL REFERENCE ONLY.

Exhibit A

**LEGEND**



PUBLIC TRUST LANDS

TRUST TERMINATION LANDS

OAKLAND INNER HARBOR

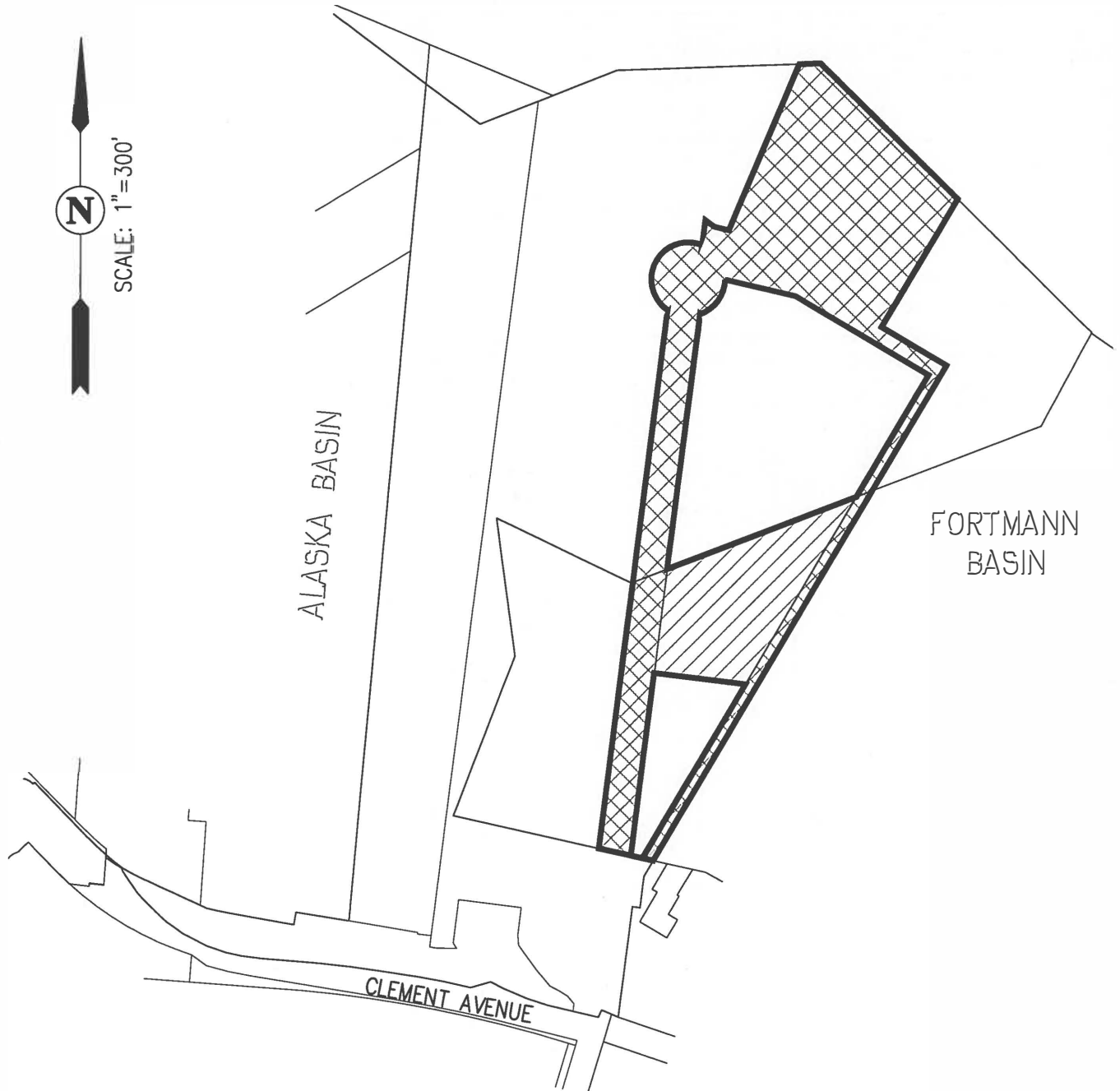


EXHIBIT C

# ILLUSTRATIVE PLAT OF PHASE AREAS - PHASE 2

ALAMEDA, CALIFORNIA

OCTOBER 26, 2022

SHEET 3 OF 5

10/26/2022 8:15 AM



THIS PLAT IS FOR GENERAL REFERENCE ONLY.

Exhibit A

**LEGEND**



PUBLIC TRUST LANDS

TRUST TERMINATION LANDS

OAKLAND INNER HARBOR



EXHIBIT C

# ILLUSTRATIVE PLAT OF PHASE AREAS - PHASE 3

ALAMEDA, CALIFORNIA

OCTOBER 26, 2022

SHEET 4 OF 5

THIS PLAT IS FOR GENERAL REFERENCE ONLY.

## Exhibit A

### LEGEND



PUBLIC TRUST LANDS

TRUST TERMINATION LANDS

OAKLAND INNER HARBOR

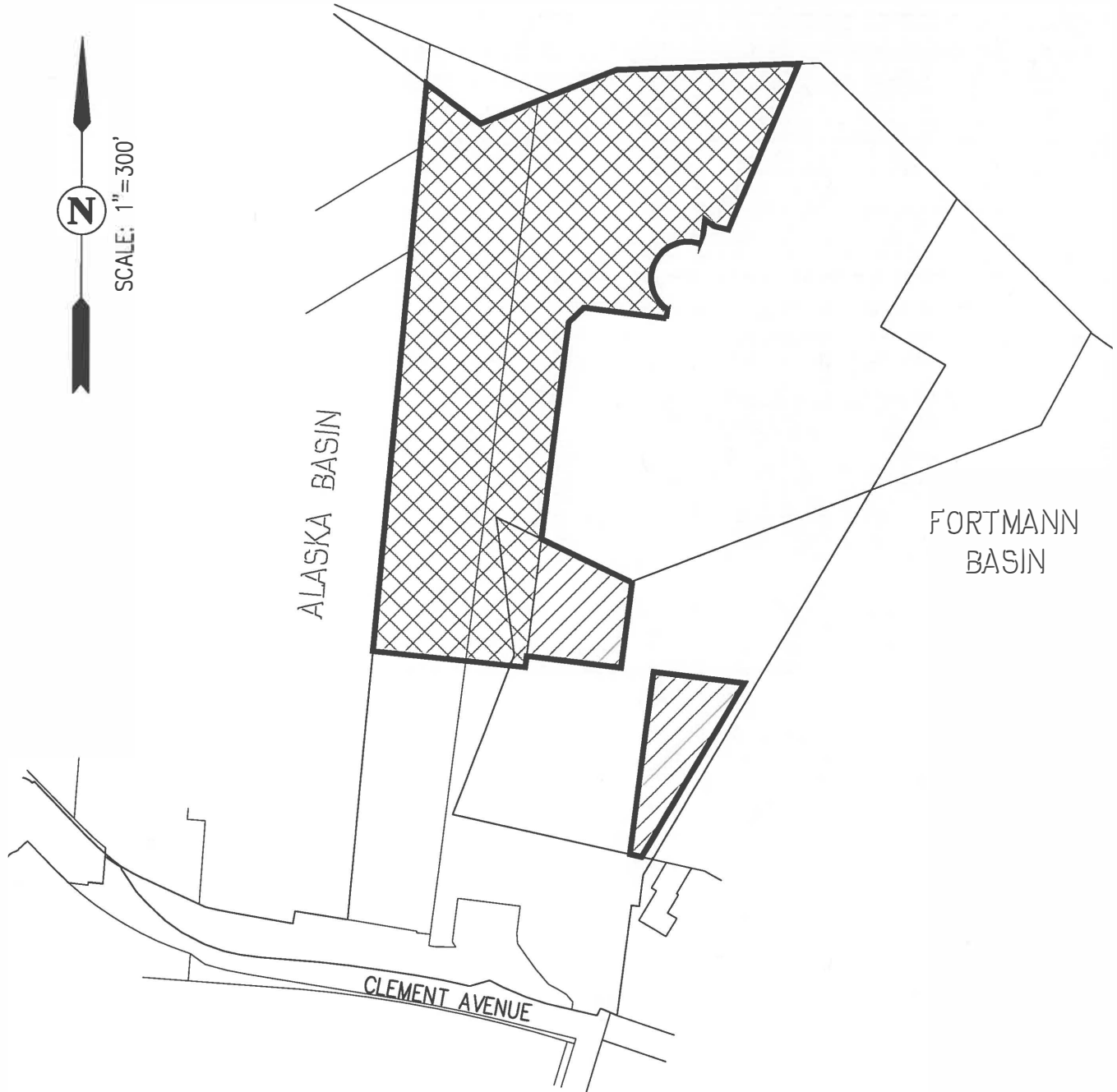


EXHIBIT C

## ILLUSTRATIVE PLAT OF PHASE AREAS - PHASE 4

ALAMEDA, CALIFORNIA

OCTOBER 26, 2022

SHEET 5 OF 5