

Senate Bill No. 1873

CHAPTER 543

An act to amend Section 8 of Chapter 898 of the Statutes of 1997, relating to Treasure Island.

[Approved by Governor September 15, 2004. Filed with Secretary of State September 15, 2004.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1873, Burton. Treasure Island Public Trust Exchange Act.

The Treasure Island Conversion Act of 1997, subject to the public trust and the terms and conditions of the act, grants to, and vests in, the Treasure Island Development Authority, all of the state's right, title, and interest in the Treasure Island Development Authority trust lands, and, upon conveyance by the federal government to the agency, in appurtenances located on Treasure Island tidelands and submerged lands. Existing law authorizes the agency to use, conduct, operate, maintain, manage, administer, regulate, improve, lease, and control the Treasure Island trust lands in conformance with the act and the public trust.

This bill would approve an exchange of public trust lands within the Treasure Island Development Authority property, whereby certain trust lands on Treasure Island that meet specified criteria and are not now useful for public trust purposes will be freed from the public trust and may be conveyed into private ownership, and certain other lands on Yerba Buena Island that are not now public trust lands and that are useful for public trust purposes will be made subject to the public trust.

The bill would declare that, due to the unique circumstances pertaining to the trust lands described in the bill and relating to the transfer of the Treasure Island Development Authority property out of federal ownership, a general statute within the meaning of specified provisions of the California Constitution cannot be made applicable and a special statute is necessary.

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

SECTION 1. This act shall be known, and may be cited, as the Treasure Island Public Trust Exchange Act.

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

(a) "Authority" or "TIDA" means the Treasure Island Development Authority, a nonprofit public benefit corporation established by the

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

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

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

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

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

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

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

That portion of the lands described in that certain Presidential Reservation of Goat Island (now Yerba Buena Island), dated November 6, 1850, lying northwesterly of Parcel 57935-1 as described in that certain Quitclaim Deed, recorded October 26, 2000, as Document Number 2000G855531, in the office of the Recorder of the said City and County of San Francisco (hereinafter referred to as Doc. 2000G855531), together with all of the underlying fee to Parcel 57935-5 as described in said Quitclaim Deed (Doc. 2000G855531), and also together with all of the underlying fee to Parcel 57935-6 as described in said Quitclaim Deed (Doc. 2000G855531), and also together with that portion of the tide and submerged lands in San Francisco Bay, relinquished to the United States of America by that certain act of the Legislature of the State of California by Statutes of the State of California of 1897, Chapter 81 (hereinafter referred to as Stat. 1897, Ch. 81), and also together with all of the Tidelands and Submerged Lands in San Francisco Bay known as Treasure Island, together with all improvements thereon and appurtenances thereto, as described in that certain Final Judgment of Condemnation, filed April 3, 1944, in the District Court of the United States in and for the Northern District of California, Southern Division, Case Number 22164-G (hereinafter referred to as Case 22164-G), excepting therefrom, that portion of the said Tidelands and Submerged Lands in San Francisco Bay known as Treasure Island (Case 22164-G), commonly referred to as the Job Corps Center, Treasure Island, which was transferred to the United States Department of Labor by that certain document entitled “Transfer and Acceptance of Military Real Property”, Dated March 3, 1998, and also excepting therefrom, that portion of the said Tide and Submerged Lands in San Francisco Bay,

relinquished to the United States of America (Stat. 1897, Ch. 81), within the “Army Reservation, Occupied by U.S. Light House Service under Permit from Secretary of War dated May 27, 1872” as shown and described upon that certain map entitled “Plat of Army and Navy reservations on Yerba Buena (Goat) Island, San Francisco Bay, California”, and also excepting therefrom, that portion of the Tide and Submerged Lands in San Francisco Bay, relinquished to the United States of America (Stat. 1897, Ch. 81) which were transferred to the United States Coast Guard by that certain document entitled “Transfer and Acceptance of Military Real Property”, Dated November 26, 2002.

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

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

(j) “Trust lands” means all lands, including, but not limited to, tidelands, within the TIDA property that are presently subject to the public trust or will be subject to the trust upon conveyance out of federal ownership or following a trust exchange.

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

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

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

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

(c) Yerba Buena Island was acquired by the United States Navy in 1898. In 1941, the city leased Treasure Island to the United States, and

Treasure Island and Yerba Buena Island became a military base known as Naval Station Treasure Island. In 1942, the Navy initiated federal court proceedings to condemn Treasure Island and portions of the surrounding tidelands. In 1944, the Navy took title to Treasure Island and certain adjacent tidelands pursuant to a consent judgment in the condemnation action.

(d) Pursuant to a decision of the federal Base Realignment and Closure Commission in 1993, Naval Station Treasure Island was officially closed on September 30, 1997. That same year, the Legislature enacted the conversion act, empowering the authority to serve as redevelopment authority for the TIDA property upon its conveyance to the city from the Navy. Under the conversion act, the authority is the only entity that may lawfully accept from the federal government title to trust lands on the TIDA property. The Navy is presently in negotiations with the city and the authority for the transfer of the TIDA property, or portions thereof, to the authority.

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

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

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

(h) The existing configuration of trust and nontrust lands within the TIDA property is such that the purposes of the public trust cannot be fully realized. Certain uplands on Yerba Buena Island of high value to the public trust due to their existing or potential recreational, scenic, and

habitat uses are currently not subject to the public trust. Specifically, upper portions of the island afford dramatic views of the bay and its environs, including Mount Tamalpais and the Marin Headlands, Alcatraz, Angel, and Treasure Islands, downtown San Francisco, the cities of the south bay and east bay, and all five of the bay's bridges. The island provides habitat for a variety of special status bird species, such as the American peregrine falcon, black-crowned night heron, black oystercatcher, Brandt's cormorant, and California brown pelican, and parts of the lower reaches of the island provide haulout sites for the harbor seal. In addition, there are lower areas of Yerba Buena Island developed with structures, including the Nimitz Mansion, that are useful for service to visitors.

(i) A substantial portion of the trust lands on Treasure Island are lands that have been cut off from access to navigable waters and are not useful for public trust purposes. Other lands, due to their location and attributes, remain useful to the trust for future open space and other trust uses, including the following: a wetland restoration site; a major visual and pedestrian corridor that traverses the island, linked with a proposed waterfront park; a proposed ferry terminal and plaza, a marina, and other public waterfront amenities; and other public ways that will provide waterfront access and enhance water views across the island. The remaining lands that are cut off from water access do not have these capabilities and are no longer needed or useful for trust purposes. Development of those lands for nontrust uses that are consistent with the redevelopment goals of the conversion act and state redevelopment law will not interfere with trust purposes and will provide revenues needed to improve the trust lands in a manner that will maximize their value to the trust.

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

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

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

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

(a) The exchange results in a configuration of trust lands substantially similar to that shown on the diagram in Section 12 of this act, except as provided in paragraph (1) of subdivision (b) of Section 7 of this act.

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

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

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

SEC. 5. All lands exchanged into the trust under this act shall be held by the trustee subject to the public trust and the statutory trust, and all lands exchanged out of the trust under this section shall be free of the public trust and the statutory trust.

SEC. 6. The precise boundaries of the lands to be taken out of the trust and the lands to be put into the trust pursuant to the exchange, including the proper locations and dimensions of streets that should be subject to the trust, shall be determined by the trustee, subject to the approval of the commission. The commission is authorized to settle by agreement with the trustee and the city any disputes as to the location of the mean high tide line in its last natural state, and any other boundary lines which the commission deems necessary to effectuate the exchange.

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

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

(2) The United States has obtained a warranty deferral, approved by the Governor in accordance with Section 9620(h)(3)(C) of Title 42 of the United States Code, involving land for which the commission has determined to execute a certificate of acceptance of title. Prior to approving a warranty deferral, the Governor, the California Department of Toxics Substances Control, and the Regional Water Quality Control Board shall confer and consult with the commission to reasonably ensure that the terms of the warranty deferral and underlying documents and agreements provide sufficient standards and financial assurances to ensure that the remediation of any affected trust lands will be completed in a manner consistent with the intended public trust use of these lands and in a reasonable period of time.

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

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

(A) Not differ significantly from the configuration shown on the diagram in Section 12 of this act, except as provided in this paragraph.

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

(C) Consist of lands suitable to be impressed with the public trust. In order to ensure consistency of the configuration with the final redevelopment plan for the property, the configuration may be revised to include additional land in the trust along the western shore of Treasure Island in exchange for additional land removed from the trust in a location within Treasure Island mutually agreed upon by the trustee and the commission, provided that all of the following occur.

(i) The additional acreage added to the trust configuration is equal to or greater in size and value than the additional acreage removed.

(ii) The commission, at a public hearing, determines that public trust lands as reconfigured are as useful for trust purposes as the configuration shown in the diagram in Section 12.

(iii) The commission, at a public hearing, makes all other necessary findings in relation to the public trust as reconfigured, including the findings in this paragraph.

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

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

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

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

(6) The trustee has approved the exchange.

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

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

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

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

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

(e) The configuration of trust lands within the TIDA property after completion of the trust exchange shall constitute the “trust property” for purposes of the conversion act, notwithstanding subdivision (b) of Section 4 of that act.

SEC. 8. This act shall not be construed as limiting the authority of the commission to approve additional land exchanges or to enter into boundary settlements involving the TIDA property pursuant to the conversion act or any other provision of law.

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

(1) Enter upon, use, or damage the surface of the lands or interfere with the use of the surface by any grantee or by the grantee’s successors or assignees.

(2) Conduct any mining activity of any nature whatsoever above a plane located 500 feet below the surface of the lands without the prior written permission of any grantee of the lands or the grantee’s successors or assignees.

SEC. 10. Any agreement for the exchange of, or termination of the public trust and the statutory trust in, granted tidelands, or to establish boundary lines, entered into pursuant to this act, shall be conclusively presumed to be valid unless held to be invalid in an appropriate proceeding in a court of competent jurisdiction to determine the validity

of the agreement commenced within 60 days after the recording of the agreement.

SEC. 11. (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 agreement entered into pursuant to this act to confirm the validity of the agreement. Notwithstanding any provision of 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 agreement meets the requirements of this act, Sections 3 and 4 of Article X of the California Constitution, and any other law applicable to the validity of the agreement.

(b) For purposes of Section 764.080 of the Code of Civil Procedure and unless the parties agree otherwise in writing, any settlement and exchange agreement 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 agreement shall be deemed to be the date on which it is executed by the Governor pursuant to Section 6107 of the Public Resources Code.

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

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TREASURE ISLAND PUBLIC TRUST EXCHANGE ACT

SEC. 13. Nothing in this act may be construed to nullify the trustee's obligations for increasing, improving, and preserving the community's supply of low- and moderate-income housing imposed by the Community Redevelopment Law (Part 1 (commencing with Section 33000) of Division 24 of the Health and Safety Code), including, but not limited to, the requirements of Sections 33334.2 and 33413 of the Health and Safety Code.

SEC. 14. Nothing in this act may be construed to authorize the development of housing on trust lands.

SEC. 15. Notwithstanding any other provision of this act or the conversion act, portions of the interior space of the buildings commonly known as Buildings 1, 2, and 3, the Nimitz Mansion (Quarters 1), and Quarters 2 to 7, inclusive, and 10, may be used for nontrust purposes as may be approved by the commission or its executive officer as part of the rehabilitation of federally listed historic maritime structures, if the use allows for public access to view historic architectural amenities and is part of an overall program that furthers trust purposes. Nothing in this section may be construed as limiting or restricting any uses of these buildings that may be authorized under any other provision of law, including, but not limited to, uses that may be authorized by Section 8 or 9 of the conversion act. Nothing in subdivision (b) of Section 8 of the conversion act, as amended by Section 16 of this act, may be construed as limiting the uses authorized in this section.

SEC. 16. Section 8 of Chapter 898 of the Statutes of 1997 is amended to read:

Sec. 8. (a) The Authority shall not at any time grant, convey, give, or alienate the Trust Property, or any part thereof, to any individual, firm, or corporation, except that the Authority may grant franchises, permits, privileges, licenses, easements, or leasehold interests (collectively referred to as "leases" hereinafter) thereon for limited periods, not to exceed 66 years.

(b) Any leases for use of the Trust Property shall be solely for uses that are consistent with or ancillary to the purposes of the public trust for commerce, navigation and fisheries, provided that leases may be granted for other uses where the Authority makes the following determinations:

(1) There is no immediate trust related need for the property proposed to be leased.

(2) The proposed lease is of a duration of no more than five years and can be terminated in favor of trust uses as they arise; except that the existing hangars, or portions thereof, may be leased for up to five years, or for up to 15 years for film, video, or audio production, without a right of termination in favor of trust uses.

(3) The proposed lease prohibits the construction of new structures or improvements on the subject property that could, as a practical matter, prevent or inhibit the property from being converted to any permissible trust use should the property become necessary therefore.

(4) The proposed use of the leased property would not interfere with commerce, navigation, fisheries, or any other existing trust uses or purposes.

SEC. 17. The Legislature finds and declares that, because of the unique circumstances applicable only to the trust lands described in this act and relating to the transfer of the TIDA property out of federal ownership, a statute of general applicability cannot be enacted within the meaning of subdivision (b) of Section 16 of Article IV of the California Constitution. Therefore, this special statute is necessary.