

# Assembly Bill No. 418

## CHAPTER 477

An act relating to tidelands and submerged lands.

[Approved by Governor October 5, 2011. Filed with  
Secretary of State October 6, 2011.]

### LEGISLATIVE COUNSEL'S DIGEST

AB 418, Ammiano. Tidelands and submerged lands: City and County of San Francisco: Pier 70.

Existing law grants to the City and County of San Francisco the right, title, and interest of the State of California in and to certain tidelands and submerged lands in trust for certain purposes. Under existing law, the Burton Act, and the Burton Act transfer agreement, the interest of the state in and to the Harbor of San Francisco was transferred in trust to the City and County of San Francisco. The State Lands Commission has jurisdiction over tidelands and submerged lands of the state.

This bill would authorize the State Lands Commission to approve an exchange of trust lands within the Pier 70 area, as defined, subject to specified conditions. The bill would provide that lands exchanged out of the trust are free from the requirements of the public trust, the Burton Act trust, and the Burton Act transfer agreement, and lands to be exchanged are subject to the requirements of the public trust, the Burton Act trust, and the Burton Act transfer agreement.

The bill would provide that 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 shall be determined by the Port of San Francisco, subject to the approval of the commission. All lands exchanged into the public trust shall be held by the Port of San Francisco.

This bill would authorize the use or lease of historic buildings situated on trust lands for purposes not otherwise consistent with the public trust or the Burton Act trust if specified requirements are met.

This bill would make legislative findings and declarations as to the necessity of a special statute for Pier 70 in the City and County of San Francisco.

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

SECTION 1. The following definitions apply for purposes of this act:

(a) "AC34" means the 34th America's Cup.

(b) "AC34 events" means the AC34 sailing regatta and related events described in the host agreement.

(c) “AC34 match” means the final series of races between the team representing the Golden Gate Yacht Club and the team representing the challenger accepted by the Golden Gate Yacht Club, the winner of which will hold the America’s Cup, and is intended to have the same meaning as the term “match” as defined in the host agreement.

(d) “Burton Act” means Chapter 1333 of the Statutes of 1968, as amended.

(e) “Burton Act transfer agreement” means that certain agreement dated January 24, 1969, between the state and the city, relating to the transfer of the Port of San Francisco from the state to the city, and any amendments to that agreement in accordance with its terms.

(f) “Burton Act trust” means the statutory trust imposed by the Burton Act, and any additional restrictions on use and alienability created by the Burton Act transfer agreement.

(g) “City” means the City and County of San Francisco, a charter city and county, and includes the port.

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

(i) “Event Authority” means the America’s Cup Event Authority, LLC.

(j) “Financial and land use plan” means a financial and land use plan approved by the board of supervisors of the city under Section B7.310 of the charter of the city after approval of any amendments to the city’s general plan necessary to ensure that the financial and land use plan conforms to the city’s general plan.

(k) “Harbor fund” means the separate fund in the treasury of the city established and maintained in accordance with Section B6.406 of the charter of the city and Section 4 of the Burton Act.

(l) “Historic buildings” means those buildings that have been designated as, or meet the standards for, resources contributing to the historic significance of the Pier 70 Historic District under federal law.

(m) “Host agreement” means the Host and Venue Agreement between the Event Authority and the city setting forth certain conditions, including completion of environmental review under the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code), under which the city will act as host city for AC34 events.

(n) “Lease” means a ground lease or space lease of real property, license agreement for use of real property, temporary easement, right-of-way agreement, development agreement, or any other agreement granting to any person any right to use, occupy, or improve real property under the jurisdiction of the port.

(o) “Master plan” means the Pier 70 Preferred Master Plan published by the port in April 2010.

(p) “Other nontrust sources” means sources of funds for the development of the Pier 70 area other than trust land revenues and trust termination revenues, such as any of the following:

- (1) Tax increment.
- (2) General obligation bonds.
- (3) Federal and state tax credits.

- (4) The city's general fund.
- (5) Special taxes.
- (6) Concessions granted by the city in accordance with city ordinances.
- (7) Grants.
- (8) Other sources of funds.

(q) "Other port revenues" means revenues to the port generated from port lands other than trust termination lands.

(r) "Person" means any private person, corporation, limited liability company, partnership, joint venture, business entity, business trust, association or other private organization or private entity, or any governmental entity or agency.

(s) "Pier 70 area" means that certain real property situated in the City and County of San Francisco and consisting of Assessor's Block 4111, portions of Assessor's Blocks 3941, 4046, 4052, 4110 and 9900, portions of Twentieth Street, Michigan Street, and Illinois Street, and portions of San Francisco Bay, more particularly described as follows:

Commencing at the point of intersection of the northerly line of Twentieth Street (66.00 feet wide) with the easterly line of Illinois Street (80.00 feet wide), as said point is described on that certain San Francisco Department of Public Works Monument Map No. 326, a copy of which is on file at the office of the Chief Harbor Engineer of the San Francisco Port Commission; running thence easterly along said northerly line at North 86° 49' 20" East, 13.20 feet, to its intersection with the Von Leicht Pueblo Line of 1883, the True Point of Beginning; thence along said Pueblo Line at North 30° 25' 08" West, 36.23 feet; thence continuing along said Pueblo Line, North 07° 25' 33" West, 106.09 feet; thence continuing along said Pueblo Line, North 32° 40' 12" West, 92.23 feet; thence continuing along said Pueblo Line, North 58° 40' 13" West, 28.32 feet, to the westerly line of Illinois Street; thence along said westerly line of Illinois Street North 3° 10' 40" West, 990.59 feet; thence North 86° 37' 29" East, 373.53 feet, to a point along the Mean High Tide Line of San Francisco Bay in the Central Basin; thence running along said Mean High Tide Line, through the following courses: South 1° 20' 44" West, 7.76 feet; thence South 1° 38' 35" East, 11.26 feet; thence South 40° 13' 42" East, 22.84 feet; thence North 84° 09' 38" East, 9.64 feet; thence South 54° 03' 28" East, 4.40 feet; thence South 66° 58' 42" East, 14.04 feet; thence South 3° 58' 56" West, 8.87 feet; thence South 40° 41' 13" West, 10.59 feet; thence South 48° 18' 22" West, 112.56 feet; thence South 65° 39' 37" West, 31.48 feet; thence South 77° 53' 28" West, 12.33 feet; thence South 83° 28' 47" West, 30.12 feet; thence South 5° 25' 41" East, 34.27 feet; thence North 83° 49' 52" East, 69.07 feet; thence South 52° 29' 10" East, 63.13 feet; thence leaving the said Mean High Tide Line and running along the existing fence line, North 38° 37' 07" East, 9.09 feet; thence South 65° 12' 52" East, 23.30 feet; thence South 17° 35' 05" West, 4.22 feet; thence South 66° 47' 12" East, 36.94 feet; thence South 54° 34' 59" East, 58.20 feet; thence North 86° 49' 20" East, 345.07 feet; thence South 3° 10' 40" East, 316.06 feet; thence South 8° 17' 47" East, 70.21 feet; thence South 16° 44' 40" East, 13.46 feet; thence South 55° 28' 50"

East, 119.49 feet; thence North  $86^{\circ} 49' 20''$  East, 118.13 feet; thence South  $3^{\circ} 10' 40''$  East, 35.72 feet; thence North  $86^{\circ} 49' 20''$  East, approximately 130 feet, to the Mean High Tide Line of San Francisco Bay; thence easterly, southeasterly, and southerly along said Mean High Tide Line, to its intersection with a line drawn parallel with and distant 154.00 feet southerly from the southerly line of Twenty-Second Street; thence westerly, along said parallel line, South  $86^{\circ} 49' 20''$  West, approximately 1,080 feet, to a point distant 60.00 feet northerly of the center line of Georgia Street, now closed, said point being on the northeasterly boundary of Lot 7, as said lot is shown and so designated on that certain Record of Survey filed April 23, 2002, as Map T-74-94, Official Records of said City and County; thence along said northeasterly boundary North  $23^{\circ} 55' 19''$  West 56.47 feet, more or less, to a point on the easterly line of said Georgia Street, said point lying distant 101.20 feet southerly of the southerly line of Twenty-Second Street; thence continuing along said northeasterly boundary North  $41^{\circ} 30' 21''$  West, 129.27 feet, more or less, to the intersection of the southerly line of Twenty-Second Street and the westerly line of said Georgia Street; thence along said westerly line of Georgia Street, at North  $3^{\circ} 10' 40''$  West, 66.00 feet, to the northerly line of Twenty-Second Street; thence North  $86^{\circ} 49' 20''$  East, along the northerly line of Twenty-Second Street, 40.00 feet, to the center line of said Georgia Street; thence North  $3^{\circ} 10' 40''$  West, along said center line of Georgia Street, 269.96 feet; thence South  $86^{\circ} 49' 20''$  West, 240.00 feet, to the easterly line of Michigan Street; thence North  $3^{\circ} 10' 40''$  West, along the easterly line of Michigan Street, 347.34 feet, to a point along said Von Leicht Pueblo Line of 1883; thence along said Pueblo Line, at North  $68^{\circ} 29' 53''$  West, 52.52 feet; thence continuing at North  $44^{\circ} 01' 43''$  West, along said Pueblo Line, 49.32 feet, to the westerly line of Michigan Street; thence South  $3^{\circ} 10' 40''$  East, along said westerly line of Michigan Street, 347.95 feet; thence South  $86^{\circ} 49' 20''$  West, 200.00 feet, to the easterly line of said Illinois Street; thence North  $3^{\circ} 10' 40''$  West, along said easterly line of Illinois Street, 537.00 feet to the southerly line of Twentieth Street; thence North  $86^{\circ} 49' 20''$  East, 50.49 feet, to a point on said Von Leicht Pueblo Line of 1883; thence along said Pueblo Line, at North  $34^{\circ} 03' 04''$  West, 29.62 feet; thence continuing along said Pueblo Line, at North  $31^{\circ} 45' 00''$  West, 46.20 feet, to the True Point of Beginning; containing an area of 62.39 acres of land, more or less.

(t) “Port” means the Port of San Francisco, acting by and through the San Francisco Port Commission.

(u) “Public trust” means the common law public trust for commerce, navigation, and fisheries.

(v) “San Francisco waterfront” means those lands placed by the city under the management, supervision, and control of the port.

(w) “Seawall lot 330” means that certain parcel of real property situated in the City and County of San Francisco and more particularly described as follows:

Commencing at the point of intersection of the northeasterly line of Beale Street and the southeasterly line of Bryant Street, as said point is described

on that certain San Francisco Department of Public Works Monument Map Number 318, with a copy on file at the Office of the Engineers of the San Francisco Port Commission; running thence northeasterly, along the southeasterly line of Bryant Street, for a distance of 158.00 feet to the true point of beginning; continuing thence along the southeasterly line of Bryant Street, for a distance of 218.69 feet; thence along a curve to the right, having a radius of 57.50 feet and a central angle of 48° 28' 22", to the realigned southeasterly line of Bryant Street; thence along the said realigned southeasterly line of Bryant Street, for a distance of 64.90 feet, to the westerly line of the Embarcadero; thence southerly and running along the westerly line of the Embarcadero, for a distance of 617.98 feet, to the northeasterly line of Beale Street; thence at a deflection angle of 131° 30' 38" to the right and running along the northeasterly line of Beale Street, for a distance of 334.53 feet; thence at a right angle northeasterly, running parallel to Bryant Street, for a distance of 158.00 feet; thence at a right angle northwesterly, parallel to Beale Street, for a distance of 143.00 feet, to the true point of beginning, containing an area of 2.33 acres of land, more or less.

(x) "Secretary's Standards" means the United States Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring and Reconstructing Historic Buildings.

(y) "Senate Bill 815" means Chapter 660 of the Statutes of 2007, as amended.

(z) "State" means the State of California.

(aa) "Team" means the Oracle Racing Team, successor to the BMW Oracle Team, and its successors.

(ab) "Tidelands" means tide and submerged lands.

(ac) "Trust" means the public trust or the Burton Act trust, or both, as appropriate in the context of its use.

(ad) "Trust land revenues" means revenues to the port generated from the use or lease of port-owned lands, whether within or outside of the Pier 70 area, other than trust termination lands.

(ae) "Trust lands" means all lands, including tidelands, within the Pier 70 area that are presently subject to the trust. Following a trust exchange, trust lands shall include all lands within the Pier 70 area that have been impressed with the trust by the exchange, and shall not include any lands that have been removed from the trust by the exchange.

(af) "Trust termination lands" means all lands within the Pier 70 area that will not be subject to the trust following a trust exchange.

(ag) "Trust termination revenues" means revenues to the port generated from the use, lease, or sale of the trust termination lands following a trust exchange.

(ah) "Venue" means a site under port jurisdiction that is subject to the public trust and that is proposed to be used for AC34 events.

(ai) "Waterfront land use plan" means the Port of San Francisco Waterfront Land Use Plan, including the waterfront design and access

element, adopted by the port in 1997 under Resolution No. 97-50, as amended from time to time.

SEC. 2. The Legislature finds and declares all of the following:

(a) A purpose of this act is to facilitate the productive reuse of the lands within the Pier 70 area of San Francisco in a manner that furthers the purposes of the trust. To effectuate this purpose, this act approves and authorizes the commission, subject to the requirements of this act, to carry out an exchange of lands that will place or confirm the public trust or the Burton Act trust on lands within the Pier 70 area with substantial value for the trust, and terminate the public trust and the Burton Act trust in Pier 70 area lands that no longer are useful for trust purposes.

(b) The Pier 70 area is one of the most important intact maritime industrial complexes west of the Mississippi. It is the oldest continuously operating shipyard on the west coast. For over 150 years, some portion of the Pier 70 site has been in use for shipbuilding and repair, steel production, and supporting heavy industrial uses. With the arrival of the Union Iron Works in the 1880s, the site became a major national and international shipbuilding center, launching, for example, the first steel-hulled ship built on the Pacific Rim. The shipyard at Pier 70, later acquired by the Bethlehem Steel Corporation, built both merchant ships and warships, and was a major supplier for the United States Navy during the Spanish-American War and both world wars. Its development was a key step in the spread of industrialization to the Pacific Coast.

(c) The Pier 70 area is within the jurisdiction of the port. Preserving the Pier 70 area's historic resources is one of the port's goals in its waterfront land use plan. In furtherance of that goal, the port has prepared an application to list the Pier 70 area on the National Register of Historic Places and is working with applicable regulatory agencies to prepare a plan to remediate, if necessary, any hazardous substances affecting the Pier 70 area. The master plan incorporates historic preservation and remediating environmental conditions as key objectives for development of the Pier 70 area.

(d) The Pier 70 area includes lands that were historically tidelands subject to the public trust as well as historic uplands that were not subject to the public trust. Beginning in 1868, certain Pier 70 area tidelands were conveyed into private ownership by the state pursuant to various state statutes. Portions of those tidelands were subsequently filled and reclaimed. The public trust status of portions of the reclaimed tidelands within the Pier 70 area, as well as certain adjacent submerged lands, is uncertain. Due to various historical circumstances, some of the reclaimed tidelands, including lands located well inland from the current shoreline, may have remained subject to the public trust, while other lands, including reclaimed tidelands, lands along the shoreline, and adjacent submerged lands, may have been freed from the trust.

(e) The port acquired portions of the Pier 70 area lands, including portions of the historic uplands, as part of the state's grant to the city under the Burton Act. The port acquired the remainder of the Pier 70 area lands from private owners.

(f) Absent a trust exchange, substantial portions of the lands within the Pier 70 area that are located along the waterfront or are otherwise of high value to the trust could be sold into private ownership, cut off from public access, and used for purposes inconsistent with the trust. In addition, certain interior lands not useful for trust purposes would be restricted by the trust and could not be used for nontrust uses essential to the revitalization of the Pier 70 area.

(g) This act is necessary for the successful revitalization of the Pier 70 area and to realize the resulting public benefits, including continued operation of the existing ship repair yard on approximately 15 acres of the Pier 70 area, the elimination of blight, the remediation of hazardous substances, the establishment of a Pier 70 National Register Historic District and adaptive reuse of approximately 700,000 square feet of historic buildings, the construction of approximately 3,000,000 square feet of new infill development compatible with the historic district predominantly for job-creating uses such as office and technology space, providing some 6,000 to 8,000 new jobs, the creation of approximately 11 acres of waterfront open space and an additional nine acres of internal open space, and increased public access to the waterfront. This legislation is also needed to improve the configuration of the trust lands in furtherance of trust purposes.

(h) A trust exchange pursuant to this act would result in the configuration of trust lands that maximizes the overall benefits to the trust, without interfering with trust uses or purposes by impressing the entire waterfront within the Pier 70 area, as well as certain interior lands that have high trust values, with the trust and removing from the trust lands that have been cut off from navigable waters, are no longer needed or required for the promotion of the trust, and constitute a relatively small portion of the granted lands within the city. This act requires the commission to ensure that the lands added to the trust by the exchange have a monetary value equal to or greater than the monetary value of the lands taken out of the trust. This act also requires that the commission ensure that the lands to be impressed with the trust will provide a significant benefit to the trust compared to the lands to be removed from the trust.

(i) The State Office of Historic Preservation has reviewed the port's draft application for listing the Pier 70 area on the National Register of Historic Places and the establishment of the Pier 70 Historic District, and has preliminarily concurred with the port's conclusion that several buildings in the Pier 70 area are contributors to the proposed historic district. These historic buildings are located throughout the Pier 70 area. They convey a sense of the Pier 70 area's early maritime industrial history and enhance the open-space experience in the corridor leading to the waterfront, but are in seriously dilapidated condition. These maritime-related historic buildings are resources of statewide importance, and their preservation and restoration benefits the statewide public and furthers trust purposes by providing maritime-related education about the historic resources and their contribution to the maritime industry, and providing public access to view the historic architectural amenities. This act authorizes uses of historic buildings located

on trust lands that support preservation and restoration of the buildings, maritime-related education, and public access to view these historic resources, including uses that would not otherwise be consistent with the trust, subject to the requirements of this act. This act also provides that historic buildings situated on trust termination lands, for so long as the buildings remain in port ownership and retain their integrity as historic resources, should continue to be managed by the port as trust assets and historic resources of statewide importance providing maritime-related education and public access.

(j) The successful development and revitalization of the Pier 70 area requires that land use planning, infrastructure development, and management and control of the site as a whole be integrated. Both the trust lands and trust termination lands within the Pier 70 area will be served by common streets, utilities, and other infrastructure and public facilities that will need to be constructed or improved as part of the development of the Pier 70 area. Preserving the historic district will similarly require investment in buildings on both trust lands and trust termination lands. In addition, the port anticipates substantial investment in the trust lands from nontrust sources, including lease revenues from the trust termination lands, infrastructure financing district tax increment funds, and park improvements funded by city general obligation bonds. In light of these unique circumstances, it is in the best interest of the state and the trust to allow the port to continue to hold and manage the trust termination lands as an asset of the trust, free of public trust and Burton Act trust use restrictions; to require that all revenues or other proceeds generated by the port from the trust termination lands be deposited in the harbor fund; and to permit the use of harbor fund moneys on the trust termination lands to enhance the value to the trust of the trust asset, subject to the limitations set forth in this act.

(k) The port has provided commission staff with a preliminary forecast of the projected costs and revenues associated with the development of the Pier 70 area, which shows that the projected trust termination revenues and funds from other nontrust sources, such as tax increment, general obligation bonds, tax credits, the city's general fund, and special taxes, are expected to exceed by over \$300 million the projected costs of rehabilitating the historic buildings and constructing infrastructure and other public facilities located on the trust termination lands, thereby providing a substantial benefit to the trust.

SEC. 3. (a) The commission is authorized to approve an exchange of trust lands within the Pier 70 area that meets the requirements of this act.

(b) The commission may not approve the exchange of the trust lands unless it finds all of the following:

(1) The portions of the trust lands or interests in lands to be exchanged out of the trust have been filled and reclaimed, are cut off from access to the waters of the San Francisco Bay, and are no longer in fact tidelands or navigable waterways, are relatively useless for public trust purposes, and constitute a relatively small portion of the granted lands within the city.



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

(3) No substantial interference with trust uses and purposes, including public rights of navigation and fishing, will ensue by virtue of the exchange.

(4) The lands or interests in lands impressed with the trust will provide a significant benefit to the trust and are useful for the particular trust purposes authorized by this act.

(5) The configuration of trust lands within the Pier 70 area, upon completion of the exchange, consists solely of lands suitable to be impressed with the trust.

(6) The appropriate state agencies have approved an environmental site investigation and risk assessment of the Pier 70 area, and agree on subsequent actions and development standards needed to ensure appropriate management of potential risks through development of a risk management plan, a remedial action plan, or comparable regulatory documents specific to the conditions at the Pier 70 area; the port has provided adequate financial assurances to ensure performance of any affirmative remedial actions required by any such plan or comparable regulatory document; and sufficient liability measures that protect the state will be in place upon completion of the exchange.

(7) The final layout of streets in the Pier 70 area shall provide access to the trust lands and be consistent with the beneficial use of the trust lands.

(8) Streets and other transportation facilities located on trust lands shall be designed to be compatible with the trust and to serve primarily trust purposes of access to shoreline improvements and shoreline circulation rather than serving nontrust purposes.

(9) The San Francisco Port Commission and the city's board of supervisors have approved the exchange after at least one public hearing and have found, based on supporting documentation, that the lands or interests in lands impressed with the trust will provide a significant benefit to the trust and are useful for the trust purposes authorized by this act.

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

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

(12) The exchange is consistent with and furthers the purpose of the public trust, the Burton Act trust, and this act.

(13) The exchange is otherwise in the best interest of the statewide public.

(c) The commission may impose additional conditions on the exchange authorized by this act if the commission determines that the conditions are

necessary to protect the public trust. The conditions may include a requirement that, following the completion of remediation of submerged lands immediately adjacent to the Pier 70 area, or at a time that the commission determines is in the best interest of the state, the port and commission shall reasonably cooperate in taking all necessary actions to impress or confirm the public trust and the Burton Act trust on those submerged lands or portions of the lands.

(d) For purposes of effectuating the exchange authorized by this section, 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 parties to the exchange agreement, including lands that are now and will remain subject to the public trust and the Burton Act trust.

(2) Convey by patent all of the right, title, and interest of the state in lands that are to be free of the public trust upon completion of an exchange of lands as authorized by this act and as approved by the commission.

(3) Convey to the city 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 Burton Act trust upon completion of an exchange of lands as authorized by this act and as approved by the commission, subject to the terms, conditions, and reservations as the commission may determine are necessary to meet the requirements of this act.

(e) The exchange authorized by this section may include lands outside of the Pier 70 area to the extent consistent with the purposes of this act and approved by the commission. Lands outside the Pier 70 area that are impressed with the public trust and the Burton Act trust as part of an exchange authorized by this act shall be deemed trust lands for purposes of this act.

(f) This act does not condition or otherwise limit the authority of the state or the city to undertake a trust exchange or other conveyance authorized by any other law.

SEC. 4. 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 shall be determined by the port at a duly noticed public hearing, subject to the approval of the commission. The commission is authorized to settle by agreement with the port any disputes as to the location of the mean high tide line in its last natural state, the boundaries of tidelands conveyed into private ownership pursuant to various statutes, and any other boundary lines that the commission deems necessary to effectuate the exchange.

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

SEC. 6. (a) For so long as the port holds title to the trust termination lands, those lands shall be held as assets of the public trust, free of any public trust or Burton Act trust use or alienation restrictions, but subject to the requirements of this section.

(b) The port may hold, use, conduct, operate, maintain, manage, administer, regulate, improve, sell, lease, encumber, and control the trust termination lands and any buildings and improvements on the lands, for any purpose, whether or not consistent with the trust, subject to the requirements of this section.

(c) Any trust termination revenues shall be deposited in the harbor fund.

(d) The port shall receive fair market value for the lease or sale of any trust termination lands or interest in the lands.

(e) The port may expend moneys in the harbor fund in connection with the trust termination lands for the following limited purposes:

(1) The operation, maintenance, management, and administration of those trust termination lands under port ownership and any buildings, structures, or improvements on the lands, provided, however, that any lease by the port of trust termination lands with a term of 30 or more years requires the port's lessee to undertake the operation, maintenance, management, and administration of the lease premises.

(2) The preservation, rehabilitation, restoration, or reconstruction of any historic building on trust termination lands in a manner consistent with the Secretary's Standards, for so long as the building remains in port ownership.

(3) Securing or servicing bond or other indebtedness incurred for the improvement or construction of streets, utilities, or other infrastructure or public facilities that serve the Pier 70 area and are located on trust termination lands or on lands immediately adjacent to the Pier 70 area. To pay any such indebtedness, the port shall use all available trust termination revenues and funds from other nontrust sources before using trust land revenues.

(4) Planning, investigation, design, administrative review, and entitlement work associated with the development of the Pier 70 area.

(f) The port shall provide, in addition to any statement of expenditures and revenues that it is required by law to submit to the commission, a separate accounting of all trust termination revenues and other port revenues spent on the trust termination lands.

(g) At least 30 days before submitting a financial and land use plan to the board of supervisors of the city for approval, the port shall consult with commission staff and provide staff with an updated analysis of the projected costs and revenues associated with the development of the Pier 70 area. The updated analysis shall include an estimate of the historic rehabilitation, infrastructure, or other costs associated with trust termination lands that could be financed with trust land revenues under subdivision (e), and a projection of the trust termination revenues and funds from other nontrust sources that will be generated by the project, together with supporting documentation. If the projected trust termination revenues and funds from other nontrust sources do not exceed the projected expenditure of trust land revenues on trust termination lands, the port may not use trust land revenues to secure any indebtedness as otherwise authorized in paragraph (3) of subdivision (e).

(h) No later than the earlier of 35 years from the date of the first expenditure of other port revenues on trust termination lands, or final payment of the initial issuance of debt pursuant to paragraph (3) of subdivision (e), the port shall report to the commission the amount of other port revenues spent on the trust termination lands and the benefit to the trust derived from trust termination revenues and other nontrust sources. If the amount of other port revenues spent on trust termination lands exceeds the benefit to the trust from trust termination revenues and other nontrust sources, the commission, following consultation with the port, may require the port to take actions to remedy the shortfall as may be in the best interest of the state, which actions may include, without limitation, sale of some or all of the trust termination lands and pursuit of refinancing options to reduce or eliminate potential liabilities to the harbor fund.

(i) At the commission's request, the port shall submit to the commission a report containing a general description of the uses to which the trust lands have been placed or are proposed to be placed during the period covered by the report.

SEC. 7. (a) Historic buildings situated on trust lands may be used or leased for purposes that are not otherwise consistent with the public trust or the Burton Act trust if all of the following conditions are met:

(1) The buildings are rehabilitated consistent with the Secretary's Standards.

(2) The uses or leases provide for public access to view the interior and exterior historic architectural amenities and other amenities that educate the public about the historic buildings and their contribution to the maritime history of Pier 70.

(3) The executive officer of the commission makes a written finding that trust uses available could not feasibly provide sufficient funds for the restoration and preservation of the building and that the uses or leases are part of an overall program that furthers trust purposes.

(b) If a building described in subdivision (a) is used for a nontrust purpose, and is remodeled, renovated, or used in a manner that is inconsistent with the Secretary's Standards, the building shall be put to a trust use from the commencement of the inconsistent remodel, renovation, or use, unless the continued nontrust use is otherwise authorized under the Burton Act.

(c) If a building described in subdivision (a) is demolished, subsequent use of the land and any replacement structure shall be consistent with the public trust and the Burton Act trust.

(d) Notwithstanding subdivisions (a), (b), and (c), this section does not limit the port's authority under Section 3 of the Burton Act.

SEC. 8. The Legislature further finds and declares all of the following:

(a) Another purpose of this act is to facilitate the port's implementation of its waterfront land use plan, its capital plan, and the host agreement, subject to required environmental review.

(b) The San Francisco waterfront is a valuable public trust asset of the state that provides special maritime, navigational, water-related recreational, habitat, open-space, cultural, and historical benefits to the people of the

region and the state. Deferred maintenance since 1969 has caused deteriorating conditions along the San Francisco waterfront, which has limited the port's ability to fully implement its waterfront land use plan.

(c) Pursuant to the San Francisco Administrative Code, the port has developed a capital plan identifying projects necessary and convenient to the improvement, operation, and conduct of the city's waterfront. Projects in the capital plan include the following:

(1) Seismic and life-safety improvements to existing buildings and other structures.

(2) Rehabilitation, restoration, and preservation of certain historic piers and other historic structures.

(3) Structural repairs and improvements to piers, seawalls, and wharves.

(4) Remediation of hazardous materials.

(5) Stormwater management facilities.

(6) Other utility infrastructure.

(7) Public access improvements, including improvements within and around the pier sheds and the construction of waterfront plazas and open space.

(d) The estimated cost to implement the port's capital plan is approximately \$2.17 billion in 2011 dollars. This amount substantially exceeds the projected revenues of the port available for these purposes.

(e) Providing additional mechanisms to finance capital improvements to the port's facilities in furtherance of the capital plan and waterfront land use plan is a matter of statewide importance that will further the purposes of both the public trust and the Burton Act trust.

(f) In February 2010, the BMW Oracle racing team, sailing under the burgee of the Golden Gate Yacht Club, won the 33rd America's Cup off the coast of Valencia, Spain. The America's Cup, which was first awarded in 1851, is the oldest sporting trophy in sailing history. On December 31, 2010, the team designated the city to host the AC34 events. The team has designated as the potential venue for AC34 the San Francisco waterfront area generally between the Golden Gate Bridge to the north and Pier 80 to the south. The team anticipates holding the AC34 match in the San Francisco Bay in 2013, with preliminary races worldwide beginning in 2011 and in the San Francisco Bay in 2012. The city is conducting environmental review of the AC34 match, pre-regattas, and related activities.

(g) An economic impact study by the Bay Area Council's Economic Institute and Beacon Economics released in July 2010 concludes that hosting AC34 on the San Francisco Bay would generate nearly 9,000 jobs and \$1.4 billion in direct spending in the San Francisco Bay area and California, and nearly \$1.9 billion nationwide. The study reports that the America's Cup is the world's third largest sporting competition after the Olympics and soccer's World Cup.

(h) Under the host agreement, the city has agreed to provide the team with venues for regattas, team and competitor facilities, sponsorship activities, spectator viewing, and ancillary activities, subject to completion of environmental review and review and approval of the planned facilities

for the event. The venues are likely to be located on water areas, piers and wharves, and waterfront and landside property under port jurisdiction, generally from the Golden Gate Bridge to Pier 80. If the AC34 project is approved by the city, the Event Authority will make capital improvements to certain venues, subject to the port's approval and permits issued by various local and state agencies, which will correct deteriorated facility conditions and increase public access to, and use and enjoyment of, trust lands.

(i) In Senate Bill 815, the Legislature found that certain lands within port jurisdiction, including seawall lot 330, have become separated from the San Francisco Bay by the Embarcadero roadway, were further cut off from the water by light rail tracks that were constructed in the median of the roadway, have ceased to be useful for the promotion of the public trust and the Burton Act trust except for the production of revenue to support the purposes of the Burton Act trust, are leased on an interim basis for commuter parking or are vacant land, and constitute in the aggregate approximately 4 percent of the lands granted to the city under the Burton Act, not including lands currently subject to tidal action.

(j) Based on those findings, the Legislature concluded, *inter alia*, that seawall lot 330 was filled and reclaimed as part of a highly beneficial plan of harbor development, has ceased to be tidelands, constitutes a relatively small portion of the tidelands granted to the city, and is not necessary for public trust or Burton Act trust purposes. Accordingly, the Legislature freed seawall lot 330 from the use requirements of the public trust and the Burton Act trust through the year 2094. The Legislature further authorized the port to enter into nontrust leases for seawall lot 330 for periods of up to 75 years.

(k) The host agreement provides that if the AC34 project is approved, in consideration of the Event Authority's capital investment in port facilities, the port will offer the Event Authority certain long-term development rights on port lands equal in value to the Event Authority's investment in the venues. The long-term development rights include the sale of seawall lot 330, following the removal of that parcel from the public trust. The host agreement further provides that the sale of seawall lot 330 be for fair market value, to be determined based on a prescribed appraisal process and indexed annually at 3 percent until title is transferred.

(l) Subject to the conditions of subdivision (d) of Section 9 of this act, the Legislature hereby finds and declares that, based on the findings made in this act and the findings previously made in Senate Bill 815, all of the conditions for terminating the public trust as set forth by the California Supreme Court in *City of Long Beach v. Mansell* (1970) 3 Cal.3d 462 have been met as to seawall lot 330. The Legislature further finds and declares that seawall lot 330 is not needed for any trust use for the foreseeable future, that the residual value to the trust of reserving seawall lot 330 for trust uses after the year 2094 is minimal, and that allowing the port to obtain a major investment in waterfront improvements to address its critical capital needs through the sale of seawall lot 330 would provide substantially greater benefit to the trust. The Legislature further finds and declares that placing the trust on lands not currently subject to the trust that are situated on or

adjacent to the San Francisco Bay in the manner required by this act would provide substantially greater benefit to the trust than would reserving seawall lot 330 for trust uses after the year 2094, provided that the conditions in Section 9 of this act are met.

SEC. 9. (a) Based on the findings in Section 8 of this act and subject to subdivision (d) of this section, the Legislature hereby declares seawall lot 330 to be free of the public trust and the Burton Act trust in perpetuity, and further declares that seawall lot 330 has ceased to be tidelands for purposes of Section 3 of Article X of the California Constitution.

(b) Subject to subdivision (d), all of the state's right, title, and interest in seawall lot 330 is hereby granted, free of the public trust and the Burton Act trust, to the port. The port shall hold seawall lot 330 as an asset of the trust, free of any public trust, Burton Act trust, or Senate Bill 815 use or alienation restrictions, but subject to the requirement that all revenues or other proceeds generated on seawall lot 330 be deposited in the harbor fund and used for trust purposes.

(c) (1) The port may, on behalf of the state, convey the fee interest in seawall lot 330 to any person free of the public trust, the Burton Act trust, and the restrictions of Senate Bill 815, if the consideration received by the port is equal to or greater than the fair market value of the fee interest conveyed and is used by the port for trust purposes.

(2) The consideration received by the port, or any portion of the consideration, for the conveyance of the fee interest in seawall lot 330 may be in the form of improvements to a venue or to other property within the port's jurisdiction and subject to the trust, if, prior to the conveyance, the commission has found that either the improvement work has been completed or the conveyee has secured the cost of completing the work by a performance bond, cash deposit, letter of credit, promissory note secured by a deed of trust on the property, or comparable security.

(3) A conveyance of the fee interest in seawall lot 330 in accordance with the terms of the host agreement as it existed on its effective date, and based on the fair market value of seawall lot 330 as determined by the port pursuant to the host agreement, if made prior to September 30, 2012, shall be deemed to satisfy the requirements of this section, provided that prior to any conveyance of the fee interest in seawall lot 330, the commission shall review the appraisals used by the port in determining the fair market value of the fee interest in seawall lot 330 for conformance with the Uniform Standards of Professional Appraisal Practice and approve the valuation methodologies used in the appraisals. If the conveyance of the fee interest in seawall lot 330 does not occur by September 30, 2012, the port's appraisal and determination of the fair market value of the fee interest in seawall lot 330 shall be subject to further review and approval by the commission.

(4) If the port elects to convey the fee interest in seawall lot 330, the port shall cause the trust to be impressed upon other lands situated on or adjacent to the San Francisco Bay that have a total area equal to or greater than the area of seawall lot 330 and have been determined by the commission to be useful for trust purposes. The lands to be impressed with the trust shall be

identified by the port and approved by the commission prior to the conveyance of the fee interest in seawall lot 330, and the port shall cause the trust to be impressed upon those lands within a reasonable period of time thereafter, as determined by the commission. Prior to consideration by the commission, the port shall hold at least one public hearing and shall make a finding, based on supporting documentation, that the lands to be impressed with the trust have a total area equal to or greater than the area of seawall lot 330, and that the lands to be impressed with the trust are useful for trust purposes.

(d) (1) If the AC34 match has not been held in the city, as contemplated by the host agreement, by December 31, 2013, or such later date as may be approved in writing by the commission, the termination of the trust in seawall lot 330 under this section shall be rescinded, and seawall lot 330 shall be subject to the public trust, the Burton Act trust, and Senate Bill 815.

(2) In any agreement authorized by this section for the conveyance of the fee interest in seawall lot 330, and in any deed effectuating such conveyance, the port shall reserve the power to terminate the right, title, and interest of the fee owner in the property, and to reenter and repossess seawall lot 330, as trustee, if the trust termination on seawall lot 330 is rescinded pursuant to this subdivision.

(3) If the port exercises its reserved power to terminate the conveyance of the fee interest in seawall lot 330 under this subdivision, and the port has agreed to reimburse the holder of the fee interest in such event, the port may provide such reimbursement in any form the port deems appropriate, which may include rent credits for a lease of seawall lot 330 consistent with subdivision (e); but in no event shall such reimbursement exceed the value of the consideration that the port received for the conveyance of the fee interest in seawall lot 330 in accordance with subdivision (c).

(e) (1) Notwithstanding anything to the contrary in this section, the port may lease seawall lot 330 to any person, free of the public trust, the Burton Act trust, and the restrictions of Senate Bill 815 if all of the following conditions are met:

(A) The term of the lease does not exceed 75 years.

(B) The consideration received by the port is equal to or greater than the fair market value of the fee interest conveyed as determined by the port.

(C) The consideration is used by the port for trust purposes.

(D) The lease provides that, at the sole discretion of the port, any improvements on seawall lot 330 made by the lessee shall become the property of the port upon termination of the lease without any additional consideration to the lessee.

(2) Consideration to the port for the lease may be in the form of improvements to a venue or to other property within the port's jurisdiction in accordance with the host agreement. If the trust termination on seawall lot 330 is rescinded pursuant to subdivision (d), any lease that the port grants for seawall lot 330 after the date of rescission shall be consistent with Senate Bill 815, except that paragraph (1) of subdivision (b) of Section 4 of Senate Bill 815 shall be deemed satisfied if the consideration for the lease is in the



form of improvements to port property in accordance with the host agreement. If the trust rescission occurs after the port has entered into a lease for seawall lot 330, the port shall have no obligation under Section 7 of Senate Bill 815 to remove structures, buildings, or appurtenances made to seawall lot 330 in accordance with such lease.

(f) Except as specifically provided in subdivisions (d) and (e), this section supersedes the requirements of the Burton Act and Senate Bill 815 to the extent that those requirements apply to seawall lot 330.

SEC. 10. This act advances the statewide purpose of the public trust and is in the best interests of the people of this state. An agreement for the sale, lease, or exchange of port property or other agreement made under this act is hereby found to be of statewide significance and importance. Therefore, an ordinance, charter provision, or other provision of local law that is inconsistent with this act does not apply to that sale, lease, exchange, or other agreement.

SEC. 11. A deed, patent, agreement, or other instrument executed in furtherance of this act, or an action of the state or port to approve the use, lease, or conveyance of a state or port property subject to this act, or any portion of that property, or to approve project agreements, grant entitlements, or permits, or issue bonds or other indebtedness in connection with the use and development of that property, 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. 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 to establish title to any lands conveyed pursuant to this act or by the parties to any agreement entered into pursuant to this act to confirm the validity of the agreement. 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 as to whether the conveyance or agreement meets the requirements of this act, Sections 3 and 4 of Article X of the California Constitution, if applicable, 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 otherwise agreed in writing, an 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.

(c) An action may be brought under Chapter 9 (commencing with Section 860) of Title 10 of Part 2 of the Code of Civil Procedure to determine the legality and validity of a deed, patent, agreement, or other instrument executed in furtherance of or authorized by this act, or an action of the port to use, lease, or convey any property, or to approve project agreements, grant entitlements or permits, or issue bonds or other indebtedness in

connection with the use and development of that property. Prior to the filing of an action, the Attorney General and the executive officer of the commission shall be provided written notice of the action and a copy of the complaint. An action authorized by this subdivision may be combined with an action authorized by subdivision (a).

SEC. 13. If a provision of this act, or its application to a person, property, or circumstance, is held invalid by a court, the invalidity or inapplicability of that provision shall not affect any other provision of this act or the application of that provision to any other person, property, or circumstance, and the remaining portions of this act shall continue in full force and effect, unless enforcement of this act as so modified by and in response to that invalidation would be grossly inequitable under all of the circumstances, or would frustrate the fundamental purposes of this act.

SEC. 14. Except as expressly provided herein, this act prevails over any inconsistent provisions of the Burton Act or the Burton Act transfer agreement.

SEC. 15. The reasonable costs of any study or investigation undertaken by or at the direction of the commission or commission staff that is necessary to implement this act, including reasonable reimbursement for time incurred by commission staff in processing, investigating, and analyzing any information submitted pursuant to this act, shall be borne by the port or the city according to a budget to be agreed upon by commission staff and the port or the city before any such study or investigation is begun.

SEC. 16. The Legislature finds and declares that a special law is necessary and that a general law cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution because of the unique circumstances applicable only to the lands described in this act.