

Assembly Bill No. 1706

CHAPTER 130

An act relating to tidelands and submerged lands.

[Approved by Governor July 27, 2023. Filed with Secretary of
State July 27, 2023.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1706, Bonta. Public trust lands: Encinal Terminals public trust lands: City of Alameda.

Under existing law, known as the public trust doctrine, the state has title as trustee to all tidelands and navigable lakes and streams and is charged with preserving these waterways for navigation, commerce, and fishing, as well as for scientific study, recreation, and as an open space and habitat for birds and marine life. Existing law establishes the State Lands Commission in the Natural Resources Agency. Existing law provides that the commission has exclusive jurisdiction over all ungranted tidelands and submerged lands owned by the state. Existing law authorizes the commission to enter into an exchange, with any person or any private or public entity, of filled or reclaimed tidelands and submerged lands or beds of navigable waterways, or interests in these lands, that are subject to the public trust for commerce, navigation, and fisheries, for other lands or interests in lands, if the commission finds that specified conditions are met.

This bill would authorize the commission to convey to the City of Alameda, in trust, as defined, and the bill would authorize the city to accept, any lands to be exchanged into the trust pursuant to an exchange agreement, as defined, to which the city is a party, as provided. The bill would grant the Encinal Terminals public trust lands, as defined, to the city, in accordance with the terms and conditions of the Encinal Terminals exchange agreement, as defined, to be held by the city subject to the terms and conditions of the granting act, as defined, and the public trust, as defined. By adding to the duties of the city with respect to the use and management of trust lands, this bill would impose a state-mandated local program.

The bill would require the commission to notify the appropriate committees of the Legislature if the conveyances authorized in the Encinal Terminals exchange agreement have not been completed within the terms of the agreement, as provided.

This bill would make legislative findings and declarations as to the necessity of a special statute for the City of Alameda.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

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

SECTION 1. The Legislature finds and declares all of the following:

(a) The purpose of this act is to facilitate the productive reuse of former tidelands within the city for much needed housing and other economic uses while improving the configuration of trust lands to ensure public access to and enjoyment of the waterfront and the San Francisco Bay.

(b) Upon its admission to the Union, the state, by virtue of its sovereignty, received all right, title, and interest in certain tidelands and submerged lands within its boundaries up to the ordinary high-water mark, subject to the public trust. In 1913, the Legislature granted to the city all of the state's right, title, and interest in the trust lands within the boundaries of the city. The granting act requires the city to hold and manage the granted lands as trustee on behalf of the people of the state, subject to the trust and the terms and conditions of the granting act.

(c) Over the last century and a half, the Alameda shoreline has been altered numerous times by artificial dredging and filling activity. As a result of these modifications, certain lands along the city's shoreline and underlying adjacent waters are privately owned and are claimed to be free of the trust, while certain granted trust lands have been filled and are cut off from the water and not useful for trust purposes. In addition, the precise boundaries between the granted lands and adjacent private lands is often uncertain. This has led to the inability to develop private lands for housing and other important uses, made portions of the city's waterfront inaccessible to the public, and caused certain portions of the city's granted trust lands to remain vacant and unused for their intended public purposes.

(d) One of the largest areas of unused granted lands in the city is the Encinal Terminals site, comprising approximately 32 acres on the city's northern waterfront. The site contains substantial dredged and filled lands that supported major port operations in the first half of the 20th century, but those operations ceased by the late 1980s. The site has been vacant since 2010. Most of the waterfront is privately owned and is not publicly accessible. Attempts to develop housing on the private lands have failed due in large part to the unsuitable configuration of private and trust lands at the site.

(e) In 2022, the city approved a number of agreements with the owner-developer of the private lands at the Encinal Terminals site, including the Encinal Terminals exchange agreement between the city, the commission, and the developer, which authorizes a land exchange to be implemented in four phases over the next 5 to 15 years. Under the Encinal Terminals exchange agreement, private lands along the waterfront and adjacent submerged lands will be exchanged into the trust, and certain city lands cut off from the water and no longer useful for the trust will be exchanged out

of the trust. The agreements permit development of 589 units of housing on the lands removed from the trust, including 80 affordable units, which are critical for the city to meet its regional housing needs. The agreements require the developer to construct a waterfront park and other infrastructure improvements at the developer's sole cost, and condition each phase of the exchange on the completion of designated public improvements. Lands will not transfer to the developer until it has completed sitewise stabilization, constructed a temporary bay trail, and provided vehicle access to the city's existing trust property, and each phase of the exchange is further conditioned on the developer's completion of public improvements for that phase, including wharf removal, waterfront park improvements, and public access. If the Encinal Terminals project does not commence, no transfers will occur. The agreements contemplate that the city will ultimately hold title to and manage the waterfront park and other Encinal Terminals trust lands following the exchange.

(f) The Encinal Terminals exchange agreement provides that the state shall hold title to the lands exchanged into the trust until the Legislature has authorized a grant of those lands to the city. This act authorizes the state to convey to the city lands that are exchanged into the trust pursuant to an exchange agreement, including the Encinal Terminals exchange agreement, and grants those lands to the city subject to the trust and the terms and conditions of the city's statutory trust grant. This act also provides a procedure for confirming the validity of exchange agreements, which will provide certainty about title and boundary matters and facilitate financing for the development contemplated by those agreements.

SEC. 2. For purposes of this act, the following terms apply:

(a) "City" means the City of Alameda.

(b) "Commission" means the State Lands Commission.

(c) "Encinal Terminals exchange agreement" means that certain exchange agreement entitled "Land Exchange and Title Settlement Agreement for the Encinal Terminals Project" by and among the city, the commission, and North Waterfront Cove LLC, and dated for reference February 8, 2023, entered into pursuant to Section 6307 of the Public Resources Code and providing for an exchange resulting in a configuration of trust lands substantially similar to the configuration described in Section 5 of this act.

(d) "Encinal Terminals public trust lands" means those lands to be exchanged into the trust pursuant to the Encinal Terminals exchange agreement.

(e) "Exchange agreement" means an exchange agreement providing for an exchange of lands situated within the city that is authorized by Section 6307 of the Public Resources Code or by Chapter 734 of the Statutes of 2000, as amended.

(f) "Granting act" means Chapter 348 of the Statutes of 1913, as amended, and as may be further amended from time to time.

(g) "Lands" means land or any interest in land.

(h) "Public trust" or "trust" means the common law doctrine, as enunciated by the court in *National Audubon Society v. Superior Court*

(1983) 33 Cal.3d 419 and other relevant judicial decisions, specifying the state's authority as sovereign to exercise a continuous supervision and control over the navigable waters of the state, the lands underlying those waters, and nonnavigable tributaries to navigable waters, including the protection of maritime or water-dependent commerce, navigation, and fisheries, and the preservation of lands in their natural state for scientific study, open space, wildlife habitat, and water-oriented recreation.



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

SEC. 3. The commission is authorized to convey to the city, in trust, and the city is authorized to accept, any lands to be exchanged into the trust pursuant to an exchange agreement to which the city is a party. Upon conveyance of any such lands to the city in accordance with the exchange agreement, the lands shall be deemed included in the grant described in the granting act and shall be held by the city in trust, subject to the terms and conditions of the granting act and the common law public trust.

SEC. 4. The Encinal Terminals public trust lands are hereby granted to the city in trust, effective upon their conveyance to the city pursuant to Section 3 of this act and in accordance with the terms and conditions of the Encinal Terminals exchange agreement, to be held by the city subject to the terms and conditions of the granting act and the public trust.

SEC. 5. The following diagram is a part of this act:

LEGEND

-  POST EXCHANGE PUBLIC TRUST LANDS
-  APPROXIMATE SHORELINE

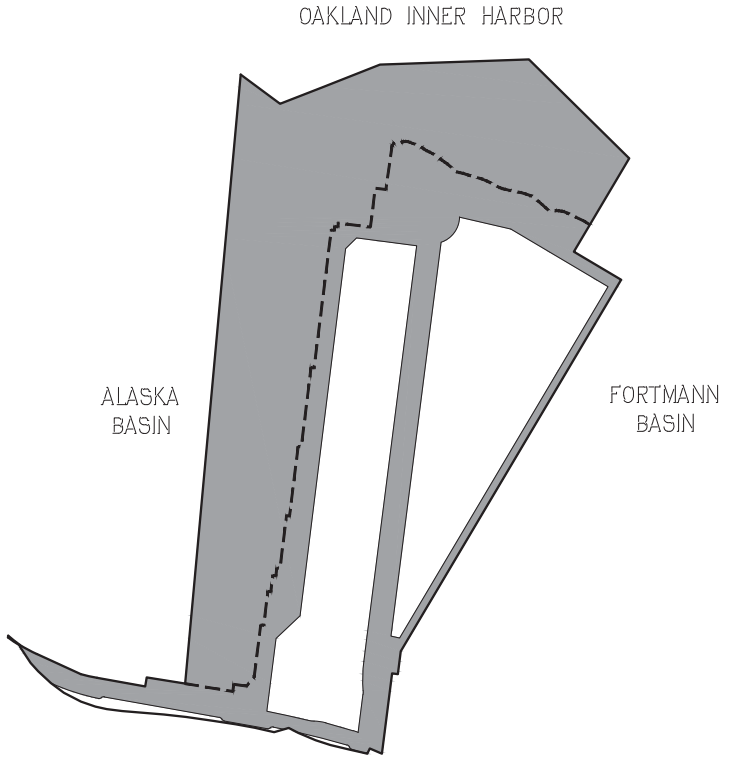


DIAGRAM OF ENCINAL
PUBLIC TRUST LANDS



SEC. 6. If the conveyances authorized in the Encinal Terminals exchange agreement have not been completed within the term of the Encinal Terminals exchange agreement, the commission shall notify the appropriate committees of the Legislature and explain why the conveyances did not proceed. The commission shall also post that information on its internet website.

SEC. 7. (a) An exchange agreement 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 such agreement commenced within one year after the recording of the exchange agreement, or, if the exchange agreement was recorded more than 10 months before January 1, 2024, within 60 days after January 1, 2024.

(b) 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 an exchange agreement and to confirm the validity of the agreement. Notwithstanding Section 764.080 of the Code of Civil Procedure, if the exchange agreement was authorized by the granting act, 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 the granting 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.

SEC. 8. The Legislature finds and declares that a special statute is necessary and that a general statute cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution because of the unique circumstances regarding the development of property previously granted to the City of Alameda pursuant to the granting act.

SEC. 9. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district are the result of a program for which legislative authority was requested by that local agency or school district, within the meaning of Section 17556 of the Government Code and Section 6 of Article XIII B of the California Constitution.