

**CALENDAR ITEM  
C83**

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W25115/ G11-02

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**CONSIDER A COMPROMISE TITLE SETTLEMENT AND LAND EXCHANGE  
AGREEMENT BETWEEN THE STATE OF CALIFORNIA, ACTING BY AND  
THROUGH THE STATE LANDS COMMISSION AND THE TREASURE ISLAND  
DEVELOPMENT AUTHORITY INVOLVING CERTAIN LANDS LOCATED ON  
TREASURE ISLAND AND YERBA BUENA ISLAND, SAN FRANCISCO BAY, CITY  
AND COUNTY OF SAN FRANCISCO**

**PARTIES:**

Treasure Island Development Authority

State of California, acting by and through the State Lands Commission

**PROPOSED AGREEMENT:**

The parties to the proposed Compromise Title Settlement and Land Exchange Agreement ("Agreement") are the State of California ("State"), acting by and through the California State Lands Commission ("Commission"), and the Treasure Island Development Authority ("TIDA"). The Agreement will settle title and boundary issues and effectuate a land exchange by terminating the State's sovereign public trust interests in certain filled parcels located on Treasure Island ("Trust Termination Parcels") and conveying those parcels to TIDA in exchange for confirming the Public Trust on certain other portions of Treasure Island, including tide and submerged lands surrounding Treasure Island and Yerba Buena Island, and acquiring certain parcels on Yerba Buena Island that will be impressed with the sovereign Public Trust ("Public Trust Parcel"). The Agreement is entered into pursuant to the Treasure Island Public Trust Exchange Act, Chapter 543, Statutes of 2004 as amended by Chapter 660, Statutes of 2007, Chapter 208, Statutes of 2009 and Chapter 429, Statutes of 2011 ("Exchange Act"), and the Treasure Island Conversion Act, Chapter 898, Statutes of 1997, as amended ("Conversion Act"). The location of the Public Trust and Trust Termination Lands are depicted, for reference purposes only, on Exhibit A.

Specifically, the terms of the proposed Agreement provide for the following conveyances:

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1. TIDA will convey to the Commission by quitclaim deed its interests in the Public Trust Lands and Trust Termination Lands following the conveyance of those lands to TIDA from the Navy;
2. After accepting the Public Trust Lands from TIDA, the Commission will convey by patent the Public Trust Lands to TIDA as sovereign lands, subject to the Trust; and
3. After accepting the Trust Termination Lands from TIDA, the Commission will convey by patent the Trust Termination Lands to TIDA, free of the Trust.

This Agreement contemplates that the conveyances called for will occur in a series of phased closings (“Closing Phases”) as TIDA acquires portions of the Subject Property from the United States.

### **BACKGROUND:**

The Subject Property includes land located within San Francisco Bay at Treasure Island and Yerba Buena Island, in the City of San Francisco, San Francisco County. The Trust Termination Lands consist of approximately 150 acres. The Public Trust Lands, excluding the unfilled tide and submerged lands, consist of approximately 285 acres. The Public Trust Lands, including the unfilled tide and submerged lands surrounding Treasure Island and portions of Yerba Buena Island, consist of approximately 850 acres. The Subject Property does not include a parcel described as the Yerba Buena Island Non-Trust Parcel that is currently owned by the Navy or a 37-acre parcel described as the Job Corps Parcel currently owned and administered by the United States Department of Labor. The Subject Parcel plus the Yerba Buena Island Non-Trust Parcel and the Job Corps Parcel are all defined as “TIDA Property” in the Exchange Act. Neither the Yerba Buena Island Non-Trust Parcel nor the Job Corps Parcel is included in the proposed Agreement.

Upon its admission to the Union on September 9, 1850, the State, by virtue of its sovereignty, received in trust for purposes of commerce, navigation and fisheries all right, title, and interest in tide and submerged lands (collectively “tidelands”) within its boundaries waterward of the ordinary high water mark. Article X, Section 3 of the California Constitution generally prohibits the conveyance of tidelands within two miles of any incorporated city, city and county, or town into private ownership. Since the adoption of Article X, Section 3 of the California Constitution on May 7, 1879, the TIDA Property has been within two miles of the City of San Francisco. The TIDA Property includes lands that, at the time California became a state, were tidelands subject to the common law Public Trust Doctrine (“Public Trust”).

### Treasure Island

The portion of the TIDA Property commonly known as Treasure Island was historically tidelands in its entirety. In 1933, the Legislature granted the tidelands comprising what is now Treasure Island to the City of San Francisco (“City”) first for the construction of

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an airport, then for the Golden Gate International Exposition. 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.

In 1941, the City leased Treasure Island to the United States, and Treasure Island and Yerba Buena Island became a military base. In 1942, the United States Navy initiated federal court proceedings to condemn Treasure Island and portions of the surrounding unfilled tidelands and took title to those lands in 1944 pursuant to a consent judgment.

### Yerba Buena Island

The TIDA Property also includes a portion of Yerba Buena Island, a natural island comprised primarily of uplands, but purportedly including some tidelands filled between 1833 and 1866. Subsequently, Yerba Buena Island was acquired by the United States Navy in 1898 along with the Legislature's conveyance to the United States of all the surrounding tidelands.

### Legislative Acts

In 1993 the federal Base Realignment and Closure Commission decided to close the Naval Station Treasure Island. Pursuant to that decision, the base was officially closed on September 30, 1997. As the approved local reuse authority for the TIDA Property, TIDA may lawfully accept title to the TIDA Property from the federal government. In 1997, the California State Legislature enacted the Conversion Act. Among other things, the Conversion Act grants, in trust, to TIDA the State's sovereign interest in filled and unfilled tidelands within the TIDA Property and establishes TIDA as the trust administrator for those lands. The Conversion Act places certain terms, conditions and requirements on TIDA's use of the granted lands ("Conversion Act Trust"), including the requirement that all money received or collected by TIDA from or arising out of the use or operation of the granted lands be deposited into a special fund to be used only for uses and purposes consistent with the Trust. For consistency and as used in the Agreement, the Public Trust, the Conversion Act Trust, and the restrictions on alienation imposed by Article X, Section 3 of the California Constitution are collectively referred to herein as the "Trust."

The extent to which filled and unfilled tidelands may be subject to the Trust within the TIDA Property is subject to dispute. The state and the federal government disagree as to the effect of the federal condemnation judgment in 1944 on the existence of the Trust on those lands. This dispute gives rise to title uncertainty that could result in lengthy land title and boundary litigation of uncertain result.

Subsequently, the Legislature amended the Conversion Act by enacting the Exchange Act, declaring that it is in the best interest of the people of California to resolve the boundary and title uncertainty in a manner that furthers the purposes of the Trust. Further, the Legislature declared in the Exchange Act that the existing configuration of

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Trust and non-Trust lands within the TIDA Property is such that the purposes of the Trust cannot be fully realized.

### **LEGAL REQUIREMENTS:**

Through the Exchange Act, the Legislature authorized the settlement of Trust land title and boundary disputes within the TIDA Property to the benefit of the Trust. To implement this settlement, the Legislature approved an exchange of lands within the TIDA Property that would result in a configuration of Public Trust lands substantially similar to that shown on the diagram ("Exchange Diagram") in section 12 of the Exchange Act, subject to certain exceptions and requirements. The Exchange Act authorizes the Commission to carry out the exchange and to establish appropriate procedures for doing so. Further, the Exchange Act requires the Commission to make certain findings and establish certain conditions before approving the exchange. In order to comply with Article X, Section 3 of the California Constitution and the Exchange Act, the Commission must make the following requisite findings in order to approve the proposed Agreement:

- A. That the configuration of the Public Trust Lands:
  - i. Does not differ significantly from the configuration shown in section 12 of the Exchange Act;
  - ii. Includes all lands within the TIDA Property that are presently below mean high tide and subject to tidal action; and
  - iii. Consists of lands suitable to be impressed with the Trust.
- B. That the final layout of streets within the TIDA Property will provide access to the Public Trust Lands, and will be consistent with the beneficial use of those lands, including, but not limited to, roadway access to serve the public along the western shoreline of Treasure Island.
- C. That 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 in this Agreement.
- D. That 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 Trust, and constitute a relatively small portion of the tidelands granted by the State within the City.
- E. That the exchange will not result in substantial interference with Trust uses and purposes, and is consistent with and furthers the purposes of the Trust.
- F. That sufficient building height limitations are in place to ensure that development on Yerba Buena Island will not significantly obstruct views from public hilltop

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areas on Yerba Buena Island as framed by structures existing as of January 1, 2010.

- G. That TIDA has approved the exchange and will hold fee title, in trust on behalf of all the citizens of the State, to all lands to be subject to the Trust upon completion of the exchange.

### **ANALYSIS AND STAFF RECOMMENDATION:**

Commission staff has reviewed the information supporting the proposed Agreement including appraisals, surveys, title reports, and other documents developed and other studies conducted for the proposed Agreement. In the interest of settlement, the Parties have conducted independent studies and evaluations of the title and boundary evidence, applicable principles of law, and the merits of their legal positions.

The compromise title settlement and land exchange described in this Agreement is needed to confirm the State's sovereign interest in certain lands within the TIDA Property; to resolve the Trust status of certain disputed lands within the TIDA Property; to confirm or impose the Trust on the lands of greatest value to the Trust on Treasure Island; to impose the Trust on those lands of greatest value to the Trust on Yerba Buena Island; to render development of Treasure Island economically feasible by removing the Trust Termination Lands from the Trust; and to allow the Public Trust Lands to be used to the greatest benefit of the people of the State.

Absent a land exchange, the uncertainties regarding the sovereign trust title of lands on Treasure Island would remain. Most of the lands on Yerba Buena Island that are of high value to the Trust would remain free of the Trust and could therefore be cut off from public access and subject to development for non-Trust uses. In addition, the interior lands on Treasure Island not useful for Trust purposes could not be used for residential or other non-Trust uses except under limited circumstances set forth in the Conversion Act. The revenues from these interior lands are essential for the economic development of the island and for the financial feasibility of needed seismic upgrades, flood protection, historic preservation, and improvement of the Treasure Island waterfront and adjacent open space for Trust purposes.

The configuration of the Public Trust Lands does not differ significantly from that shown in Section 12 of the Exchange Act. Additionally, the Public Trust Lands include all of the lands within the TIDA Property presently below mean high tide and subject to tidal action.

The exchange will terminate any Trust interests in the Trust Termination Lands. As described, all former tidelands within the Trust Termination Lands have been filled and reclaimed, are cut off from access to the waterfront, and are no longer needed for Trust purposes. The Trust Termination Lands constitute a relatively small portion of the more than 1,000 acres of filled tidelands within the City that have been granted to the City by

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the State. The exchange will substantially benefit the Trust and will not result in any interference with the uses and purposes of the Trust. The exchange will place or confirm the Public Trust Lands in the Trust. The Public Trust Lands reflect a configuration of lands that is most advantageous to the Trust in light of all relevant considerations discussed in this calendar item and in the Agreement.

Commission staff has reviewed an appraisal and other information prepared to analyze monetary values of the Trust Termination Lands and the Public Trust Lands and has reached an independent conclusion regarding the economic values of these properties. Based on staff's consideration of the appraisals, legal analyses, and configuration of Public Trust Lands and Trust Termination Lands, Commission staff concludes that, after each Closing Phase, the cumulative monetary value of all of the lands or interests in lands that have been exchanged into the Trust will be equal to or greater than the cumulative monetary value of all of the lands or interests in lands that have been exchanged out of the Trust, regardless of the manner in which the exchange is phased.

### Public Trust Benefits

The Public Trust lands on Treasure Island are useful for Trust purposes. These lands include the entire shoreline of the island and adjacent lands, as well as lands that have been cut off from the water but, due to their location and attributes, remain useful to the Trust for future open space and other Trust uses, including but not limited to the following proposed uses: a wetland creation site; a pedestrian and bicycle corridor around the shoreline of the island linked with a major open space in the northern and eastern portions of the island; a proposed ferry terminal and plaza, a marina and other public waterfront amenities; a major visitor-serving commercial core including retail and hospitality uses connecting the historic maritime buildings, the ferry terminal and the waterfront; and, other public ways that will provide waterfront access and enhance water views from the island.

The remaining filled tidelands on Treasure Island are cut off from water access, do not have the utility described in the preceding paragraph and are no longer needed or useful for Trust purposes. Development of these lands for non-Trust uses that are consistent with the goals of the Conversion Act will not interfere with Trust purposes and will provide revenues needed to improve the Public Trust Lands in a manner that will maximize their value to the Trust.

Yerba Buena Island, as a natural and largely undeveloped island situated in San Francisco Bay between the Bay's two major metropolitan centers, presents an extraordinary opportunity to promote and enhance Public Trust values not only along its shoreline, but also at the island's higher elevations, which provide a context for the Bay that cannot be replicated elsewhere. The shoreline, portions of the upper slopes and the hilltop area on Yerba Buena Island are of high value to the Trust due to their existing or potential Public Trust consistent water-related recreational, scenic, and habitat uses, but are currently not subject to the Trust.

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Additionally, Clipper Cove beach on Yerba Buena Island provides direct public access to the shoreline. Upper portions of the island afford dramatic views of San Francisco Bay as well as unique views across the Bay to the Golden Gate, Mount Tamalpais and the Marin Headlands, Alcatraz, Angel, and Treasure Islands, and downtown San Francisco. The island provides habitat for a diversity of plants and wildlife, including three special status bird species (American peregrine falcon, double-crested cormorant, and California brown pelican). In addition, there are lower areas of Yerba Buena Island developed with structures, including the Senior Officers' Quarters Historic District, which are useful for service to visitors.

### Public Street Access

The Treasure Island/Yerba Buena Island Project development plan agreements include a transportation plan that provides public street access to all of the Public Trust Lands. The public street layout for Treasure Island provides vehicular access to and along the eastern and western shores to the proposed recreational resources and wetlands at the north end of the island, and provides east-west access near the southern end of the island, linking the proposed ferry terminal with the water-dependent and trust-consistent uses on the southern shore at the marina facilities and Pier One. The Agreement includes provisions to ensure that development of the TIDA Property includes adequate access from the public streets to the Public Trust Lands, including public roadway access along the western shoreline of Treasure Island, as required by the Exchange Act.

### Building Height Limitations

The Exchange Act also requires the Commission to find that sufficient building height limitations are in place to ensure that development on Yerba Buena Island will not significantly obstruct views of the bay from public hilltop areas on Yerba Buena Island as framed by structures existing as of January 1, 2010. The Exchange Act defines "public hilltop areas" as the westernmost hilltop on Yerba Buena Island, having an elevation of approximately 320 feet, and the easternmost hilltop on Yerba Buena Island, having an elevation of approximately 340 feet ("Public Hilltop Areas"). The Treasure Island/Yerba Buena Island Project development plan agreements include height limits for buildings on those portions of Yerba Buena Island that are subject to development. Consistent with these height limits, and as required by the Exchange Act, this Agreement contains provisions limiting building heights as shown in Exhibit O to the Agreement to ensure that that development on Yerba Buena Island will not significantly obstruct views from Public Hilltop Areas as framed by structures existing as of January 1, 2010, and that views will be enhanced by removal of non-native vegetation in conjunction with park development on the Public Hilltop Areas.

### Yerba Buena Public Trust Improvements

Consistent with the purposes of the Exchange Act, the Agreement provides that commencing with the date of the first Closing Phase, TIDA will ensure that reasonable,

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interim public access to the Public Hilltop Areas is provided, subject to reasonable construction-related closures, pending construction of permanent park access improvements. Additionally, TIDA will undertake certain selected non-native vegetation removal projects adjacent to the Public Hilltop Areas, consistent with the applicable policies of the Habitat Management Plan, for the purpose of enhancing views of San Francisco Bay within one year after the initial closing phase and other selected removal projects within five years. Further, the Agreement provides that TIDA will cause the removal of additional non-native vegetation to further enhance and protect views from the Public Hilltop Areas concurrent with the construction of the park improvements.

### Hazardous Materials Remediation

The Parties presently anticipate that some or all of the lands within the TIDA Property will be remediated by the United States prior to transfer to TIDA, and that the United States will provide a warranty for the lands. However, it is possible that a portion of the lands within the TIDA Property will be conveyed to TIDA by early transfer, prior to complete remediation by the United States. The Agreement provides that lands within the TIDA Property for which no warranty has been obtained may not be exchanged unless and until the United States has obtained a warranty deferral for the lands, approved by the Governor, and the Commission has determined 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 Public 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. TIDA has also agreed to indemnify, defend and hold harmless the Commission from any claims or liability relating to any hazardous materials located on the Public Trust Lands.

### Conclusion

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

### **OTHER PERTINENT INFORMATION:**

1. The State, acting by and through the Commission, is authorized under the Chapter 543, Statutes of 2004 as amended, to enter into this Compromise Title Settlement and Land Exchange Agreement.
2. TIDA approved this Agreement through TIDA Resolution 11-20-04/21, adopted by TIDA on April 21, 2011. The City/County of San Francisco Board



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of Supervisors approved this Agreement through BOS Resolution 244-11, adopted by the Board of Supervisors on June 7, 2011.

3. TIDA has entered into a number of agreements approved by its Board of Directors governing future development of the TIDA Property, including the Disposition and Development Agreement, and relating documents including: the Treasure Island and Yerba Buena Island Design for Development, the Yerba Buena Island Habitat Management Plan, an Infrastructure Plan, and a Parks and Open Space Plan. The Commission is not a party to these agreements.
4. A Final Environmental Impact Report ("EIR") on the Treasure Island/Yerba Buena Island Project was certified by TIDA and the City Planning Commission on April 21, 2011. On June 7, 2011, the City/County of San Francisco Board of Supervisors affirmed the certification of the EIR. Subsequently, project opponents challenged the adequacy of the EIR. The action to challenge the EIR is still pending. The Commission was not named as a party in the petition for writ of mandate challenging the EIR but was listed as a real party in interest. Staff and the Attorney General's Office are monitoring the litigation.
5. Pursuant to the Commission's delegation of authority and the State CEQA Guidelines (Cal. Code Regs., tit. 14, section 15061), staff has determined that this activity is exempt from the requirements of CEQA as a statutorily exempt project. The project is exempt because it involves settlement of title and boundary problems.

Authority: Public Resources Code Section 21080.11.

6. This activity involves lands identified as possessing significant environmental values pursuant to Public Resources Code sections 6370 et seq., but such activity will not affect those significant lands. Based upon the staff's consultation with the persons nominating such lands and through the CEQA review process, it is staff's opinion that the project, as proposed, is consistent with its use classification.

### EXHIBIT:

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

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### IT IS RECOMMENDED THAT THE COMMISSION:

#### **CEQA FINDINGS:**

Find that the activity is exempt from the requirements of CEQA pursuant to California Code of Regulations, Title 14, Section 15061 as a statutorily exempt project pursuant to Public Resources Code section 21080.11 and California Code of Regulations, Title 14, section 15282, subdivision (f), settlement of title and boundary problems and to exchanges or leases in connection with those settlements.

Find that this activity is consistent with the use classification designated by the Commission for the land pursuant to Public Resources Code sections 6370 et seq.

#### **AUTHORIZATION:**

Based upon the terms and conditions in the Agreement, this calendar item, and all of the information contained in the Commission's files and presented at the public meeting related to the Agreement, the Commission hereby:

1. Finds that there is a good faith and bona fide dispute as to the State's interests within the TIDA Property. This Agreement is a compromise of the contested issues of law and evidence upon which the dispute is based, and is in lieu of the costs, delay, and uncertainties of title and boundary litigation, and is consistent with and authorized by the requirements of law.
2. Finds that, with respect to the proposed Land Exchange Agreement, which findings shall be effective upon recordation as provided in the Agreement:
  - A. The configuration of the Public Trust Lands:
    - i. Does not differ significantly from the configuration shown in section 12 of the Exchange Act;
    - ii. Includes all lands within the TIDA Property that are presently below mean high tide and subject to tidal action; and
    - iii. Consists of lands suitable to be impressed with the Trust.
  - B. The construction of the public streets, as depicted in the Agreement, prior to or concurrently with construction of adjacent new development in accordance with the Agreement will ensure that the final layout of streets within the TIDA Property will provide access to the Public Trust Lands, and will be consistent with the beneficial use of those lands, including, but not limited

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to, roadway access to serve the public along the western shoreline of Treasure Island.

- C. 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 in this Agreement.
  - D. After each closing phase, the cumulative monetary value of all of the lands or interests in lands that have been exchanged into the Trust is equal to or greater than the cumulative monetary value of all of the lands or interests in lands that have been exchanged out of the Trust, regardless of the manner in which the exchange is phased.
  - E. 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 Trust, and constitute a relatively small portion of the tidelands granted by the State within the City. The exchange will not result in substantial interference with Trust uses and purposes, and is consistent with and furthers the purposes of the Trust.
  - F. Compliance with the building height limits set forth in the Agreement for the construction of new buildings within the Yerba Buena Non-Trust Lands in accordance with the Agreement will ensure that development on Yerba Buena Island will not significantly obstruct views from Public Hilltop Areas as framed by structures existing as of January 1, 2010.
  - G. TIDA has approved the exchange and will hold fee title, in trust on behalf of all the citizens of the State, to all lands subject to the Trust upon completion of the exchange.
- 3. Finds that the Agreement is in the best interests of the State of California.
  - 4. Approves and authorizes the execution, acknowledgment, and recordation of the Compromise Title Settlement and Land Exchange Agreement and associated deeds and acceptances on behalf of the Commission, in substantially the form of the copy of such agreement on file with the Commission.


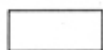

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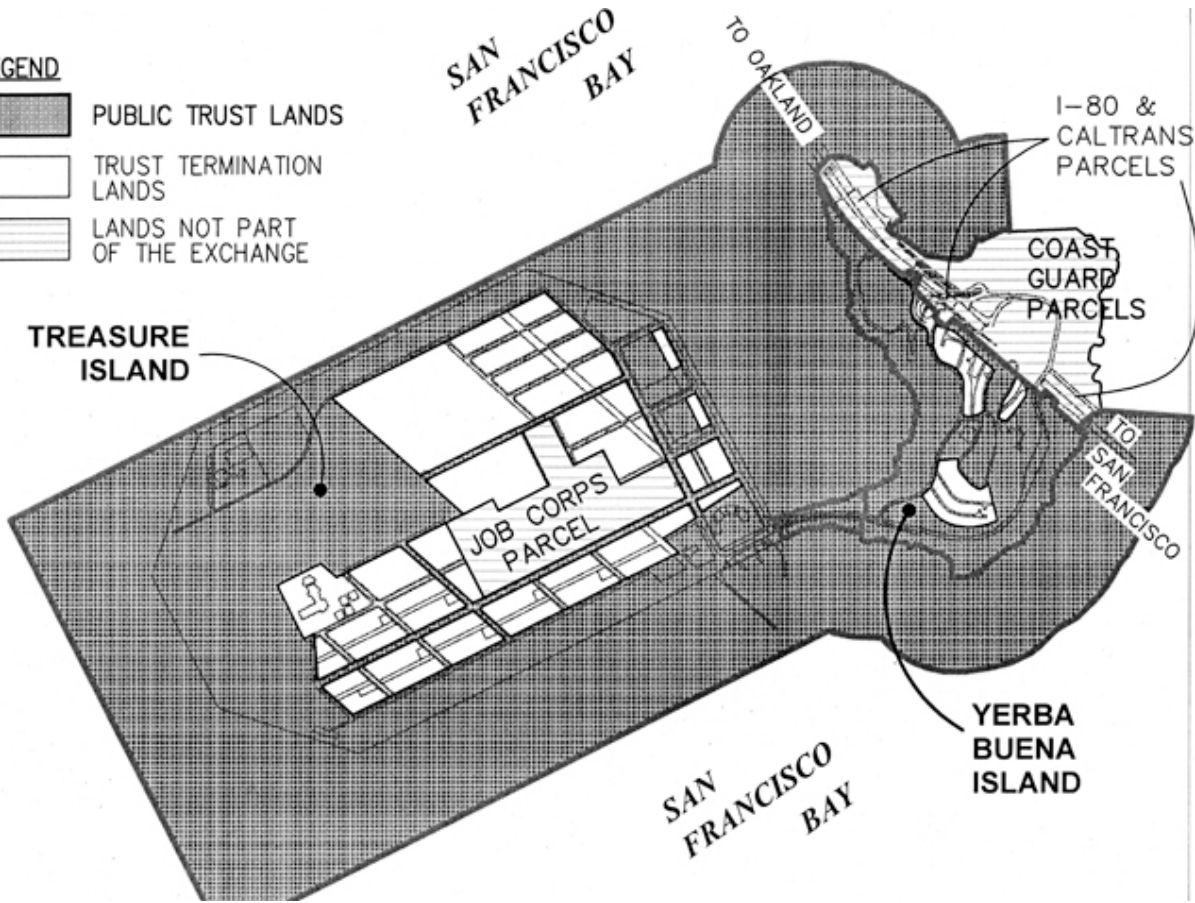
5. Authorizes and directs the staff of the Commission and/or the California Attorney General to take all necessary or appropriate action on behalf of the California State Lands Commission, including the execution, acknowledgment, acceptance, and recordation of all documents as may be necessary or convenient to carry out the Compromise Title Settlement and Land Exchange Agreement; and to participate on behalf of the Commission in any legal proceedings relating to the subject matter of the Agreement, Exchange Act or Conversion Act.

NO SCALE

### SITE

#### LEGEND

-  PUBLIC TRUST LANDS
-  TRUST TERMINATION LANDS
-  LANDS NOT PART OF THE EXCHANGE



### TREASURE ISLAND/YERBA BUENA ISLAND TITLE SETTLEMENT & LAND EXCHANGE

NO SCALE

### LOCATION



MAP SOURCE: USGS QUAD

### **Exhibit A**

W25115  
 TREASURE ISLAND/  
 YERBA BUENA ISLAND  
 SAN FRANCISCO CITY &  
 COUNTY



EAP 01/10/12

This Exhibit is solely for purposes of generally defining the lease premises, is based on unverified information provided by the Lessee or other parties and is not intended to be, nor shall it be construed as, a waiver or limitation of any State interest in the subject or any other property.