

**STAFF REPORT  
C92**

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**CONSIDER THE REVISED PHASE AREA BOUNDARIES AND THE HAZARDOUS  
MATERIAL REMEDIATION FINDING FOR PHASE THREE CLOSING AS REQUIRED  
BY THE NAVAL AIR STATION ALAMEDA TITLE SETTLEMENT  
AND EXCHANGE AGREEMENT**

**PARTIES:**

City of Alameda

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

**INTRODUCTION:**

In October 2012, the California State Lands Commission approved the Naval Air Station Alameda Title Settlement and Exchange Agreement (Agreement) ([Item 94, October 19, 2012](#)), which was subsequently recorded on June 30, 2014. The parties to the Agreement are the City of Alameda and the Commission. The Agreement was authorized by the Legislature pursuant to Chapter 734, Statutes of 2000, as amended by Chapter 429, Statutes of 2011 (Exchange Act).

The property involved in the Agreement includes lands within and adjacent to the former Naval Air Station Alameda (NAS Property) located in the city and county of Alameda. The Agreement authorizes a land exchange that will impress the state's Public Trust interest on certain lands within the NAS Property (Trust Addition Lands) and terminate the state's Public Trust interest in other lands within the NAS Property (Trust Termination Lands). The Agreement also settles and establishes certain boundary lines and settles and confirms the character of certain lands within the NAS Property as either subject to the Public Trust (Agreed Trust Lands) or as free from the trust (Agreed Non-Trust Lands). The total Trust Termination Lands are approximately 304 acres. The total Trust Addition Lands are approximately 121 acres. The total Agreed Trust Lands are approximately 1,478 acres and the total Agreed Non-Trust Lands are approximately 197 acres. When the Commission approved the Agreement, it found that the Agreement did not substantially interfere with the Public Trust, that it was consistent with the enabling legislation, and in the best interests of the State.

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Under the framework of the Agreement, the U.S. Navy conveys title to former NAS Property to the City of Alameda, which then conveys title in those Trust Addition Lands and Trust Termination Lands to the Commission. The Commission then reconveys those lands back to the City, impressed with the Public Trust or with the Public Trust definitively terminated, as established by Exhibit I of the Agreement. The Agreement authorized the conveyances to occur in phases upon the successful remediation of hazardous material by the U.S. Navy. Previous closing phases were approved by the Commission beginning in 2014 ([Item 62, February 21, 2014](#)), 2016 ([Item 79, February 9, 2016](#)), and 2017 ([Item 88, April 20, 2017](#)). Closing phase three requires the Commission to approve the revised phase area boundaries and a record of survey and to make a finding relating to the hazardous material remediation involving the property to be exchanged as part of each closing phase.

### **Revised Phase Area Boundaries:**

Each closing phase must have a configuration of Trust Termination Lands and Trust Addition Lands that substantially conforms to the phase area boundaries in Exhibit I of the Agreement, as determined by the Commission's Executive Officer. The Commission must find that, after each closing phase under the revised phase area boundaries, the cumulative lands or interests in lands that have been exchanged into the Public Trust will be configured in a way that furthers the purposes of the overall exchange.

Because the United States has modified the sequence of lands that will be transferred to the City, a revised phase boundary amending Exhibit I to the Agreement, has been prepared. The revised closing phase three will consist of 0.45 acres of Trust Addition Lands, 20.12 acres of Trust Termination Lands, and 131.38 acres of Agreed Trust Lands as shown on Exhibit A of this staff report. Closing phase three accelerates the land transfer that was previously planned as part of closing phase four but does not change the overall exchange configuration. Pursuant to section 5(c) of the Agreement, revising the closing phase three boundaries will require the recordation of a "Third Memorandum of Phasing Revision Pursuant to the Naval Air Station Alameda Title Settlement and Exchange" (Third Memorandum of Phasing Revision). The Third Memorandum of Phasing Revision serves to amend Exhibit I of the Agreement, to reflect the lands identified in Exhibit A of this staff report.

The Agreement ensures that substantial portions of the waterfront on the NAS property are dedicated to the Public Trust and protects public access to the waterfront. The Agreement allows for redevelopment and reuse of non-waterfront lands that contain buildings constructed by the Navy that are not useful for trust purposes. Staff believes that after each closing phase under the revised phase area boundaries, the cumulative lands or interests in lands that will be exchanged

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into the Public Trust are configured in a way that furthers the purposes of the overall exchange.

### **Record of Survey for Closing Phase Three:**

One of the requirements in the Agreement is that the City must file with the County of Alameda a record of survey showing the boundaries of the Trust Addition Lands, Trust Termination Lands, Agreed Trust Lands and Agreed Non-Trust Lands conveyed in each closing phase. The record of survey must be based on field surveys and establish the physical location of boundaries and define the boundaries with appropriately placed monuments. The record of survey will be recorded as part of the close of escrow for the closing phase after review and approval by the Executive Officer of the Commission.

Staff has reviewed the record of survey and believes that it accurately shows the boundaries of the Trust Addition Lands, Trust Termination Lands, Agreed Trust Lands and Agreed Non-Trust Lands conveyed in the third closing phase. Staff recommends approval of the record of survey for the third closing phase, which is on file in the Commission's Sacramento office.

### **Hazardous Remediation Finding:**

A condition precedent to each closing phase is that the Commission find that all the remedial action necessary to protect human health and the environment concerning hazardous substances on the land has been completed in accordance with the Federal Facility Agreement for Alameda Naval Air Station between the U.S. EPA, the U.S. Navy, and the State. The United States must provide a warranty in accordance with Section 9620(h)(3)(A) of title 42 of the United States Code or obtain a warranty deferral approved by the governor. The deed from the Navy to the City contains warranties in accordance with Section 9620(h)(3)(A) of title 42 of the United States Code. The warranty states that all remedial action necessary to protect human health and the environment concerning any hazardous substance identified pursuant to section 120(h)(3)(A)(i)(I) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) remaining on the property has been taken before the date of the quitclaim deed, and any additional remedial action found to be necessary after the date of the quitclaim deed shall be conducted by the United States. This covenant shall not apply to any remedial action that is required as a result of a new hazardous substance release caused by the City.

On August 7, 2017, the Navy submitted a final Finding of Suitability to Transfer Phase 3b Former Naval Air Station Alameda, Alameda, California (2017 FOST). This document covers the NAS Alameda property that will be included in closing phase three, with the exception of the seaplane lagoon agreed-trust lands, that was previously included in the final Finding of Suitability to Transfer Phase 2

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Former Naval Air Station Alameda, Alameda, California, dated March 2016. ~~which~~ The parcels involved in closing phase three includes a portion of two CERCLA sites: Operable Unit (OU) 2C and Installation Restoration (IR) Site 35. The U.S. EPA submitted its concurrence letter to the 2017 FOST on September 15, 2017. The California Department of Toxic Substances Control submitted its concurrence letter on August 15, 2017.

Staff has reviewed the relevant documents and believes that the evidence supports the required finding. Staff therefore recommends that the Commission find that all remedial action necessary to protect human health and the environment with respect to hazardous substances on the land has been completed as determined in accordance with the Federal Facility Agreement for Alameda Naval Air Station between the U.S. EPA, the U.S. Navy, and the State.

**SB 50 Analysis:**

Pursuant to California Public Resources Code section 8560 (added by Stats. 2017, ch. 535; SB 50), “conveyances of federal public lands in California are void ab initio unless the [C]ommission was provided with the right of first refusal to the conveyance or the right to arrange for the transfer of the federal public land to another entity.” If the Commission was offered either the right of first refusal to the conveyance or the right to arrange for the transfer of the federal public land to another entity the Commission shall issue a certificate affirming compliance with this section. Certain exceptions apply.

Conveyances of federal public lands, as defined in SB 50, are a necessary precondition for the comprehensive title settlement explicitly authorized by the Exchange Act. The Commission negotiated the Agreement assuming that the U.S. Navy would convey specific lands to the City prior to the lands being exchanged with the Commission and ultimately reverting in the City. The Commission approved the Agreement at its meeting on October 19, 2012 ([Item 94, October 19, 2012](#)). Therefore, staff recommends that the Commission find that it arranged for the transfer from the U.S. Navy to the City, and that the Commission approve issuance of a certificate affirming compliance.

**OTHER PERTINENT INFORMATION:**

1. The State, acting by and through the Commission, was authorized under Chapter 734, Statutes of 2000, as amended by Chapter 429, Statutes of 2011, to enter into the Agreement.
2. A condition precedent to closing phase three is that the Executive Officer has approved the condition of title and the form of title insurance covering the closing phase three parcels, for suitable coverage. The City will

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provide this information for the Executive Officer's review before the exchange of deeds between the Commission and the City.

3. Staff recommends that the Commission find that approval of the revised phase area boundaries for closing phase three and hazardous material remediation finding does not have a potential for resulting in either a direct or a reasonably foreseeable indirect physical change in the environment, and is, therefore, not a project in accordance with the California Environmental Quality Act (CEQA).

Authority: Public Resources Code section 21065 and California Code of Regulations, title 14, sections 15060, subdivision (c)(3), and 15378.

4. The proposed action is consistent with Strategy 1.1 of the Commission's Strategic Plan to deliver the highest levels of public health and safety in the protection, preservation and responsible economic use of the lands and resources under the Commission's jurisdiction, and Strategy 1.2 to provide that the current and future management of ungranted sovereign lands and resources and granted lands, including through strategic partnerships with trustee ports and harbor districts, is consistent with evolving Public Trust principles and values, particularly amid challenges relating to climate change, sea-level rise, public access, and complex land use planning and marine freight transportation systems.

**EXHIBIT:**

- A. Location and Site Map of Public Trust and Trust Termination Parcels

**RECOMMENDED ACTION:**

It is recommended that the Commission:

**CEQA FINDINGS:**

Find that the subject approval of the revised phase area boundaries for closing phase three and hazardous material remediation finding is not subject to the requirements of CEQA pursuant to California Code of Regulations, title 14, section 15060, subdivision (c)(3), because the subject activity is not a project as defined by Public Resources Code section 21065 and California Code of Regulations, title 14, section 15378.

**STATE'S BEST INTERESTS FINDING:**

Find that the subject approval of the revised phase area boundaries for closing phase three and hazardous material remediation finding is in the best interests of the State because it furthers the purpose of the overall exchange as directed by the Legislature and the Exchange Act. Further,

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find that the Commission, acting in the State's best interests, was provided the right to arrange for the transfer of the federal public lands, identified in Exhibit A, to another entity.

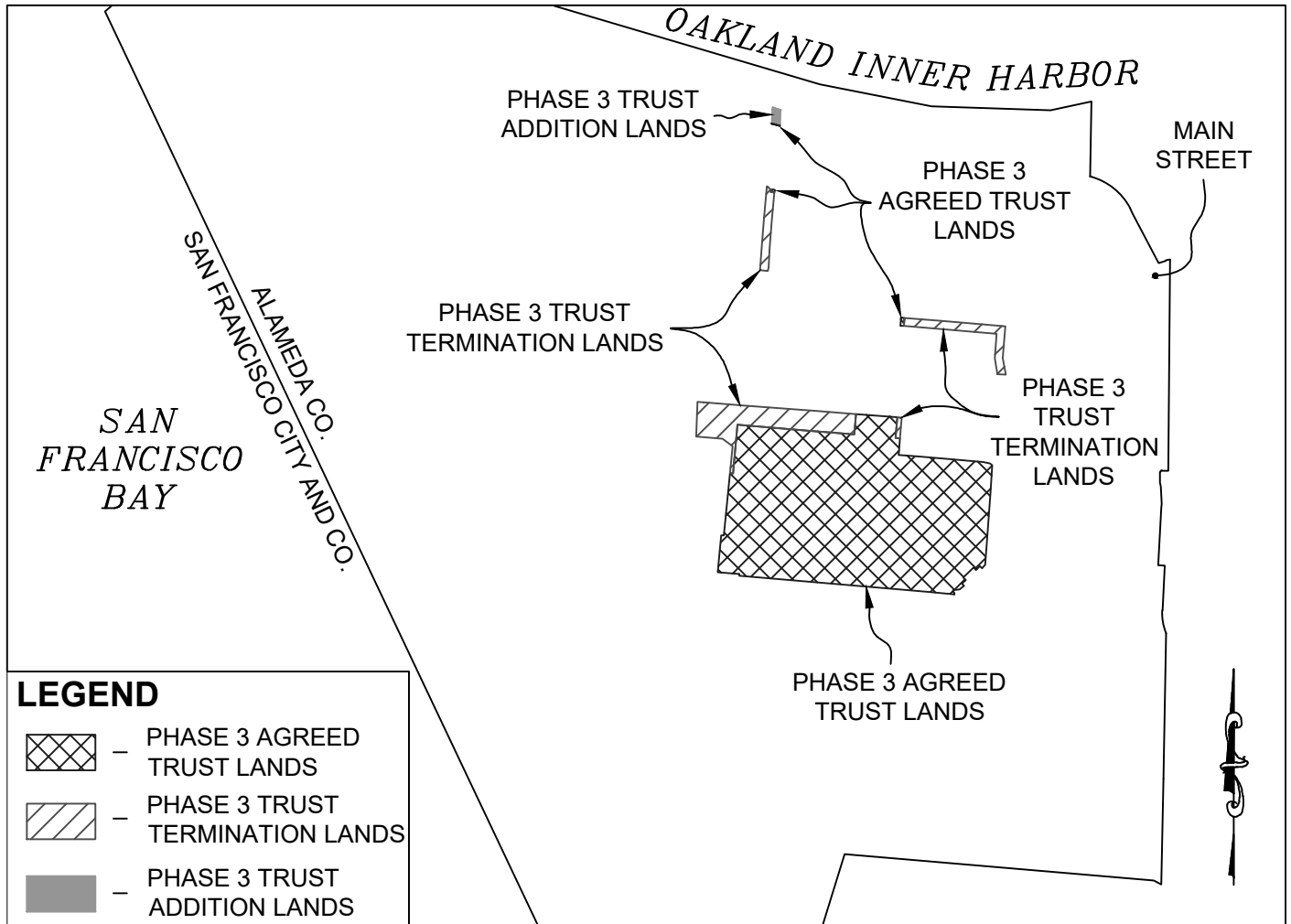
**AUTHORIZATION:**

1. Approve the revised phase area boundaries for closing phase three at Naval Air Station Alameda and find that the cumulative lands or interests in lands that have been exchanged into the Public Trust are configured in a way that furthers the purposes of the overall exchange.
2. Find that all remedial action necessary to protect human health and the environment with respect to hazardous substances on the land proposed for closing phase three has been completed as determined in accordance with the Federal Facility Agreement for Alameda Naval Air Station between the U.S. EPA, the U.S. Navy, and the State, and the United States has provided a warranty in accordance with Section 9620(h)(3)(A) of title 42 of the United States Code.
3. Authorize the Executive Officer, or her designee, to approve the record of survey, substantially in the form on file in the Commission's Sacramento office, showing the boundaries of the Trust Addition Lands, Trust Termination Lands, Agreed Trust Lands and Agreed Non-Trust Lands to be conveyed in closing phase three.
4. Authorize and direct the staff of the Commission and the California Attorney General to take all necessary or appropriate action on behalf of the Commission, including the execution, acknowledgment, acceptance, and recordation of all documents as may be necessary or convenient to carry out the closing phase three transactions; and to participate on behalf of the Commission in any legal proceedings relating to the subject matter of the Agreement.
5. Authorize the Executive Officer, or her designee, to issue a certificate of compliance, pursuant to Public Resources Code section 8560, for the conveyance of lands occurring in closing phase three from the U.S. Navy to the City of Alameda.



NO SCALE

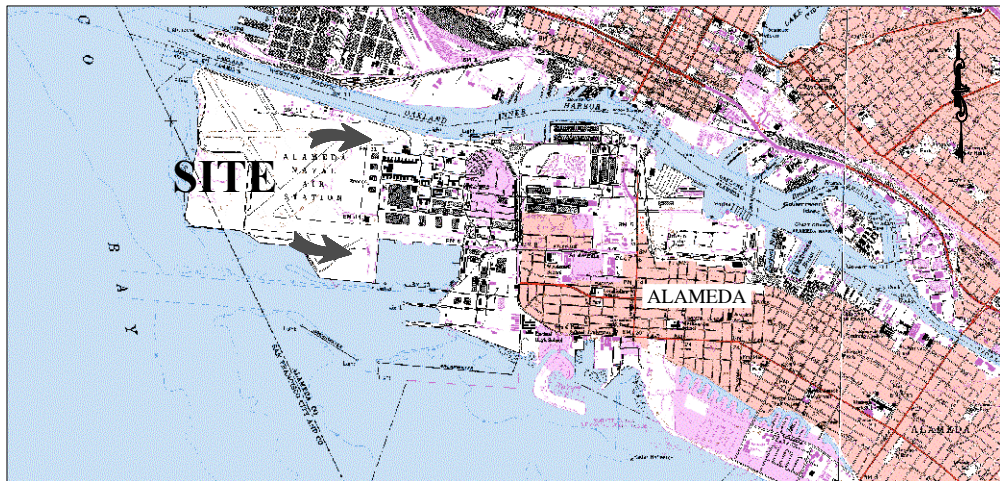
# SITE



## FORMER NAVAL AIR STATION TITLE SETTLEMENT AND EXCHANGE AGREEMENT PHASE 3

NO SCALE

# LOCATION



MAP SOURCE: USGS QUAD

# Exhibit A

G01-01/ AD 617  
 NAS ALAMEDA TITLE  
 SETTLEMENT AND  
 EXCHANGE AGREEMENT  
 PHASE 3 HAZARDOUS  
 MATERIAL REMEDIATION  
 AND RECORD OF SURVEY  
 ALAMEDA COUNTY



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.