

CHAPTER 1016

An act relating to lands within the City of Oakland.

[Approved by Governor September 30, 1981 Filed with
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The people of the State of California do enact as follows:

SECTION 1. The Legislature hereby finds and declares the following:

(a) The City of Oakland, commencing on or about 1927, began purchasing, through its Board of Port Commissioners (hereafter referred to as the "Port of Oakland"), land in the vicinity of San Leandro Bay in the City of Oakland for the promotion and development of commerce, shipping, and navigation. A substantial portion of that land, approximately 1,070 acres, is in the "Port Area" of the City of Oakland and now comprises the Port of Oakland's Oakland Airport Business Park and Distribution Center. Most of the Oakland Airport Business Park and the Distribution Center presently is not subject to the daily tides, has been filled, is within the boundaries of the Rancho de San Antonio granted by the Spanish government in 1820 to Luis Peralta, and is within the boundaries of that portion of the Rancho de San Antonio that the United States government, pursuant to the Treaty of Guadalupe Hidalgo and "An Act to ascertain and settle private land claims in the State of California", 9 Stat. 631, confirmed and then patented in part to Ygnacio Peralta by patent issued February 3, 1858 (recorded in Book A of Patents at page 52 in the Office of the County Recorder of Alameda County) and in part to Antonio Maria Peralta by patent issued May 8, 1874 (recorded in Book A of Patents at page 648 in the Office of the County Recorder of Alameda County). The Board of Port Commissioners is the legislative body of the City of Oakland with the complete and exclusive power and jurisdiction, for and on behalf of the City of Oakland, over that part of the City of Oakland defined in Section 628 of the Charter of the City of Oakland as the "Port Area".

(b) The Port of Oakland sought to, and reasonably and in good faith believed that it did, acquire fee title to the land in the vicinity of San Leandro Bay subject only to encumbrances of record, and reasonably was not aware that fee title was subject to any alleged claim of a sovereign state public trust right for purposes of commerce, navigation, and fisheries.

(c) The Port of Oakland, pursuant to the Charter of the City of

Oakland, has established and for several years has taken action to implement a comprehensive plan for development of the land in order to make provision for and to promote the city's harbor and airport and the commerce, shipping, and navigation of the City of Oakland.

(d) Pursuant to plans to dredge a shipping channel through San Leandro Bay, and to construct piers, transit sheds, and other terminal shipping facilities, and thereby to benefit the various tidelands, submerged lands, and salt marsh granted by the Legislature in trust to the City of Oakland from time to time commencing in 1852, the Port of Oakland in the 1940's began to fill and reclaim certain portions of lands described in subdivision (b) of Section 5 of this act. Most of this fill and reclamation was completed by 1972, although after 1972 there has been additional fill placed for construction purposes in some of the reclaimed areas and additional construction fill is contemplated for the future. Even if portions of the lands described in subdivision (b) of Section 5 of this act which on or after the date of the Spanish land grant to Luis Peralta in 1820 may have been submerged lands or subject to the daily tides, as the result of the filling and reclamation, the lands are no longer submerged and are no longer subject to the daily tides.

(e) The State Lands Commission, in good faith and to protect the interests of the people of the state in the public trust for commerce, navigation, and fisheries, alleges that such public trust exists over some portion of the land described in subdivision (b) of Section 5 of this act by virtue of the existence of tidelands and submerged lands in that parcel as of the date the lands were originally granted by the Spanish government to Luis Peralta in 1820. Based upon this claim, the State Lands Commission further alleges that those tidelands and salt marsh lands within the property described in subdivision (b) of Section 5 of this act and subject to the public interest passed in trust to the City of Oakland pursuant to the legislative grant enacted by Chapter 654 of the Statutes of 1911.

(f) The total acreage of the lands granted by the Legislature to the City of Oakland in trust commencing with Chapter 107 of the Statutes of 1852, and presently subject to trust, is approximately 14,500 acres.

The total acreage of filled lands within the property described in subdivision (b) of Section 5 of this act that the State Lands Commission alleges is subject to a state public trust interest for commerce, navigation, and fisheries because the State Lands Commission claims that it was submerged lands and tidelands, is approximately 43 acres. The extent to which any other portion of the lands described in subdivision (b) of Section 5 of this act in addition to 43 acres was subject to the daily tides is subject to considerable controversy, uncertainty, and problems of proof. Only approximately 900 linear feet of the 43 acres fronts on San Leandro Bay.

(g) Pursuant to the Port of Oakland's comprehensive plan for development of the San Leandro Bay lands included within its

Oakland Airport Business Park and Distribution Center, the Port of Oakland since approximately 1962, in accordance with the City Charter of the City of Oakland and ordinances adopted pursuant thereto, has conveyed fee title or has leased for terms in excess of 50 years substantial portions of the lands described in subdivision (b) of Section 5 of this act.

(h) Due to (1) the claims asserted by the State Lands Commission to portions of the lands described in subdivision (b) of Section 5 of this act, (2) potential future claims of the State Lands Commission in other portions of the lands described in subdivision (b) of Section 5 of this act, and (3) the uncertainty of the boundaries of the lands subject to future State Lands Commission claims of sovereign public trust interest, the Port of Oakland feasibly cannot sell and cannot lease for more than 25 years with a 25-year renewal right most of the remaining approximately 160 acres of undeveloped lands in the lands described in subdivision (b) of Section 5 of this act, and sales or lease assignments or substantial new improvement of most of the lands that the Port of Oakland has previously sold or leased for terms in excess of 25 years with a 25-year renewal right practically may be halted. The effects of this controversy and dispute threaten to create severe detriment and loss to the commerce, navigation, and shipping at the Port of Oakland's harbors and airport, threaten to create severe detriment and loss to the trust established by the legislative grants to the City of Oakland, and threaten severe and irreparable harm to employment and economic growth in the City of Oakland. The extent and nature of land within the lands described in subdivision (b) of Section 5 of this act, claimed by the State Lands Commission to be subject to the public trust, is uncertain and subject to genuine controversy and dispute, and it is in the best interests of the people of the state, the City of Oakland, and other interested parties to resolve that controversy and dispute as provided in this act.

(i) The Legislature expressly does not make any determination by virtue of this act or any provision of this act as to the merits of any pending litigation or any claim involving the state's assertion of sovereign public trust interests for commerce, navigation, and fisheries in any former rancho lands within the boundaries of a federal patent.

(j) All portions of the lands described in subdivision (b) of Section 5 of this act were filled before 1980 and have not at any time after filling been subject to tidal action.

SEC. 2. Based upon the findings and declarations made in Section 1 of this act, the Legislature further finds and declares the following with respect to the land described in subdivision (b) of Section 5 of this act:

(a) The total area reasonably subject to the state's claimed sovereign public trust interest for commerce, navigation, and fisheries is but a relatively small part of the submerged lands and tidelands granted in trust by the Legislature to the City of Oakland.

(b) The areas subject to the state's claimed sovereign public trust

interests have been filled and reclaimed by the Port of Oakland as the result of a program of beneficial development of the harbor and airport of the City of Oakland, the major part of which harbor and airport are located on lands granted by the Legislature in trust to the City of Oakland.

(c) The lands described in subdivision (b) of Section 5 of this act that are subject to the claim by the state of a sovereign public trust easement for commerce, navigation, and fisheries are not under present circumstances useful for trust purposes.

(d) The trust interests of the people of the state in commerce, navigation, and fisheries will be better promoted and benefited by the exchange of the state's claimed trust interests in the filled portions of the lands described in subdivision (b) of Section 5 of this act for those trust interests in the City of Oakland's land described in subdivision (c) of Section 5 of this act. The trust interests which this act authorizes to be exchanged are of equal value.

SEC. 3. There is hereby granted to the City of Oakland in trust, to be held pursuant to the provisions of Chapter 654 of the Statutes of 1911, and amendatory acts, all former submerged lands located within the boundaries of the lands described in subdivision (b) of Section 5 of this act. This grant does not constitute a determination by the Legislature that Chapter 654 of the Statutes of 1911, as amended, does not convey submerged lands in trust to the City of Oakland.

SEC. 4. Notwithstanding the provisions of Chapter 107 of the Statutes of 1852, Chapter 73 of the Statutes of 1854, Chapter 390 of the Statutes of 1909, Chapter 654 of the Statutes of 1911, Chapter 657 of the Statutes of 1911, Chapter 59 of the Statutes of 1917, Chapter 516 of the Statutes of 1919, Chapter 174 of the Statutes of 1923, Chapter 621 of the Statutes of 1931, Chapter 45 of the Statutes of 1937, Chapter 343 of the Statutes of 1937, Chapter 908 of the Statutes of 1937, Chapter 720 of the Statutes of 1941, Chapter 218 of the Statutes of 1945, Chapter 1028 of the Statutes of 1955, Chapter 709 of the Statutes of 1957, and Chapter 931 of the Statutes of 1961, or any other act granting tidelands, submerged lands, and salt marsh in trust to the City of Oakland, the City of Oakland may grant franchises and leases with respect to those lands for terms not to exceed 66 years, but shall otherwise be subject to all the terms and conditions of the prior grants.

SEC. 5. (a) The Legislature hereby terminates all of the state's sovereign public trust right, title, and interest, to the extent that any of the right, title, and interest exists, in all former submerged lands, tidelands, and salt marsh that may have been, on and after the date of the Spanish land grant to Luis Peralta in 1820 situated within the lands described in subdivision (b) of this section and subject to each of the following:

(1) The termination shall be effective only upon delivery of an unconditional and duly authorized, executed, and acknowledged deed from the City of Oakland, acting by and through its Board of

Port Commissioners, to the State of California, acting by and through its State Lands Commission, granting to the state a public trust easement for commerce, navigation, and fisheries, in the lands described in subdivision (c) of this section in exchange for the Legislature's foregoing termination. The City of Oakland is not required to deliver that deed, but the trust termination shall be effective only if delivery is made on or before January 1, 1984.

(2) Upon delivery of the deed to the state as described in paragraph (1) of this subdivision, Section 1 of Chapter 1028 of the Statutes of 1955 shall be deemed to have been supplemented by this act to provide that the City of Oakland is granted the public trust easement for commerce, navigation, and fisheries conveyed by the deed, to be forever held by the city, and its successors, in trust for the uses and purposes and upon the express conditions set forth in Chapter 1028 of the Statutes of 1955; provided, however, that the city shall not be required to improve the lands as provided in Section 1 of Chapter 1028 of the Statutes of 1955.

(b) The lands in which are located the former submerged lands, tidelands, and salt marsh in which the Legislature by this act terminates all of the state's sovereign public trust right, title, and interest, are described as follows:

All that property located above the presently existing line of mean high water located in the "Port Area" of the City of Oakland bounded on the east by Hegenberger Road, on the northeast by the Nimitz Freeway, on the northwest by the south bank of East Creek Slough and its direct prolongation southwesterly to its point of intersection with the City of Oakland-City of Alameda boundary line, on the west by the City of Oakland-City of Alameda boundary line from that point of intersection southerly to Doolittle Drive, and on the south and southwest by Doolittle Drive, excluding therefrom, however, Parcel 1 of that certain real property over which the Board of Port Commissioners relinquished control and jurisdiction by adoption of Port Ordinance No. 1235 on August 5, 1963, the Parcel 1 being more particularly described as follows:

Parcel 1

Beginning at the point of intersection of the northwestern line of 50th Avenue, formerly Bay Avenue, with the southwestern line of the Nimitz Freeway, formerly known as the Eastshore Freeway, designated as "State of California, Department of Public Works survey through the City of Oakland, Road IV-Ala-69-Oak", as described in deed from Pacific Gas and Electric Company, a corporation, to the State of California, dated February 5, 1943 and recorded July 17, 1943, in Book 4391 of Official Records of Alameda County, page 231; running thence along the southwestern line of that state freeway south $34^{\circ}52'44''$ east 408.30 feet until intersected by the direct prolongation northeasterly of the southeastern line of that certain parcel of land described in deed from City of Oakland, a

municipal corporation, acting by and through its Board of Port Commissioners to Pacific Gas and Electric Company, a corporation, dated January 18, 1955, and recorded April 5, 1955, in Book 7621 of Official Records of Alameda County, page 111; thence along that line so produced south $55^{\circ}07'16''$ west 52.00 feet to the actual point of commencement; thence along a line parallel with that state freeway and distant 52.00 feet southwesterly therefrom, measured at a right angle therefrom, south $34^{\circ}52'44''$ east 2927.65 feet; thence south $55^{\circ}07'16''$ west 1888.01 feet; thence south $89^{\circ}49'48''$ west 54.73 feet; thence north $34^{\circ}52'44''$ west 2360.72 feet to a point on the southwestern boundary line of that certain parcel of land designated as Parcel "E" in Final Judgment of Condemnation made on December 31, 1951, in the Superior Court of Alameda County, State of California, entitled City of Oakland, a municipal corporation, acting by and through its Board of Port Commissioners, vs. Pacific Gas and Electric Company, a corporation, et al., Case No. 209246, a certified copy whereof was recorded on December 31, 1951, in Book 6624 of Official Records of Alameda County, page 345; thence along the southwestern and northwestern lines of the Parcel "E" north $22^{\circ}07'52''$ west 277.23 feet and north $35^{\circ}35'18''$ east 900.20 feet to a point on the southwestern boundary line of that certain parcel of land described in deed from City of Oakland, a municipal corporation, acting by and through its Board of Port Commissioners, to Pacific Gas and Electric Company, a corporation, dated January 18, 1955, and recorded April 5, 1955, in Book 7621 of Official Records of Alameda County, page 111; thence along the last mentioned line south $34^{\circ}52'44''$ east 35.60 feet to the southeastern boundary line thereof; thence along the last mentioned line and its direct prolongation north $55^{\circ}07'16''$ east 1023.43 feet to the actual point of commencement;

Also excluding therefrom Arrowhead Marsh and also excluding all that property lying westerly of Arrowhead Marsh and Airport Channel along the northeasterly line of Doolittle Drive. Arrowhead Marsh is that portion of land labeled "Arrowhead Marsh" depicted on a map entitled "Attachment I San Leandro Bay Regional Shoreline," such Attachment I being a portion of that document entitled "Development Plan for San Leandro Bay Regional Shoreline" recorded on the 13th day of September 1977, in Reel 5043, Image 667, Official Records of Alameda County, such portion being bounded on the southeast and east by an "L" shaped "New Channel" adjoining the artificially filled Play Meadow, and being bounded elsewhere by the waters of San Leandro Bay, all as shown on that map.

(c) The lands on which the City of Oakland is required, as a condition of trust termination, to grant to the state a public trust easement for commerce, navigation, and fisheries, are described as follows:

All of those portions of the following described lands which lie within the present City of Oakland, County of Alameda, State of

California:

Lots 29, 30, and 31 in Section 30, and lots 2, 3, and 4 in Section 31, all in township 2 south, range 3 west, Mount Diablo Base and Meridian, as such lots are shown on "Sale Map No. 10, Salt Marsh and Tide Lands, situate in the County of Alameda, State of California," filed June 9, 1888, in book 17 of maps at page 30, in the office of the County Recorder of Alameda County, containing 84 acres more or less.

SEC. 6. The Legislature's termination of the state's sovereign public trust to the lands described in subdivision (b) of Section 5 of this act is not intended to constitute a legislative determination or finding that such a public trust actually exists in those lands, or that whatever public trust may at some time have existed in those lands has not terminated for reasons separate from and in addition to the termination effected by this act, including without limitation, application of the holding and decision of the California Supreme Court in *City of Berkeley v. Superior Court*, 26 Cal. 3d 515 (1980).

SEC. 7. The legislative findings and declarations in Sections 1 and 2 of this act shall not be admissible as evidence in any administrative, judicial, or quasi-judicial proceeding unless and until the City of Oakland has delivered to the State Lands Commission the deed described in paragraph (1) of subdivision (a) of Section 5 of this act.
