

## CHAPTER 664

An act relating to the Oakland Army Base, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 7, 2005. Filed with  
Secretary of State October 7, 2005.]

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

SECTION 1. This act shall be known, and may be cited, as the Oakland Army Base Public Trust Exchange Act.

SEC. 2. The following definitions apply for purposes of this act:

(a) "1911 grant" means Chapter 657 of the Statutes of 1911, as amended.

(b) "Agency" or "ORA" means the Oakland Redevelopment Agency, or any successor redevelopment agency.

(c) "BCDC" means the San Francisco Bay Conservation and Development Commission.

(d) "City" means the City of Oakland, a charter city.

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

(f) "Consent Agreement" means that agreement entitled, "Consent Agreement between Oakland Base Reuse Authority, City of Oakland by and through the Oakland Redevelopment Agency and State of California, California Environmental Protection Agency, Department of Toxic Substances Control, Concerning Oakland Army Base, Oakland California," signed on behalf of DTSC on May 19, 2003.

(g) "Covenant to Restrict Use of Property" means the "Covenant to Restrict Use of Property, Environmental Restriction, Former Oakland Army Base, Oakland California" by and between the Oakland Base Reuse Authority, the City of Oakland by and through the Oakland Redevelopment Agency, and the State of California, Department of Toxic Substances Control, signed on behalf of DTSC on August 7, 2003.

(h) "DTSC" means the California Environmental Protection Agency, Department of Toxic Substances Control.

(i) "EDC property" means all that real property situated in the City of Oakland, California, within the former Oakland Army Base, which was conveyed in fee from the United States to OBRA by that certain "Quitclaim Deed for No-Cost Economic Development Conveyance Parcel, County of Alameda, California," Deed No. DACA 05-9-03-567, recorded August 8, 2003, as document 2003466370 in the Official Records of Alameda County, as more particularly described in that deed.

(j) "Gateway development area" means that portion of the OARB redevelopment property located within the area defined as the Gateway development area in the reuse plan.

(k) "Governor" means the Governor of the State of California.

(l) "Granted lands" means lands granted in trust by the state to the city or other trustee pursuant to this act, the town grant, or the 1911 grant.

(m) "Lease" means any temporary rights to occupy or use property, or the grant of such rights, including, but not limited to, franchises, permits, privileges, licenses, assignments, easements, or leasehold interests.

(n) "OARB" or "base" refers to that portion of the property commonly known as the former Oakland Army Base, initially considered for disposition by the Army as part of the federal base reuse and closure process.

(o) "OARB adjacent parcels" means those portions of the OARB redevelopment property which are surrounded by or adjacent to the EDC property, but not within the EDC property, and are more particularly described as follows:

PARCEL 1, A portion of that certain Parcel of land described in that certain Indenture between the Southern Pacific Company and the United States of America, recorded March 2, 1942, in Book 4189 of Official Records, Page 197 in the Office of the Recorder of said Alameda County (hereinafter referred to as 4189 O.R. 197), being Parcel B as described in that unrecorded "Transfer and Acceptance of Military Real Property" from the Military Traffic Management Command of the Oakland Army Base to the 63rd RSC, dated December 17, 1998, (hereinafter referred to as the Building 780 Parcel), and being more particularly described as follows:

COMMENCING at City of Oakland monument No. 7SE13, said monument being a pin set in concrete, in a monument well marking the intersection of the centerlines of Maritime Street and 10th Street, as said streets are shown on that unrecorded map entitled "Oakland Army Terminal Boundary Map" prepared by Wilsey & Ham Engineers in 1958 for the U.S. Army Corps of Engineers, File No. 45-I-286 (hereinafter referred to as the Army Map), said monument is further described as being Port of Oakland Monument ID H006 as shown upon Record of Survey 990, filed for record in Book 18 of Record of Surveys, at Pages 50-60, Alameda County Official Records;

Thence North 77°06'11" East 1106.11 feet to the most western corner of said Building 780 Parcel, said corner being marked by a bolt and washer stamped "LS 6379", being the POINT OF BEGINNING of Parcel 1;

Thence along the northwest, northeast, southeast and southwest lines of said Building 780 Parcel the following eight courses:

1. North 8°06'06" East, 425.20 feet to the most northern corner of said parcel, said corner being marked by a concrete nail and shiner stamped "LS 6379";
2. South 81°58'14" East, 655.73 feet to the most eastern corner of said parcel;
3. South 8°01'46" West, 294.89 feet to the southeast corner of said parcel, said corner being marked by a pipe and plug stamped "LS 6379";
4. North 82°02'59" West, 117.67 feet to an angle point in said southwest line, said angle point being marked by a pipe and plug stamped "LS 6379";
5. North 7°49'06" East, 31.76 feet to an angle point in said southwest line, said angle point being marked by a pipe and plug stamped "LS 6379";
6. North 82°00'47" West, 261.81 feet to an angle point in said southwest line;
7. South 7°59'16" West, 161.25 feet to an angle point in said southwest line, said angle point being marked by a 2.5" brass disk and bolt stamped "LS 6379";
8. North 82°03'57" West, 276.78 feet to the POINT OF BEGINNING, containing 221,199 square feet (5.078 acres) more or less, measured in ground distances.

PARCEL 2, A portion of that Parcel of land described in that certain Indenture between the Southern Pacific Company and the United States of America, recorded February 15, 1979, as Document 79-030025, in the Office of the Recorder of said Alameda County (hereinafter referred to as Doc. 79-030025); A portion of the Parcel of land described in that certain Indenture between the Southern Pacific Company and the United States of America, recorded March 2, 1942, in Book 4189 of Official Records, Page 197 in the Office of the Recorder of said Alameda County (hereinafter referred to as 4189 O.R. 197); A portion of the lands described in that certain Final Judgment as to Interests of Defendant City of Oakland, A Municipal Corporation, United States of America vs. City of Oakland et al., Case No. 21758-L, Case No. 21930-L, Case No. 22084-L, District Court of the United States in and for the Northern District of California, Southern Division, recorded February 24, 1960, Reel 032, Image 660 of Official Records in the Office of the Recorder of said Alameda County hereinafter referred to as Reel: 032, Image:660) all of which being the "Parcel Encompassing Building 762" as described in that certain unrecorded "Transfer and Acceptance of Military Real Property" from the Military Traffic Management Command of the Oakland Army Base to the 63rd RSC, dated September 3, 1997,

(hereinafter referred to as the Building 762 Parcel), and being more particularly described as follows:

COMMENCING at City of Oakland monument No. 7SE13, said monument being a pin set in concrete, in a monument well marking the intersection of the centerlines of Maritime Street and 10th Street, as said streets are shown on that unrecorded map entitled "Oakland Army Terminal Boundary Map" prepared by Wilsey & Ham Engineers in 1958 for the U.S. Army Corps of Engineers, File No. 45-I-286 (hereinafter referred to as the Army Map), said monument is further described as being Port of Oakland Monument ID H006 as shown upon Record of Survey 990, filed for record in Book 18 of Record of Surveys, at Pages 50-60, Alameda County Official Records;

Thence, North 43°48'16" East 958.07 feet to the most western corner of said Building 762 Parcel, said corner being marked by a  $\frac{5}{8}$ " rebar with plastic cap stamped "LS 5671", being the POINT OF BEGINNING;

Thence, along the northwest, northeast, southeast and southwest lines of said Building 762 Parcel the following four courses:

1. North 41°02'39" East, 238.78 feet to the most northern corner of said parcel;

2. South 82°00'39" East, 299.96 feet to the most eastern corner of said parcel, said corner being marked by a  $\frac{5}{8}$ " rebar with plastic cap stamped "LS 5671";

3. South 07°51'10" West, 200.86 feet to the most southern corner of said parcel, said corner being marked by a  $\frac{5}{8}$ " rebar with plastic cap stamped "LS 5671";

4. North 81°54'53" West, 430.68 feet to the POINT OF BEGINNING, containing 73,278 square feet (1.682 acres) more or less, measured in ground distances.

PARCEL 3, A portion of the Parcels of land described in that certain Indenture between the Southern Pacific Company and the United States of America, recorded April 23, 1941, in Book 4017 of Official Records, Page 485 in the Office of the Recorder of said Alameda County (hereinafter referred to as 4017 O.R. 485); A portion of the lands described in that certain Final Judgment as to Interests of Defendant City of Oakland, A Municipal Corporation, United States of America vs. City of Oakland, et al., Case No. 21758-L, Case No. 21930-L, Case No. 22084-L, District Court of the United States in and for the Northern District of California, Southern Division, recorded February 24, 1960, Reel 032, Image 660 of Official Records in the Office of the Recorder of said Alameda County (hereinafter referred to as Reel: 32, Image:660); A portion of the lands described in that certain Final Judgment as to Parcel No. 6, United States of America vs. City of Oakland, State of California, et al., Case No. 21930-L, District Court of the United States

in and for the Northern District of California, Southern Division, recorded May 23, 1960, Reel 092, Image 111 of Official Records, in the Office of the Recorder of said Alameda County (hereinafter referred to as Reel: 092, Image:111), all of which are more particularly described as follows:

COMMENCING at City of Oakland monument No. 7SE13, said monument being a pin set in concrete in a monument well marking the intersection of the centerlines of Maritime Street and 10th Street, as said streets are shown on that unrecorded map entitled "Oakland Army Terminal Boundary Map" prepared by Wilsey & Ham Engineers in 1958 for the U.S. Army Corps of Engineers, File No. 45-I-286 (hereinafter referred to as the Army Map), said monument also being Port of Oakland Monument ID H006 as shown upon Record of Survey 990, filed for record in Book 18 of Records of Surveys, at Pages 50-60, Alameda County Official Records;

Thence North  $48^{\circ}22'05''$  East, 5692.24 feet to the northern most corner of Parcel 1, Tract 1 as described in that certain Final Judgment as to Tract 1 and as to Lack of Interests of Certain Persons as to Property Subject to the Above Action, United States of America vs. Santa Fe Land and Improvement Co., Southern Pacific Railroad Company, et al., Case No. 23099-S, District Court of the United States in and for the Northern District of California, Southern Division, recorded October 22, 1951, in Book 6566 of Official Records, Page 301 in the Office of the Recorder of said Alameda County (hereinafter referred to as 6566 O.R. 301), said corner being the northwest terminus of the course described as "North  $71^{\circ}40'17''$  West 585.40 feet" in the description of said Parcel 1, Tract 1 (6566 O.R. 301), said corner being marked by a  $2\frac{1}{2}''$  brass disk with punch mark stamped "City of Oakland Survey Station 8NW9" as shown on Record of Survey No. 1705, filed in Book 26 of Records of Surveys, at Page 1, Alameda County Official Records;

Thence along the northwestern line of said Parcel 1, Tract 1 (6566 O.R. 301) South  $79^{\circ}57'58''$  West, 9.41 feet to the beginning of a nontangent curve concave southwesterly, having a radius of 599.96 feet and a central angle of  $20^{\circ}37'16''$ , from which beginning the radius point bears South  $36^{\circ}18'10''$  West;

Thence along said curve to the right, an arc distance of 215.93 feet to a point on the generally northeastern line of Parcel A as described in an unrecorded "Transfer and Acceptance of Military Real Property" from the Military Traffic Management Command of the Oakland Army Base to the 63rd RSC, dated December 17, 1998, said Parcel A being commonly referred to as the "Subaru Lot" (said Parcel A will hereinafter be referred to as the Subaru Lot), being a point on the course described as "South  $70^{\circ}14'01''$  East, 101.26 feet" in the description of said Parcel

A (the Subaru Lot), and being the POINT OF BEGINNING of Parcel 3 as herein described;

Thence along the northeastern, eastern and southeastern lines of said Parcel A (the Subaru Lot) the following twelve courses:

1. South 70°14'16" East, 42.04 feet to an angle point in said line, said point being marked by a 1 ½" brass disk with bolt stamped "LS 6379";

2. South 71°46'24" East, 32.44 feet to an angle point in said line, said point being marked by a 1 ½" brass disk with bolt stamped "LS 6379";

3. South 74°35'56" East, 103.17 feet to an angle point in said line, said point being marked by a 1 ½" brass disk with bolt stamped "LS 6379";

4. South 71°25'40" East, 87.02 feet to the beginning of a nontangent curve concave southwesterly, having a radius of 354.97 feet and a central angle of 59°49'02", from which the radius point bears South 30°09'08" West, said beginning of curve being marked by a 1 ½" brass disk with bolt stamped "LS 6379";

5. along said curve to the right, an arc distance of 370.59 feet to the beginning of a compound curve concave westerly, having a radius of 199.99 feet and a central angle of 25°52'29", said point of compound curvature being marked by a nail and washer with tag stamped "LS 6379";

6. along said curve to the right, an arc distance of 90.32 feet to a point of tangency being marked by a nail and washer with tag stamped "LS 6379";

7. South 25°50'39" West, 100.04 feet to an angle point in said line, said point being marked by a nail and washer with tag stamped "LS 6379";

8. South 30°42'24" West, 148.96 feet to an angle point in said line, said point being marked by a nail and washer with tag stamped "LS 6379";

9. South 37°08'59" West, 99.92 feet to an angle point in said line, said point being marked by a nail and washer with tag stamped "LS 6379";

10. South 40°33'22" West, 49.03 feet to an angle point in said line, said point being marked by a nail and washer with tag stamped "LS 6379";

11. South 49°48'18" West, 93.04 feet to an angle point in said line;

12. South 56°00'39" West, 30.42 feet to a point on the generally northeastern line of Parcel 56444 as described in that certain Quitclaim Deed, recorded on February 13, 2002, as Document No. 2002072863 of Official Records, in the Office of the Recorder of Alameda County (hereinafter referred to as Doc. 2002072863), said point being the beginning of a nontangent curve concave southwesterly, having a radius

of 1647.00 feet and a central angle of  $08^{\circ}46'22''$ , from which beginning point the radius point bears South  $46^{\circ}46'37''$  West;

Thence along the generally northeastern line of said Parcel 56444 (Doc. 2002072863) the following eight courses:

1. along said curve to the left, an arc distance of 252.18 feet to a point from which the radius point bears South  $38^{\circ}00'16''$  West, being the beginning of a nontangent curve concave southwesterly, having a radius of 1647.00 feet and a central angle of  $07^{\circ}24'24''$ , from which the radius point bears South  $39^{\circ}39'54''$  West;

2. along said curve to the left, an arc distance of 212.91 feet to a point of tangency;

3. North  $57^{\circ}44'30''$  West, 113.40 feet to an angle point;

4. North  $49^{\circ}58'48''$  West, 124.70 feet to an angle point;

5. North  $59^{\circ}26'20''$  West, 696.99 feet to an angle point;

6. North  $38^{\circ}53'13''$  West, 28.48 feet to an angle point;

7. North  $59^{\circ}26'21''$  West, 95.01 feet to an angle point;

8. North  $65^{\circ}41'40''$  West, 26.04 feet to a point on the generally northwestern line of said Parcel A (the Subaru Lot), said point being the beginning of a nontangent curve concave easterly, having a radius of 20.00 feet and a central angle of  $29^{\circ}55'43''$ , from which beginning point the radius point bears North  $87^{\circ}47'11''$  East;

Thence along the northwesterly, northerly and northeasterly lines of said Parcel A (the Subaru Lot) the following thirteen courses:

1. along said curve to the right, an arc distance of 10.45 feet to the beginning of a compound curve concave southeasterly, having a radius of 199.99 feet and a central angle of  $39^{\circ}56'30''$ , said point of compound curvature being marked by a  $1\frac{1}{2}''$  brass disk and spike stamped "LS 6379";

2. along said curve to the right, an arc distance of 139.42 feet to a point of tangency being marked by a 1" iron pipe with plug and tack stamped "LS 6379";

3. North  $67^{\circ}39'24''$  East, 25.68 feet to the beginning of a curve concave southerly, having a radius of 299.98 feet and a central angle of  $25^{\circ}11'31''$ ;

4. along said curve to the right, an arc distance of 131.90 feet to a point of tangency being marked by a 1" iron pipe with plug stamped "LS 6379";

5. South  $87^{\circ}09'05''$  East, 415.50 feet to an angle point in said line, said point being marked by a 1" iron pipe with plug stamped "LS 6379";

6. North  $80^{\circ}41'00''$  East, 170.83 feet to an angle point in said line, said point being marked by a 1" iron pipe with plug stamped "LS 6379";

7. South  $70^{\circ}15'39''$  East, 49.25 feet to an angle point in said line, said point being marked by a  $1\frac{1}{2}''$  brass disk with bolt stamped "LS 6379";

8. South 72°38'25" East, 67.85 feet to an angle point in said line, said point being marked by a 1 ½" brass disk with bolt stamped "LS 6379";

9. South 69°32'54" East, 44.74 feet to an angle point in said line, said point being marked by a 1 ½" brass disk with bolt stamped "LS 6379";

10. South 66°07'36" East, 44.94 feet to an angle point in said line, said point being marked by a ¾" brass tag in concrete stamped "LS 6379";

11. South 63°28'21" East, 40.88 feet to an angle point in said line, said point being marked by a 1 ½" brass disk with bolt stamped "LS 6379";

12. South 69°21'45" East, 49.64 feet to an angle point in said line, said point being marked by a 1 ½" brass disk with bolt stamped "LS 6379";

13. South 70°14'16" East, 59.22 feet to the POINT OF BEGINNING, containing 829,036 square feet (19.032 acres), more or less, measured in ground distances.

Bearings and distances called for in the descriptions of Parcels 1, 2, and 3 herein are based upon the California Coordinate System, Zone III, North American Datum of 1983 (1986 values) as shown upon that certain map entitled Record of Survey 990, filed in Book 18 of Record of Surveys, Pages 50-60, Alameda County Records unless otherwise indicated. To obtain ground level distances, multiply distances called for herein by 1.0000705.

PARCEL 4, All of Parcel 56444 as described in that certain Quitclaim Deed, recorded February 13, 2002, as Document No. 2002072863 of Official Records, in the Office of the Recorder of said Alameda County, California.

PARCEL 5, A portion of the lands described as Parcel 2 in that certain Quitclaim Deed between the State of California and the City of Oakland, recorded February 23, 1979, as Doc. No. 79-034788 of Official Records, in the Office of the Recorder of Alameda County (hereinafter referred to as Doc. 79-034788), being all that land underlying that certain aerial easement described as Parcel 1 of that certain Grant Deed between the City of Oakland and the State of California, recorded February 3, 1995, as Doc. No. 95-028117 of Official Records, in the Office of the Recorder of Alameda County (hereinafter referred to as Doc. 95-028117), and being more particularly described as follows:

COMMENCING at City of Oakland monument No. 7SE13, said monument being a pin set in concrete, in a monument well marking the intersection of the centerlines of Maritime Street and 10th Street, as said streets are shown on that unrecorded map entitled "Oakland Army Terminal Boundary Map" prepared by Wilsey & Ham Engineers in 1958 for the U.S. Army Corps of Engineers, File No. 45-I-286 (hereinafter



referred to as the Army Map), said monument is further described as being Port of Oakland Monument ID H006 as shown upon Record of Survey 990, filed for record in Book 18 of Records of Surveys, at Pages 50-60, Alameda County Official Records;

Thence North  $24^{\circ}14'22''$  East, 4601.25 feet to the eastern most corner of that land underlying said aerial easement described as Parcel 1 (Doc. 95-028117), said corner being a point on the northwest line of the lands described in that certain Final Judgment as to Tract 23, United States of America vs. City of Oakland, State of California, et al., Case No. 21930-L, District Court of the United States in and for the Northern District of California, Southern Division, recorded January 11, 1950, in Book 5987 of Official Records, Page 319 in the Office of the Recorder of Alameda County (hereinafter referred to as 5987 O.R. 319), being marked by a 1" iron pipe and CalTrans cap, as shown on Record of Survey No. 1687, filed in Book 25 of Records of Surveys, at Pages 58-69, Alameda County Official Records and being the POINT OF BEGINNING;

Thence along said northwest line of said Tract 23 (5987 O.R. 319), South  $71^{\circ}46'34''$  West, 315.39 feet to an angle point in the generally northwest line of the lands described in that certain Final Judgment as to Tract 5, United States of America vs. City of Oakland, State of California, et al., Case No. 21930-L, District Court of the United States in and for the Northern District of California, Southern Division, recorded February 16, 1951, in Book 6361 of Official Records, Page 334 in the Office of the Recorder of Alameda County (hereinafter referred to as 6361 O.R. 334), said angle point being marked by a  $1\frac{1}{2}''$  brass disk in top of concrete culvert, as shown on said unrecorded map entitled "Oakland Army Terminal Boundary Map" (the Army Map);

Thence along the generally northwest line of said Tract 5 (6361 O.R. 334), South  $64^{\circ}17'11''$  West, 77.77 feet to an angle point on the generally southern line of said land underlying said aerial easement (Doc. 95-028117);

Thence along said generally southern line of said land underlying said aerial easement (Doc. 95-028117) the following five courses:

1. North  $09^{\circ}10'00''$  West, 85.90 feet to the beginning of a nontangent curve concave southerly, having a radius of 1457.00 feet and a central angle of  $12^{\circ}33'12''$ , from which beginning the radius point bears South  $01^{\circ}08'14''$  West;
2. Along said curve to the left, an arc distance of 319.22 feet to a point of tangency;
3. South  $78^{\circ}35'02''$  West, 301.18 feet;

4. South  $77^{\circ}23'57''$  West, 93.57 feet to the beginning of a curve concave northerly, having a radius of 295.00 feet and a central angle of  $58^{\circ}05'18''$ ;

5. Along said curve to the right, an arc distance of 299.08 feet to a point on the generally northwest line of said Parcel 2 (Doc. 79-034788), being an angle point from which the radius point bears North  $45^{\circ}29'15''$  East;

Thence along said generally northwest line of said Parcel 2 (Doc. 79-034788) North  $78^{\circ}23'41''$  East, 168.32 feet to the western most corner of Parcel 2 described in that certain Grant Deed from the City of Oakland to the State of California, recorded February 3, 1995, as Doc. No. 95-028117 of Official Records, in the Office of the Recorder of Alameda County (hereinafter referred to as Doc. 95-028117), said corner being marked by a railroad spike in asphalt, as shown on said Record of Survey No. 1687;

Thence along the generally southern line of said Parcel 2 (Doc. 95-028117) the following six courses:

1. North  $89^{\circ}46'56''$  East, 212.20 feet;
2. North  $85^{\circ}56'18''$  East, 430.96 feet;
3. North  $60^{\circ}51'27''$  East, 202.98 feet to the beginning of a nontangent curve concave southerly, having a radius of 1492.00 feet and a central angle of  $6^{\circ}52'33''$ , from which beginning the radius point bears South  $03^{\circ}12'08''$  West;

4. Along said curve to the right, an arc distance of 179.05 feet to an angle point from which the radius point bears South  $10^{\circ}04'41''$  West;

5. South  $20^{\circ}40'48''$  East, 21.16 feet to an angle point marked by a 1" iron pipe and CalTrans cap, as shown on said Record of Survey No. 1687;

6. North  $69^{\circ}19'13''$  East, 78.44 feet to a point on the generally northeast line of said Parcel 2 (Doc. 79-034788), being the beginning of a nontangent curve concave southwesterly, having a radius of 571.21 feet and a central angle of  $4^{\circ}19'29''$ , from which beginning the radius point bears South  $28^{\circ}56'43''$  West, said point being marked by a 1" iron pipe and CalTrans cap, as shown on said Record of Survey No. 1687;

Thence along the generally northeast line of said Parcel 2 (Doc. 79-034788) the following two courses:

1. Along said curve to the right, an arc distance of 43.12 feet to a point of tangency marked by a 1" iron pipe and CalTrans cap, as shown on said Record of Survey No. 1687;

2. South  $56^{\circ}43'48''$  East, 98.27 feet to the POINT OF BEGINNING, containing 127,320 square feet (2.923 acres), more or less, measured in ground distances.

Bearings and distances called for herein are based upon the California Coordinate System, Zone III, North American Datum of 1983 (1986 values) as shown upon that certain map entitled Record of Survey 990, filed in Book 18 of Record of Surveys, Pages 50-60, Alameda County Records unless otherwise indicated. To obtain ground level distances, multiply distances called for herein by 1.0000705.

(p) "OARB MOA" means the document entitled "Memorandum of Agreement for Oakland Army Base Among the Oakland Base Reuse Authority, the Oakland Redevelopment Agency, the City of Oakland, a Municipal Corporation, Acting by and through its City Council, and the City of Oakland, a Municipal Corporation, Acting by and through its Board of Port Commissioners," dated July 8, 2003.

(q) "OARB redevelopment property" means the EDC property, the Port Sliver parcels, and the OARB adjacent parcels.

(r) "OARB trust lands" means all lands, including tidelands, within the OARB redevelopment property that are presently subject to the public trust or will be subject to the trust following a trust exchange.

(s) "OBRA" means the Oakland Base Reuse Authority, a joint powers agency.

(t) "Port" or "Port of Oakland" means the Port Department of the City of Oakland established by the Charter of the City of Oakland, exclusive control and management of which the charter vests in the Board of Port Commissioners.

(u) "Port development area" means that portion of the OARB redevelopment property located within the area defined as the Port of Oakland development area in the reuse plan.

(v) "Port Sliver parcels" means all that real property situated in the City of Oakland, California, comprised of portions of the property granted to the city by the 1911 grant, and more particularly described as follows:

PARCEL 1, A portion of the lands described as Parcel 2 in that certain Quitclaim Deed between the State of California and the City of Oakland, recorded February 23, 1979, as Doc. No. 79-034788 of Official Records, in the Office of the Recorder of Alameda County (hereinafter referred to as Doc. 79-034788), being more particularly described as follows:

COMMENCING at City of Oakland monument No. 7SE13, said monument being a pin set in concrete, in a monument well marking the intersection of the centerlines of Maritime Street and 10th Street, as said streets are shown on that unrecorded map entitled "Oakland Army Terminal Boundary Map" prepared by Wilsey & Ham Engineers in 1958 for the U.S. Army Corps of Engineers, File No. 45-I-286 (hereinafter referred to as the Army Map), said monument is further described as being Port of Oakland Monument ID H006 as shown upon Record of

Survey 990, filed for record in Book 18 of Records of Surveys, at Pages 50-60, Alameda County Official Records;

Thence North  $06^{\circ}22'58''$  West, 3704.99 feet to the western most corner of said Parcel 2 (Doc. 79-034788), said corner being marked by a concrete nail and CalTrans tag set flush, as shown on Record of Survey No. 1687, filed in Book 25 of Records of Surveys, at Pages 58-69, Alameda County Official Records, and being the POINT OF BEGINNING of Parcel 1 as herein described;

Thence along the western and generally northern lines of said Parcel 2 (Doc. 79-034788) the following three courses:

1. North  $21^{\circ}36'13''$  East, 249.00 feet to an angle point marked by a 1" iron pipe and CalTrans cap under a cyclone fence, as shown on said Record of Survey No. 1687;

2. North  $75^{\circ}30'42''$  East, 642.22 feet to an angle point marked by a 1" iron pipe and CalTrans cap, as shown on said Record of Survey No. 1687;

3. North  $78^{\circ}23'41''$  East, 230.24 feet to the western most corner of Parcel 1 described in that certain Grant Deed from the City of Oakland to the State of California, recorded February 3, 1995, as Doc. No. 95-028117 of Official Records, in the Office of the Recorder of Alameda County (hereinafter referred to as Doc. 95-028117), said corner being the beginning of a nontangent curve concave northerly, having a radius of 295.00 feet and a central angle of  $58^{\circ}05'18''$ , from which beginning the radius point bears North  $45^{\circ}29'15''$  East;

Thence along the generally southern line of said Parcel 1 (Doc. 95-028117) the following five courses:

1. along said curve to the left, an arc distance of 299.08 feet to a point of tangency;

2. North  $77^{\circ}23'57''$  East, 93.57 feet;

3. North  $78^{\circ}35'02''$  East, 301.18 feet to the beginning of a curve concave southeasterly, having a radius of 1457.00 feet and a central angle of  $12^{\circ}33'12''$ ;

4. along said curve to the right, an arc distance of 319.22 feet to an angle point from which the radius point bears South  $01^{\circ}08'14''$  West;

5. South  $09^{\circ}10'00''$  East, 85.90 feet to a point on the northwest line of the lands described in that certain Final Judgment as to Tract 5, United States of America vs. City of Oakland, State of California, et al., Case No. 21930-L, District Court of the United States in and for the Northern District of California, Southern Division, recorded February 16, 1951, in Book 6361 of Official Records, Page 334 in the Office of the Recorder of Alameda County (hereinafter referred to as 6361 O.R. 334);

Thence along the generally northwest line of said Tract 5 (6361 O.R. 334), South  $64^{\circ}17'11''$  West, 319.86 feet to a point on the generally

southern line of Parcel "S" described in that certain Indenture and Conveyance by and between the State of California, acting by and through its Department of Public Works and the California Toll Bridge Authority, and the City of Oakland, a municipal corporation, acting by and through its Board of Port Commissioners, recorded February 17, 1942, in Book 4186 of Official Records, Page 156, in the Office of the Recorder of Alameda County (hereinafter referred to as 4186 O.R. 156);

Thence along said generally southern line of said Parcel "S" (4186 O.R. 156), South  $81^{\circ}36'26''$  West, 1660.88 feet to the POINT OF BEGINNING, containing 416,298 square feet (9.557 acres), more or less, measured in ground distances.

PARCEL 2, A portion of the lands described in that certain act of the Legislature of the State of California entitled "An act granting certain tidelands and submerged lands of the State of California to the City of Oakland and regulating the management, use and control thereof," approved May 1, 1911, as Chapter 657 of Statutes of 1911, and amendatory acts, more particularly described as follows:

COMMENCING at City of Oakland monument No. 7SE13, said monument being a pin set in concrete, in a monument well marking the intersection of the centerlines of Maritime Street and 10th Street, as said streets are shown on that unrecorded map entitled "Oakland Army Terminal Boundary Map" prepared by Wilsey & Ham Engineers in 1958 for the U.S. Army Corps of Engineers, File No. 45-I-286 (hereinafter referred to as the Army Map), said monument is further described as being Port of Oakland Monument ID H006 as shown upon Record of Survey 990, filed for record in Book 18 of Records of Surveys, at Pages 50-60, Alameda County Official Records;

Thence South  $38^{\circ}00'05''$  West, 989.35 feet to the eastern most corner of Parcel Seven as described in that certain Quitclaim Deed, recorded June 15, 1999, as Doc. No. 99-222447 of Official Records, in the Office of the Recorder of Alameda County (hereinafter referred to as Doc. 99-222447), being a point on the agreed-upon location of the "Low Tide Line of 1852" as described in City of Oakland Ordinance No. 3099, a certified copy of which was recorded on October 10, 1910, in Book 1837 of Deeds, Page 84, in the Office of the Recorder of Alameda County (hereinafter referred to as 1837 Deeds 84), said point being marked by a pin set in concrete in a monument well, as shown on said Army Map;

Thence northeasterly along said agreed-upon location of the "Low Tide Line of 1852" (1837 Deeds 84) North  $41^{\circ}00'50''$  East, 3829.19 feet;

Thence departing from the said agreed-upon location of the "Low Tide Line of 1852", North  $48^{\circ}48'07''$  West, 1380.09 feet to a point on the generally southern line of Parcel 1, Tract 14 as described in said

Final Judgment as to Interests of Defendant City of Oakland, A Municipal Corporation, United States of America vs. City of Oakland et al., Case No. 21758-L, Case No. 21930-L, Case No. 22084-L (Reel: 32, Image: 660), being the POINT OF BEGINNING of Parcel 2 as herein described;

Thence along the generally southern line of said Parcel 1 (Reel: 32, Image: 660) the following two courses:

1. North  $86^{\circ}48'30''$  East, 461.63 feet to an angle point;

2. South  $08^{\circ}03'07''$  West, 385.68 feet to a point on a line that bears North  $48^{\circ}48'07''$  West from the herein above described Point "A";

Thence North  $48^{\circ}48'07''$  West, 540.75 feet to the POINT OF BEGINNING, containing 87,323 square feet (2.005 acres), more or less, measured in ground distances.

Bearings and distances called for herein are based upon the California Coordinate System, Zone III, North American Datum of 1983 (1986 values) as shown upon that certain map entitled Record of Survey 990, filed in Book 18 of Record of Surveys, Pages 50-60, Alameda County Records unless otherwise indicated. To obtain ground level distances, multiply distances called for herein by 1.0000705.

(w) "Public trust" or "trust" means the public trust for commerce, navigation, and fisheries.

(x) "RAP/RMP" means the "Final Remedial Action Plan, Oakland Army Base, Oakland, California" and "Final Risk Management Plan, Oakland Army Base, Oakland, California" prepared by OBRA and approved by DTSC on September 27, 2002.

(y) "Reuse plan" means the document entitled "Oakland Base Reuse Authority - Gateway to the East Bay: Final Reuse Plan for the Oakland Army Base adopted July 31, 2002."

(z) "Tidelands" means lands waterward of the ordinary high water mark, and includes submerged lands.

(aa) "Town grant" means Chapter 107 of the Statutes of 1852.

(bb) "Trustee" or "trustees" means OBRA, ORA, the city, and the port, to the extent these entities are authorized by this act or the 1911 grant to administer OARB trust lands.

SEC. 3. The Legislature finds and declares all of the following:

(a) The purpose of this act is to resolve public trust title uncertainties in the lands comprising the Oakland Army Base redevelopment property, and to facilitate the productive reuse of those lands in a manner that will further the purposes of the trust. To effectuate this purpose, this act approves and authorizes the commission to carry out a boundary settlement and trust exchange under which those lands having the greatest value to the trust will be exchanged into the trust, and those lands that are not needed for trust purposes will be exchanged out of the trust.

(b) The OARB redevelopment property includes lands that, at the time California became a state, were tidelands. By virtue of its sovereignty, the state acquired title to these lands in trust for the people of the state for purposes of commerce, navigation, and fisheries.

(c) The lands comprising that portion of the OARB redevelopment property north of the 1862 Oakland city charter line, established by Section 2 of Chapter 294 of the Statutes of 1862, were conveyed by the state into private ownership pursuant to Chapter 388 of the Statutes of 1869-1870. These lands were filled prior to 1980 and were freed of the trust by application of the holding and decision of the California Supreme Court in *City of Berkeley v. Superior Court* (1980) 26 Cal. 3d 515.

(d) The remaining tidelands within the OARB redevelopment property were granted to the Town of Oakland and later the City of Oakland by the Legislature. Through a series of grants, including in particular the town grant and the 1911 grant, the State of California granted to the Town of Oakland and later the City of Oakland, subject to certain reservations, all the right, title, and interest of the State of California held by the state by virtue of its sovereignty in and to certain tidelands therein described to be forever held by the city and by its successors in trust.

(e) The location of tidelands within OARB redevelopment property is subject to uncertainty that could result in lengthy land title litigation. The factors bearing on the uncertainty as to the extent of tidelands within the OARB redevelopment property include, but are not limited to, legal questions concerning an 1852 transfer of tidelands along the Oakland waterfront to a private party by the Town of Oakland; the effect of subsequent litigation and court decisions concerning that transfer; and the basis and validity of a 1910 boundary line agreement entered into by the City of Oakland and a private party within the OARB redevelopment property purporting to establish the waterward boundary of lands transferred by the Town of Oakland to a private party in 1852 at what is now the eastern line of Maritime Street.

(f) Through a series of acquisitions and condemnation actions beginning in 1941, the United States Army obtained title to what came to be known as the Oakland Army Base. The United States acquired the entirety of the EDC property west of the eastern line of Maritime Street through several condemnation actions, which culminated in a stipulated final judgment in 1952 in *United States v. 72 Acres of Land*, N.D. Cal. Nos. 21758-L, 21930-L and 22084-L.

(g) The former Oakland Army Base was used by the United States from 1941 until it was closed in 1999, primarily as an Army cargo and distribution facility. Pursuant to the Defense Base Closure and Realignment Act of 1990 (Part A of Title XXIX of P.L. 101-510), the

base was designated for closure in 1995. OBRA was created in 1995 and is the legally recognized local reuse authority for the base under the base closure process. In 1999, the base was closed and OBRA assumed management and control of most of the base. In August 2003, the Army transferred the EDC property to OBRA as a no-cost economic development conveyance. Under federal base closure law, OBRA is required to reinvest proceeds generated at or received from the base for employment generation and economic development of the base for a period of seven years following conveyance.

(h) To address hazardous substances on the EDC property, OBRA commissioned, and DTSC approved in 2002, the RAP/RMP, which set forth cleanup obligations and standards and established risk management protocols for the EDC property. In 2003, OBRA, ORA, and DTSC entered into the consent agreement, providing a schedule for implementing the RAP/RMP, and the Covenant to Restrict Use of Property, establishing use limitations to ensure that future use and development of the EDC property is consistent with the protection of human health and the environment. Prior to the transfer of the EDC property from the Army to OBRA, the Army issued a Finding of Suitability for Early Transfer (FOSET) pursuant to Section 120(h)(3)(C) of the Comprehensive Environmental Response Compensation and Liability Act (CERCLA) (42 U.S.C. Section 9620(h)(3)(C)) and U.S. Department of Defense guidance (1998). In the FOSET, the Army determined that: (1) use restrictions placed on the EDC property through the Covenant to Restrict Use of Property assured protection of human health and the environment; (2) the response actions and risk management protocols identified in the RAP/RMP will assure remediation of the EDC property; (3) the schedule for undertaking those actions is adequately set forth in the consent agreement; and (4) there are adequate funds available to ensure completion of the remediation. Based on the findings in the FOSET and additional financial assurances from the city, OBRA, ORA, and the port to ensure completion of the remediation, the Governor, in accordance with Section 120(h)(3)(C) of CERCLA, concurred with the Army that the EDC property was suitable for early transfer and deferred the covenant required by Section 120(h)(3)(B) of CERCLA.

(i) In anticipation of the transfer of the EDC property to OBRA, the city and the port worked together on a reuse and redevelopment vision for the base, culminating in OBRA's adoption of a final reuse plan for the OARB redevelopment property in 2002. The reuse plan was designed to maximize trust benefits by identifying the optimal configuration of trust lands given current and anticipated port needs, potential waterfront recreational opportunities, and the desire to minimize bay fill.



(j) The reuse plan contemplates a port development area of approximately 235 acres adjacent to the port's existing Oakland Outer Harbor terminals. OBRA has transferred to the port approximately 20 acres of land that is presently filled and 50 acres of land that is presently submerged within the port development area west of the eastern line of Maritime Street. Most of the lands in the proposed port development area are located in the portion of the OARB redevelopment property east of Maritime Street, and will later be transferred by OBRA to the port. The port is also seeking to acquire certain interests in the OARB adjacent parcels, which are essential for the port to acquire in order for the port to meet the year 2020 cargo throughput demand forecasts in BCDC's San Francisco Bay Area Seaport Plan. The acquisition of the port development area lands will allow the port to consolidate and reconfigure its existing terminals, expand its cargo capacity, create a new larger and more productive Joint Intermodal Rail Terminal, and construct its proposed Berth 21 project. The port development program was designed to allow the port to achieve the year 2020 cargo throughput demand forecasts set forth in the BCDC's San Francisco Bay Area Seaport Plan. The port has estimated that, as a result of the increased capacity and more efficient design of port facilities made possible by the development of the port development area, overall cargo throughput at the port's maritime facilities could be increased by approximately 500,000 metric tons, exceeding the throughput demand forecasts contained in the seaport plan and conferring a substantial benefit on the region and the state.

(k) The Gateway development area is situated adjacent to the Bay Bridge touchdown in Oakland at the point of entry to Oakland and the East Bay. The reuse plan proposes a mixed-use development plan to revitalize this area and to satisfy OBRA's federal job-creation and redevelopment obligations. OBRA has proposed the development of a high-quality destination open-space park that would encompass the entire existing waterfront within the proposed Gateway development area. Development of this park would open almost a mile of previously inaccessible waterfront to the public for recreational purposes, and would directly connect with lands currently held by the federal government to the west of the OARB redevelopment property anticipated for use in the future as a shoreline regional park. The remaining lands in the Gateway development area would be developed for a variety of commercial or light industrial uses which would create significant economic and employment benefits for Oakland.

(l) Over the past several decades, the community of west Oakland has experienced a sharp decline in economic vitality as a result of a decline in Oakland's industrial base. In 2000, the city approved and adopted the Oakland Army Base Area Redevelopment Plan for the

Oakland Army Base Area Redevelopment Project, pursuant to the Community Redevelopment Law (Part 1 (commencing with Section 33000) of Division 24 of the Health and Safety Code). The redevelopment project area includes the OARB redevelopment property. The redevelopment project is intended to mitigate the economic and social degradation faced by the city due to the closure of the Army base by redesigning and redeveloping portions of the project area which are improperly utilized, improving pedestrian and vehicular circulation, and constructing and installing infrastructure and other improvements to stimulate new development, employment, and social and economic growth. The city and OBRA anticipate that ORA will succeed to OBRA's interest in the Gateway development area portion of the OARB redevelopment property.

(m) In recognition of the improved efficiencies and increased maritime cargo capability that the reconfigured port marine terminals and Joint Intermodal Rail Terminal would provide, and to ensure the availability of adequate land for port ancillary uses, including trucking uses, BCDC amended the San Francisco Bay plan and the San Francisco Bay Area seaport plan in 2001 to add certain lands to its designated port priority use area, retain the port priority use designation over the port development area and a portion of the Gateway development area, and remove the designation from the remainder of the Gateway development area. BCDC determined that the additional port priority use acreage for port ancillary uses is sufficient to meet the need for directly related port ancillary uses at the Port of Oakland.

(n) The historical circumstances surrounding the grants and conveyances of tidelands within the OARB redevelopment property, the 1910 boundary line agreement, the fact and manner of the federal government's acquisition of tidelands for OARB, and other factors relating to the state's public trust claims have all created uncertainties as to the nature and extent of the state's sovereign interest in the OARB redevelopment property. These legal uncertainties, including trial litigation and possible appeals from trial court rulings, would delay development of the OARB redevelopment property for years, to the detriment of its use for both public trust and nonpublic trust purposes. It is in the best interests of the people of the state to resolve these uncertainties in a manner that furthers trust purposes.

(o) A configuration of trust lands that is based on the 1910 boundary line agreement would not reflect current and anticipated trust needs. The lands east of Maritime Street within the port development area are needed to expand the port's terminal and transportation capacity and meet BCDC's 2020 cargo throughput demand forecasts. The lands west of the eastern line of Maritime Street within the Gateway development area

are not needed to meet these forecasts. The waterfront portion of these lands is better suited for park and recreational purposes, and the landward portion is no longer needed for trust purposes.

(p) (1) A trust exchange is needed to confirm the state's sovereign interest in lands within the OARB redevelopment property and to place the trust on the lands of greatest value to the trust. A trust exchange that substantially reflects the proposed trust land configuration illustrated in Section 16 and that complies with the requirements of this act will further trust purposes and substantially benefit the trust while allowing OBRA to achieve redevelopment goals set forth in the reuse plan and state redevelopment law and to satisfy federal reinvestment obligations.

(2) The diagram in Section 16 reflects the configuration of trust lands that is most advantageous to the public trust in light of all relevant considerations, including, but not limited to, port improvement plans, public access, and other present and anticipated future trust needs; legal and factual uncertainties in existing trust title; port ancillary uses; current and anticipated future transportation needs; and the city's redevelopment and reinvestment obligations.

(q) Following the exchange, all lands within the OARB redevelopment property immediately adjacent to the waterfront, as well as certain interior lands that have high trust values, will be subject to the public trust. The lands on which the trust will be terminated pursuant to the exchange have been or will be cut off from navigable waters, are no longer needed or required for the promotion of the public trust, and constitute a relatively small portion of the lands originally granted to the city. The port's Berth 21 project is part of a highly beneficial program of harbor development that will require the filling with solid earth of approximately 28 acres of land below the present line of mean high tide, including a strip of approximately 0.84 acres that is located in the Gateway development area. The findings required by this act will ensure that the trust is not terminated on this strip of land pursuant to an exchange until it has been filled and cut off from the waterfront. With the exception of this strip, all lands on which the trust will be terminated have already been filled and cut off from navigable waters as the result of a highly beneficial program of harbor development. This act requires that the commission ensure that the lands added to the trust pursuant to the exchange are of equal or greater value than the lands taken out of the trust.

(r) The OARB adjacent parcels are not part of the EDC property that was transferred to OBRA, but are located within the OARB redevelopment property, and are included in the port development area or the Gateway development area. The city, OBRA, ORA, and the port are seeking to acquire title or certain other rights and interests in these

lands. This act authorizes the commission to incorporate the OARB adjacent parcels into the trust exchange as necessary and appropriate to further trust purposes.

(s) This legislation advances the purposes of the Defense Base Closure and Realignment Act of 1990 (Part A of Title XXIX of P.L. 101-510), the Community Redevelopment Law (Part 1 (commencing with Section 33000) of Division 24 of the Health and Safety Code), and the public trust, and is in the best interests of the people of this state.

SEC. 4. Except for the portions of the EDC property in which OBRA has previously transferred to the port all of OBRA's right, title, and interest, which shall be held by the port subject to the public trust and the requirements and reservations set forth in the 1911 grant and this act, all of the state's right, title, and interest in the lands within the EDC property, including any right, title, and interest in such lands currently held by the city by virtue of a prior grant from the state, are granted to and vested in OBRA, subject to the public trust and the requirements and reservations set forth in the 1911 grant and this act, and subject to agreements among OBRA, ORA, the city, and the port providing for the transfer to the port of other portions of the EDC property included within the port development area, to the extent that those agreements and any of their terms, conditions, and covenants are consistent with applicable law related to the public trust.

SEC. 5. Nothing in this act shall be construed as granting, conveying, extinguishing, or limiting any property interest in the OARB redevelopment property held by the California Department of Transportation in its proprietary capacity.

SEC. 6. (a) Notwithstanding the restrictions on alienation in the 1911 grant, OARB trust lands may be conveyed by and among OBRA, ORA, the city, and the port in accordance with applicable requirements, of the Charter of the City of Oakland, other applicable legal requirements, and any applicable contractual requirements, provided that any contractual requirements are consistent with applicable law related to the public trust. Any such conveyance for which conveyance documents are executed after the recordation of an exchange agreement authorized by this act shall require the prior approval of the commission, which shall not be unreasonably withheld. Upon acquiring fee title in any OARB trust lands pursuant to such conveyance or pursuant to an exchange, OBRA, ORA, the city, or the port shall succeed to all of the state's sovereign right, title, and interest in those lands, subject to the requirements of this act and the 1911 grant, and shall become the trustee for those lands.

(b) Notwithstanding subdivision (a) of this section, at such time that the Oakland Army Base Area Redevelopment Plan terminates, or on

January 1, 2045, whichever is earlier, the city (including the port) shall become the sole grantee of OARB trust lands, unless an extension is approved by the commission. This subdivision shall not apply to any OARB trust lands for which fee title is held by a state agency.

SEC. 7. Each trustee may use, conduct, operate, maintain, manage, administer, regulate, improve, lease, and control the OARB trust lands it owns and may do all things necessary in connection with that authority that conform with the terms of this act, the 1911 grant, and the public trust, including the development of public open space and recreational facilities.

SEC. 8. Monetary contributions by the port to a community trust fund established or funded by the city, OBRA, or ORA in connection with redevelopment of the EDC property shall be used only for uses and purposes consistent with the trust and the requirements of this act. Contributions by the port to this community trust fund shall not exceed a total of two million dollars (\$2,000,000). The trustee with control or supervisory authority over the community trust fund (hereinafter "supervisory trustee") shall separately account for, and provide the commission an annual statement of, all moneys received from the port and expenditures of those moneys. Prior to expending any community trust fund moneys received from the port, the supervisory trustee shall provide commission staff with a list and description of potential projects that would be funded in whole or in part with those moneys. Within 90 days of the submittal of the list to the commission staff, the executive officer of the commission shall either approve the list or notify the supervisory trustee which projects on the list are not consistent with the public trust. The supervisory trustee may appeal to the commission any decision by the executive officer to disapprove some or all of the projects on the list. No port moneys shall be spent on community trust fund projects unless both of the following conditions are met:

- (a) The executive officer or the commission has approved one or more of the potential projects on the list.
- (b) The expenditures are for one or more of the approved projects that are on the list.

SEC. 9. The Legislature hereby approves an exchange of public trust lands within the OARB redevelopment property, whereby certain lands that meet the criteria set forth in this act and are not now useful for public trust purposes will be freed from the public trust and may be conveyed free of any trust interest, and certain other lands that are useful for public trust purposes will be made subject to the public trust, provided that the exchange results in a configuration of trust lands substantially similar to that shown on the diagram in Section 16 of this act and otherwise complies with the requirements of this act.

SEC. 10. All lands exchanged into the trust under this act shall be held by the appropriate trustee or trustees subject to the public trust, and the requirements of this act and the 1911 grant, and all lands exchanged out of the trust under this act shall be free of the public trust, the requirements of this act, the town grant, and the 1911 grant.

SEC. 11. The precise boundaries of the lands to be exchanged shall be determined by the trustees with trustee authority over the lands to be exchanged, subject to the approval of the commission. The commission is authorized to settle by agreement with the appropriate trustees any disputes as to the location of the mean high water line in its last natural state, the boundaries of tidelands conveyed into private ownership pursuant to various statutes, and any other boundary lines which the commission deems necessary to effectuate the exchange. The commission may include any of the OARB adjacent parcels in the exchange if it determines that the inclusion of these lands would be substantially consistent with the configuration of trust lands shown in the diagram in Section 16 of this act and would otherwise satisfy the requirements of this act. Nothing in this act shall be construed as limiting the authority of the commission to approve additional trust land exchanges or to enter into boundary settlements involving the OARB redevelopment property pursuant to any other provision of law.

SEC. 12. (a) The commission is authorized to approve an exchange of public trust lands within the OARB redevelopment property that meets the requirements of this act. Pursuant to this authority, the commission shall establish appropriate procedures for effectuating the exchange. The procedures shall include provisions for ensuring that the requirements specified in either paragraph (1) or (2) have occurred:

(1) Property to be received or confirmed in public trust ownership has been remediated consistent with the requirements of the RAP/RMP and Consent Agreement, and there are no land use covenants or restrictions on the property, other than the existing Covenant to Restrict Use of Property, that impede its use for public trust purposes, unless approved by the commission.

(2) Sufficient protections are in place to ensure that the remedial actions for property to be received or confirmed in public trust ownership will be completed consistent with the timeframe and standards set forth in the RAP/RMP and Consent Agreement, and there are no land use covenants or restrictions on the property, other than the existing Covenant to Restrict Use of Property, that impede its use for public trust purposes, unless approved by the commission. Protections may be demonstrated by a showing of sufficient financial assurances consistent with Oakland Base Reuse Authority Resolution No. 2003-13, Port of Oakland Resolution No. 03150, Oakland City Council Resolution No. 77857, and

Oakland Redevelopment Agency Resolution No. 2003-29, as those resolutions read on January 1, 2004, and may include insurance, third-party indemnifications, and sufficient funds to complete remediation.

(3) The commission may consult with DTSC regarding the factors stated in paragraphs (1) and (2).

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

(1) The configuration of OARB trust lands upon completion of the exchange will not differ significantly from the configuration shown on the diagram in Section 16 of this act, includes all lands within the OARB redevelopment property that are below mean high tide at the time of the exchange, with the exception of the strip of submerged land within the Gateway development area that will be filled and cut off from the waterfront by the Berth 21 project described in subdivision (q) of Section 3 of this act, and consists of lands suitable to be impressed with the public trust.

(2) The final layout of streets in the Gateway development area and the port development area will provide public vehicular, pedestrian, and bicycle access to the public trust lands within those respective areas, and through those areas to the lands adjoining the Gateway development area on its westerly side, and will be consistent with the beneficial use of those lands.

(3) 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. The commission may take into consideration the degree of uncertainty, if any, as to whether the lands are presently subject to the trust.

(4) The lands to be taken out of the trust have been filled and reclaimed as the result of a highly beneficial program of harbor development, are cut off from access to navigable waters, are no longer needed or required for the promotion of the public trust, and constitute a relatively small portion of the lands originally granted to the city, and that the exchange will not result in substantial interference with trust uses and purposes.

(5) The OARB MOA has been amended to eliminate the concept of the "City Cash-Out Remedy" as defined in Section 1.1(a)(17) and as referenced in Sections 2.2(d), 3.3(c)(1), 4.1, 5.1(b)(2), 5.1(c)(2), 5.1(e), 6.2(b)(3), 6.5, 8.4, 11.17, and elsewhere in the OARB MOA, or in any amendment to the OARB MOA.

(6) Each trustee, and any state agency, which owns fee title in any of the lands to be exchanged has approved the exchange.

(c) The commission shall impose additional conditions on the exchange authorized by this act if the commission determines that these conditions are necessary for the protection of the public trust.

(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 trustees, including lands that are now and that will remain subject to the public trust.

(2) Convey to the trustees 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 trustees 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 terms of this act and the 1911 grant 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.

(4) This subdivision shall not be construed as authorizing the commission to convey to the trustees any property interest in the OARB redevelopment property held by the California Department of Transportation in its proprietary capacity as of the date of the conveyance.

SEC. 13. Any agreement for the exchange of, or trust termination over, granted lands, or to establish boundary lines, entered into pursuant to this act, 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. 14. (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 by the parties to any agreement entered into pursuant to this act to confirm the validity of the agreement. Notwithstanding any provision of 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 whether the agreement meets the requirements of this act, Sections 3 and 4 of Article X of the California Constitution, 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, any settlement or exchange 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

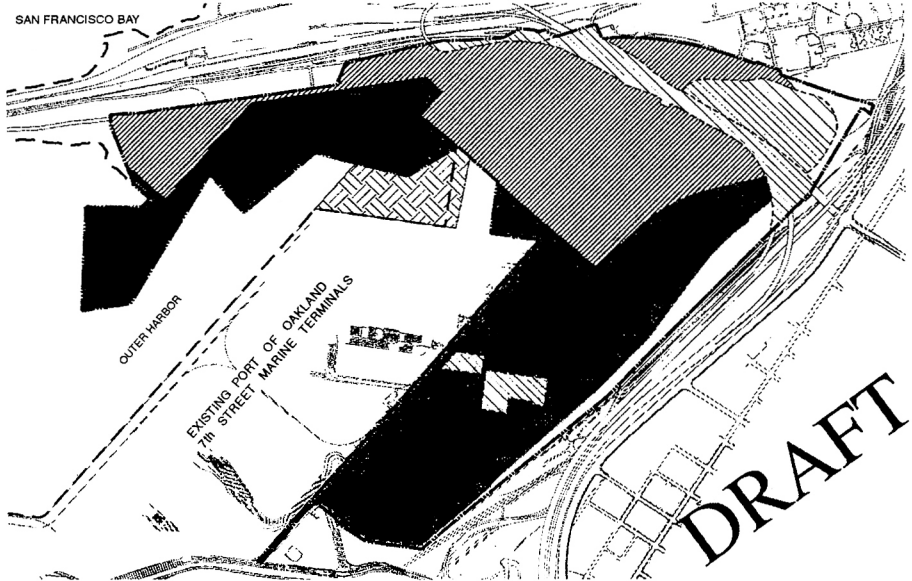









Governor. The effective date of the agreement shall be deemed to be the date on which it is executed by the Governor pursuant to Section 6107 of the Public Resources Code.

SEC. 15. Notwithstanding Section 6359 of the Public Resources Code or any other provision of law, the grant of trust lands authorized herein shall be deemed effective as of the effective date of this act.

SEC. 16. The following diagram is a part of this act:

### OAKLAND ARMY BASE PUBLIC TRUST EXCHANGE ACT



-  OAKLAND ARMY BASE (OARB) REDEVELOPMENT PROPERTY
-  EXISTING WATERFRONT LINE
-  LANDS WITHIN OARB REDEVELOPMENT PROPERTY SUBJECT TO THE PUBLIC TRUST UPON COMPLETION OF THE EXCHANGE
-  LANDS WITHIN OARB REDEVELOPMENT PROPERTY FREE OF THE PUBLIC TRUST UPON COMPLETION OF THE EXCHANGE
-  OARB ADJACENT PARCELS
-  "BERTH 21" TRUST LANDS TO BE DREDGED
-  "BERTH 21" TRUST LANDS TO BE FILLED



JUNE 2004