

CHAPTER 1238

An act to repeal Chapter 344 of the Statutes of 1913 and Chapter 542 of the Statutes of 1917, relating to tidelands and submerged lands and to convey certain tide and submerged lands to the City of Arcata.

[Approved by Governor October 1, 1989 Filed with
Secretary of State October 1, 1989]

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

SECTION 1. (a) There is hereby granted in trust to the City of Arcata, hereafter referred to as the "trustee" all of the right, title, and interest of the State of California, held by the state by virtue of its sovereignty in and to all tidelands and submerged lands, whether filled or unfilled, situated in the County of Humboldt and described in Section 13, hereafter referred to as "trust lands." The lands shall be held by the trustee and its successors in trust for the benefit of all the people of the state for purposes of commerce, navigation, and fisheries, and for other public trust purposes, including, but not limited to, preservation of the lands in their natural state for scientific study, open space, wildlife habitat, and recreational and visitor-oriented uses, as more particularly provided in this act.

(b) This trust grant is subject to the following express conditions:

(1) The use of the trust lands shall be in conformity with a trust lands use plan, as defined in Section 2.

(2) The trustee or its successors shall not at any time grant,

convey, give, or otherwise alienate the trust lands, or any part thereof, to any person, firm, entity, or corporation for any purposes whatsoever. The trustee may lease the trust lands, or any part thereof, for limited periods, not exceeding 50 years, for purposes consistent with the trust upon which those lands are held. The trustee may collect and retain rents and other trust revenues from those leases, under rules and regulations adopted in accordance with Section 2 and consistent with Section 5.

(3) In the management, conduct, operation, and control of the trust lands, or any improvement, betterments, or structures thereon, the trustee or its successors shall make no illegal discrimination in rates, tolls, or charges for any use or service in connection herewith, nor shall the trustee discriminate against or lawfully segregate any person or group of persons on account of sex, race, color, creed, national origin, ancestry, or physical handicap for any use or service in connection herewith.

(4) The state shall have the right to use, without charge, any transportation, landing, or storage improvements, betterments, or structures constructed upon the trust lands for any vessel or other watercraft or railroad owned or operated by or under contract to the state. The state's use of the facilities shall be governed by the trustee's rules and regulations.

(5) There is reserved to the people of the State of California the right to fish in the waters over the trust lands, with the right to convenient access to those waters over the trust lands for that purpose.

(6) There is excepted and reserved to the state all remains or artifacts of archaeological and historical significance and all deposits of minerals, including, but not limited to, all substances specified in Section 6407 of the Public Resources Code, in the trust lands, and the right to prospect for, mine, and remove those deposits from the lands

(7) The trustee shall not authorize a capital outlay project, lease, or agreement for port facilities, such as marine terminals, pipelines, or other related energy facilities on the granted lands without first requesting and receiving the approval, in writing, of the State Lands Commission. Prior to approving any such capital outlay project, lease, or agreement, the commission shall consult with other governmental agencies and shall determine that the project is in the best interests of the state and complies with applicable laws.

SEC. 2. (a) On or before January 1, 1994, the trustee shall submit to the State Lands Commission, hereafter referred to as the "commission," a trust lands use plan indicating details of intended development, preservation, or other use of the trust lands. The trustee shall thereafter submit to the commission for approval all changes of, amendments to, or extensions of the trust lands use plan. Any use of the trust lands shall be consistent with the trust lands use plan as approved by the commission.

(b) The commission shall review with reasonable promptness the

trust lands use plan submitted by the trustee and any changes or amendments to determine that they are consistent with the public trust and the requirements of this act. Based upon its review, the commission shall either approve or disapprove the plan. If the commission disapproves the plan, the commission shall furnish the trustee with its formal recommendations, and the trustee shall submit a revised plan to the commission within 180 days. If that revised plan is determined by the commission to be inconsistent with the public trust and the requirements of this act, all right, title, and interest of the trustee in and to the trust lands and improvements thereon shall revert to the state.

(c) The trust lands use plan may consist of any plan, program, or other document which includes all of the following:

(1) A general description of the type of uses planned or proposed for the trust lands. The location of these land uses shall be shown on a map or aerial photograph.

(2) The projected statewide benefit to be derived from the planned or proposed uses of the trust lands, including, but not limited to, the financial benefit and the furtherance of those purposes set forth in Section 1.

(3) The proposed method of financing the planned or proposed uses of the trust lands, including estimated capital costs, annual operating costs, and anticipated annual trust revenues.

(4) An estimated timetable for implementation of the trust lands use plan or any phase thereof.

(5) A description of how the trustee proposes to protect and preserve natural and manmade resources in connection with the use of the trust lands.

(d) The governing body of the trustee shall submit to the commission, for its approval, procedures, rules, and regulations to govern the use or development of the trust lands. These rules and regulations shall include, but not be limited to, lease rates, the bases upon which the rates are established, lease terms and conditions, provision for renegotiation of rates and terms and assignments, and other information as may be required by the commission.

(e) All leases or agreements proposed, or entered into, by any trustee after January 1, 1990, shall be consistent with the trust lands use plan submitted by the trustee and approved by the commission.

(f) Upon request, the trustee shall submit to the commission a copy of all leases and agreements entered into, renewed, or renegotiated.

SEC. 3. (a) On or before September 30 of every succeeding fifth year, commencing on September 30, 1991, the trustee shall submit a report of its utilization of the trust lands for each immediately preceding five-calendar-year period ending with June 30 of the calendar year in which the report is required to be submitted.

(b) The report shall include all of the following:

(1) A general description of the uses to which the trust lands have been placed during the period covered by the report.

(2) A list of the owners and holders of leases or permits granted or issued by the trustee, which list shall specify, as to each owner or holder, all of the following:

(A) The use to which the trust lands have been placed by the owner or holder.

(B) The consideration provided for in each lease or permit, and the consideration actually received by the trustee for the lease or permit granted or issued.

(3) An enumeration of the restrictions which the trustee has placed on the use of the trust lands and each area thereof for the period covered by the report.

SEC. 4. The trustee shall demonstrate good faith in carrying out its trust lands use plan and amending it when necessary in accordance with Section 2. If the commission determines that the trustee has substantially failed to improve, restore, preserve, or maintain the trust lands, as required by the trust lands use plan, in the time period set forth in paragraph (4) of subdivision (c) of Section 2, or has unreasonably delayed adopting that proposal, all right, title, and interest of the trustee in and to the trust lands and improvements thereon shall revert to the state.

SEC 5 (a) The trustee shall establish and maintain accounting procedures, in accordance with generally accepted accounting principles, providing accurate records of all revenues received from the trust lands and trust assets and of all expenditures of those revenues. If the trustee has several trust grants of adjacent lands and operates the granted lands as a single integrated entity, separation of accounting records for each trust grant is not required. All revenues received from trust lands and trust assets, hereafter referred to as "trust revenues," shall be expended only for those uses and purposes set forth in subdivision (a) of Section 1. The purpose of this requirement is to provide for the segregation of funds derived from the use of the trust lands in order to ensure that they are only expended to enhance the lands in accordance with the trust uses and purposes upon which the trust lands are held.

(b) Trust revenues may be used to acquire appropriate uplands to benefit and enhance the trust with the prior written consent of the commission. Property acquired with these trust revenues shall be considered an asset of the trust and subject to the terms and conditions of this act.

SEC 6. On or before October 1 of each year, the trustee shall file with the commission a detailed statement of all trust revenues and expenditures relating to its trust lands and trust assets, including obligations incurred but not yet paid, covering the fiscal year preceding submission of the statement. This statement shall be prepared according to generally accepted accounting principles and may take the form of an annual audit prepared by or for the trustee.

SEC. 7. (a) As to the expenditure of trust revenues for any single capital improvement on the trust lands involving an amount in excess of two hundred fifty thousand dollars (\$250,000) in the

aggregate, the trustee shall file with the commission a detailed description of the capital improvement not less than 90 days prior to the time of any disbursement therefor or in connection therewith.

(b) Within 90 days after the time of that filing, the commission shall determine whether the capital improvement is in the statewide interest and benefit and is consistent with the conditions of this act. The commission may request the opinion of the Attorney General on the matter; and, if it does so, a copy of that opinion shall be delivered to the trustee with the notice of its determination. If the commission notifies the trustee that the capital improvement is not authorized, the trustee shall not disburse any trust revenues for, or in connection with, the capital improvement, unless and until it is determined to be authorized by a final order or judgment of a court of competent jurisdiction.

(c) The trustee may bring suit against the state for the purpose of securing such an order or judgment, which suit shall have priority over all other civil matters. Service shall be made upon the executive officer of the commission and the Attorney General, and the Attorney General shall defend the state in that suit. If judgment is given against the state in the suit, no costs may be recovered.

SEC. 8 (a) On June 30, 1992, and at the end of every third fiscal year thereafter, that portion of the trustee's trust revenues in excess of two hundred fifty thousand dollars (\$250,000) remaining after current and accrued operating costs and expenditures directly related to the operation or maintenance of trust activities shall be deemed excess revenues.

(b) However, any funds deposited in a reserve fund for future capital expenditures or any funds used to retire bond issues for the improvement or operation of the granted lands shall not be deemed excess revenue. Any reserve fund for future capital expenditure shall be for projects that are consistent with the trust lands use plan required by Section 2 and have prior commission approval under Section 7 to be deemed nonexcess revenues. Capital improvements of the trust lands made for purposes authorized by this act may be considered as expenditures for the purpose of determining excess revenues.

(c) The excess revenues, as determined pursuant to this section, shall be allocated 85 percent to the Treasurer for deposit in the General Fund in the State Treasury and 15 percent to the trustee for expenditures consistent with this act.

SEC. 9. The commission shall, from time to time, institute a formal inquiry to determine that the terms and conditions of this act, and amendments thereto, have been complied with and that all other applicable provisions of law concerning the trust lands are being complied with in good faith.

SEC. 10. Reimbursement for any and all expenditures of nontrust revenues for management, maintenance, and improvements made to the trust shall be approved by the commission in advance of those expenditures, or the expenditures shall be deemed a gift to the trust.

SEC. 11. (a) Whenever the commission finds that the trustee has violated, or is about to violate, the terms of its trust grant or any other principle of law relating to its obligation under the public trust, the commission shall notify the trustee of the violations.

(b) The trustee shall have 30 days from receipt of that notice of violation to conform to the terms of its grant and the principles and laws under the public trust. If the trustee fails or refuses to so conform, the commission may bring such actions as are necessary to enforce the rights of the state and people pursuant to the public trust. The Attorney General shall represent the state and people in those actions or proceedings. If the judgment is given against the state in the action or proceeding, no costs may be recovered from the state.

SEC. 12. Section 6359 of the Public Resources Code does not apply to this act.

SEC. 13. The lands granted in Section 1 are those tidelands and submerged lands in Humboldt Bay, City of Arcata, Humboldt County, California described as follows:

(a) Parcel 1. Beginning at a point S89° 30'W 5.91 ch. (390.06 ft) and S31° 52'W 16.27 ch. (1,073.82 ft) from the center of Section 32, T6N, R1E, HM, Humboldt County, California; thence from that point of beginning north 250 ft to dike, thence N 75°W 1,750 ft following the south side of the dike and crossing Daniel's Slough to a point on the section line between Sections 31 and 32; thence westward following the south side of the dike to a point on that dike S79°W 6,450 ft; thence south 6,440 ft to a point due west of Beacon number 9; thence east 4,000 ft to a point 780 ft south of "pier," as marked on United States hydrographic chart Humboldt Bay survey 1911, sheet 3; thence N54° 30'E 2,375 ft to the end of the fourth course as recited in the description of the tidelands granted to the City of Arcata (approved June 11, 1913); thence N80°E 5,750 ft to a point on the west side of the right of way of the Northwestern Pacific Railroad Company; thence following the west line of the Northwestern Pacific Railroad Company's right-of-way to a point in the center of Butcher's Slough, N27° 50'W 4,500 ft; thence N52° 30'W 6.12 ch. (403.92 ft); thence N71° 30'W 4.05 ch. (267.30 ft); thence N53° 30'W 11.26 ch. (743.16 ft); thence N31° 30'W 2.06 ch. (135.96 ft) to the point of beginning.

(b) Parcel 2. Beginning in the center of Butcher Slough at a point which is distant 300 ft north from the quarter section line forming the south line of the northeast quarter of Section 32, T6N, R1E, HM; thence parallel to that quarter section line N89° 59'W 803.8 ft, more or less, to the east line of the the railroad right-of-way of the Arcata and Mad River Railroad Company, as defined in the deed from Elias Sharp dated January 6, 1876, and recorded in the office of the County Recorder of Humboldt County in Book "W" of Deeds, Page 578; thence S23° 45'W 35.6 ft to the north point of a parcel of land conveyed by William M Campbell to the California and Northern Railway Company by deed dated November 1, 1901, and recorded in the Recorder's Office in Book 77 of Deeds, Page 75; thence along the easterly line of that parcel S13° 39'W 275.7 ft, more or less, to the

southeast corner of the parcel, which corner is situated on the above-mentioned quarter section line; thence $S89^{\circ} 59'E$ on the quarter section line to the east line of the railroad right-of-way conveyed by R. W. Bull and wife to R. H. Emmerson and wife by deed recorded in the office of the County Recorder of Humboldt County, California, in Book 5 of the Official Records, Page 110; thence following that east line $S11^{\circ} 33'W$ 94.7 ft to the intersection of the east line with the east line of the right-of-way of the Northwestern Pacific Railroad Company; thence southerly following the easterly line of the railroad right-of-way to a point, this point is on the prolongation easterly of the southerly line of the existing sewage disposal plant sludge beds, and is on the north line of the road leading to the Arcata Sewage Disposal Plant as referred to in the deed from the City of Arcata to Durable Fir Lumber Company recorded February 27, 1952, in Book 199, Page 234, Document No. 2366, Humboldt County Official Records; thence $N57^{\circ} 40' 15"E$ along that prolongation and the north line of that road 34.58 ft to the west line of Old State Highway Route 101 (South "G" St.); thence northerly along the highway following the curve thereof, 154.44 ft to the end of the curve; thence $N15^{\circ} 27'W$ along the highway 484.72 ft; thence $N0^{\circ} 12'E$ along the highway 231.9 ft; thence $N15^{\circ} 50'E$ 890.13 ft along the highway to its intersection with the eastern terminus of the curve in the south end of the south line of the extension of "H" Street in the City of Arcata, as that extension was conveyed to the County of Humboldt by deed recorded September 22, 1934, in Book 216 of Deeds, Page 159, Humboldt County Records; thence still along that line of "H" Street extension in the northerly direction to a point that is distant 300 ft northerly along that street from the quarter section line first above-mentioned; thence parallel with that quarter section line to the middle of Butcher Slough in a westerly direction, and thence northerly on the same to the point of beginning.

(c) Parcel 3. Beginning at a point 303 ft west of the quarter section corner in the center of that Section 32; thence $N13^{\circ} 30'E$ 277 ft to a point distant 15 ft from and on the east side of the centerline of Arcata and Mad River Railroad as it existed on November 1, 1901; thence following a line parallel to and distant 15 ft from the center of that Arcata and Mad River Railroad $S31^{\circ} 25'W$ 316.5 ft to a line running east and west through the center of Section 32; thence east 106 ft to the point of beginning, excepting therefrom any portion thereof which lies westerly of the easterly line of a strip of land 66 ft wide, lying 33 ft on each side of the centerline of the main tract of the Northwestern Pacific Railroad Company.

(d) Parcel 4. Commencing at the quarter section corner in the center of that Section 32; thence along the quarter section line running east and west through the center of that section $N89^{\circ} 59' W$ 295.3 ft to the east line of the railroad right-of-way conveyed by Ralph W. Bull and wife to R. H. Emmerson and wife by deed recorded February 13, 1947, in Book 5 of Official Records Page 110, Recorder's File No. 1450, and the point of beginning of the parcel of land here

described; thence following that east line $S11^{\circ} 33'W$ 94.7 ft to the intersection of that east line with the easterly line of the right-of-way of the Northwestern Pacific Railroad Company; thence northerly along that easterly line to the north line of the northeast quarter of the southwest quarter of that Section 32; thence along that north line $S89^{\circ} 59'E$ to the point of beginning excepting therefrom any portion thereof that lies within a strip of land one foot wide, the centerline of which is described as follows:

Beginning at a point 1,745.42 ft south and 314.10 ft west of the concrete monument at the intersection of the centerline of Fifth and H Streets in the City of Arcata; and running thence from a tangent that bears $S6^{\circ} 56' 30''W$ along a curve to the right with a radius of 1,000 ft through an angle of $4^{\circ} 15'$, a distance of 74.27 ft; thence $S11^{\circ} 11' 30''W$ 97.96 ft; thence along a curve to the left with a radius of 55 ft through an angle of $50^{\circ} 4' 30''$, a distance of 48.07 ft; thence $S51^{\circ} 7'W$ 25.50 ft to the end of the herein described centerline.

SEC. 14. Chapter 344 of the Statutes of 1913 is repealed.

SEC. 15. Chapter 542 of the Statutes of 1917 is repealed.

SEC 16 No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because this act is in accordance with the request of a local agency or school district which desired legislative authority to carry out the program specified in this act. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.
