

CHAPTER 1742

*An act relating to lands, including tide and submerged lands, and, in this connection, to amend Section 6008 of the Public Resources Code.*

[Approved by Governor December 14, 1971. Filed with Secretary of State December 14, 1971.]

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

SECTION 1. As used in this act:

(a) "City" means the City of San Rafael, Marin County, California, and its predecessors or successors in interest.

(b) "San Rafael Creek" unless otherwise indicated means the waterway within the natural banks of the San Rafael Creek as it existed prior to dredging and realignment and upland reclamation.

(c) "Present waterway" means the presently existing navigable waterway sometimes referred to as San Rafael Canal or San Rafael Creek extending from San Rafael Bay to Irwin Street in the city, and includes dredged "cutoff" channels and all lands below the plane of mean high water that are subject to the ebb and flood of the tides.

(d) "Cutoff channels" are those parcels described in that certain deed from the city to the United States of America, recorded in 225 Deeds 431, and shown on that certain U.S. Army Corps of Engineers' map entitled "San Rafael Creek, California, Property Deeded to United States Government by City of San Rafael," dated March 30, 1920, U.S. Army Corps of Engineers File No. 55-1-4.

(e) "Granted lands" means those lands granted in trust to the city by virtue of Chapter 83 of the Statutes of 1923, as amended by Chapter 178 of the Statutes of 1967 and as amended by Chapter 1383 of the Statutes of 1970.

(f) "Statutes" means those statutes noted in subdivision (e) pursuant to which the granted lands were granted in trust to the city.

(g) "Canal" means Allardt's San Rafael Canal which is that certain canal from San Francisco Bay to the Townsite of San Rafael, designated by the Board of Tide Land Commissioners pursuant to the authority granted by Chapter 543 of the Statutes of 1868 and Chapter 388 of the Statutes of 1870, and which was surveyed by said board under the direction of G. F. Allardt in 1870 and depicted as "San Rafael Canal" on that certain map prepared by order of said board entitled "Map No. 2 of the Salt Marsh and Tide Lands Situate in the County of Marin," a copy of which is on file in Can "F" of the Marin County Recorder.

(h) "State" means the State of California.

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

(j) "Tidelands" includes tidelands and submerged lands.

(k) "Claimants" means both public and private individuals and entities and their predecessors in interest claiming some right, title, or interest within or adjoining the canal.

(l) "Trusts" means the trusts and conditions imposed with respect to the granted lands by the statutes or existing in law by virtue of the previous or present character of the granted lands as tidelands.

(m) "Plan" means that certain plan for the development and enhancement of a navigable harbor and waterway for the city referred to in subdivision (d) of Section 2 of this act.

(n) "Filled lands" means those portions of the canal and San Rafael Creek which are referred to in subdivision (e) of Section 2 of this act.

SEC. 2. It is found and determined that:

(a) The State of California, by virtue of Chapter 83 of the Statutes of 1923, as amended by Chapter 178 of the Statutes of 1967 and as amended by Chapter 1383 of the Statutes of 1970, has granted all the right, title, and interest of the state

in and to all the salt marsh, tide, and submerged lands, whether filled or unfilled, located within the boundaries of the city and situated below the line of mean high tide of the Pacific Ocean or any harbor, estuary, bay, or inlet within its boundaries, to the city, to be held by the city and its successors in interest subject to the trusts set forth in the statutes, and for the purposes of commerce, navigation, and fisheries and all appurtenances thereto, including the canal.

(b) The filled lands are, subject to the terms and conditions set forth in this act, no longer susceptible, useful, or required for the purposes of commerce, navigation, and fisheries, and it is not necessary that they remain in public ownership.

(c) The filled lands are comparatively small in relation to the area of the present waterway.

(d) Certain improvements in the canal have been made subsequent to the establishment of the canal and pursuant to a plan for development and enhancement of a navigable harbor and waterway for the city, which plan was tacitly or expressly participated in by the city, the state, claimants, the United States, and members of the public for many years, and which plan continues to the present time. Such improvements include certain dredging and the cutting off, relocation, and realignment of certain portions of the canal. The cutoff channels exist at this time and constitute a portion of the primary navigation channels between city and San Francisco Bay. The plan, as adopted and implemented, has resulted in a statewide public benefit.

(e) Certain of the claimants have relied on the plan and certain portions of the canal and San Rafael Creek have been filled above the mean high tide line as part of the plan and the implementation thereof. As a result thereof such filled lands are no longer used for purposes of the trusts, the same being replaced by the waterway developed pursuant to the plan.

(f) Certain lands of claimants have not been surveyed nor described in the deeds, patents, or other conveyances by which title was acquired by private claimants in such manner as to establish their location in relation to the canal. As a result thereof, the relative locations of the claimants' lands, the canal, and the patented lands are not known, resulting in uncertainty of boundaries, clouds on title, and disputed land claims along the length of the canal. It is in the public interest that the canal be resurveyed in such a manner as shall show the location of the mean high tide line within or across the canal, and to enable the lands claimed by claimants to be later located with relation to the canal.

(g) Numerous persons and their predecessors in interest have for many years, continuously and openly and notoriously occupied under color of title, or otherwise, certain of the filled lands, claiming ownership thereof adversely to the city and to the state, and paying any taxes that may have been assessed thereupon. Such persons presently dispute on numerous grounds the right, title, and interest of the city and the state

to, and contend that they are the true owners of, the filled lands.

(h) The true right, title, and interest of the parties is subject to a bona fide dispute and depends upon substantial issues of law and fact, the resolution of which is uncertain, time consuming and costly to city, the state, and to claimants. Certain litigation is now pending and it is in the interest of the people of the state that the location of the canal and the respective title claims therein be resolved consistent with present conditions.

(i) It is in the statewide interests for the furtherance and preservation of commerce, navigation, and fisheries, and of the trusts, and in the interests of the city, the state, adverse claimants, and of the public generally, that such boundary and title problems be resolved, and that public and private rights be established without further delay consistent with present conditions which have resulted from the long-standing conduct of public and private parties, all in accordance with the plan for the development and use of the present waterway and for public access thereto.

(j) It is in the interest of the city, the state, and the public generally, that a sufficient interest within the presently existing waterway, including the cutoff channels, to guarantee the perpetual use thereof as a continuous navigable channel, be acquired by the city.

(k) By reason of the existing public rights within the present waterway, and over the unfilled portions of the canal, and the comparatively small area of the filled lands, the removal and abandonment of the trusts over the filled lands will not adversely impair the trusts.

SEC. 3. (a) The city is hereby directed to cause a resurvey of the canal to be made, with sufficient ties to monuments of record to enable the relative locations of the parcels and lots of land along the canal to be later established, located, and surveyed in relation to the canal.

(b) Such resurvey shall be monumented and platted and, upon approval by the commission, the same shall be filed for record in the office of the County Recorder of Marin County, California.

SEC. 4. The city, by document, quitclaim, or conveyance, and upon receipt of such considerations as are hereinafter authorized or described in this act, may convey, release, or quitclaim its interest in those portions of the canal and San Rafael Creek freed of the trust and lying above the line of mean high tide. Such document, quitclaim, or conveyance may, by its terms, operate generally and by declaration, and without specifying the name of any person, and shall operate as to any parcel of land within the described area only in favor of such persons as have, at the time of said conveyance, release, or quitclaim, a claim of ownership to said parcel based upon a record chain of title, which chain of title covers a period of 30 years or more immediately preceding the effective

date of this act, or in favor of such persons who are in actual possession and have, at the time of said conveyance, release, or quitclaim, a claim of ownership to said parcel, which claim is based upon a record chain of title of less than 30 years and upon the payment of taxes on said property by the claimant or his predecessors in interest for a period of 10 years or more, which period of payment of taxes covers the period immediately preceding the effective date of this act.

SEC. 5. The city, with the approval of the commission, is hereby authorized to settle by agreement, exchange, or quitclaim, any dispute concerning whether or not particular land within either the present waterway or the granted lands, constitutes land in private or proprietary ownership by reason of title traceable to a state or federal patent or other valid source, or rather constitutes granted tidelands, title to which is vested in the city. In settlement of such disputes the city, with the approval of the commission, may by such agreement, exchange, or quitclaim, establish boundary or compromise boundary lines between the granted salt marsh, tide, and submerged lands, and the bordering private or proprietary lands.

SEC. 6. Any consideration as is given in exchange for any conveyance, release, quitclaim, or settlement under this act shall be determined by the city with the approval of the commission. In determining the adequacy of any such consideration, the city and the commission shall give effect in their evaluation to all factors bearing upon the value, if any, of the public's interest being conveyed, released, quitclaimed, or settled, and the rights, claims, and equities of the person in whose favor the conveyance, release, quitclaim, or settlement is being made and their predecessors in interest. In those cases where the land has been filled, or reclaimed, or improved, or both, without the expenditure of public moneys held in trust under the terms of the statutes, such lands may be valued by excluding the value of the fill, or improvements, or both. Consideration under this act may consist of lands, property, interest in property, easements, moneys, or other things of value given by the grantee or any other person.

SEC. 7. Any conveyance, release, quitclaim, or settlement made by the city pursuant to the provisions of this act shall be made by an appropriate document executed by the city and approved by the commission.

SEC. 8. Any portion of the lands granted to the city which pass by reason of any conveyance, release, quitclaim, or settlement made under the terms of this act is deemed to be freed of the trusts. No right, title, or interest in land lying below the line of mean high tide of the present waterway may be conveyed, released, or quitclaimed by the city under the terms of this act, nor shall any such land be freed by the terms of this act of the trusts. Any approval by the commission of a conveyance, release, quitclaim, or settlement made by city shall conclusively establish the character of the lands

described in said appropriate documents as being above the line of mean high tide.

SEC. 8.5. There is hereby excepted and reserved in the state all deposits of minerals, including oil and gas, in any lands granted to the city which pass by reason of any conveyance, release, quitclaim, or settlement made under the terms of this act, and to the state, or persons authorized by the state, the right to prospect for, mine, and remove such deposits from such lands. This section is not intended to prevent the settlement of title or boundary disputes pursuant to this act. It is also the intent of this section that the commission protect the claim of the state to commercially valuable mineral deposits. Upon a finding that the provisions of this section would prevent the settlement of boundary or title disputes in the public interest pursuant to this act, or that no commercially valuable mineral deposits exist, the provisions of this section shall not be binding. In the event that the provisions of this section are not binding, the reasons shall be set forth in any boundary or title settlement document.

SEC. 9. All lands, interests in lands, and appurtenances thereto, which lie below the line of mean high tide and are received by the city as a result of sales or exchanges authorized by this act shall be deemed tidelands under the provisions of Chapter 83 of the Statutes of 1923, as amended by Chapter 178 of the Statutes of 1967 and as amended by Chapter 1383 of the Statutes of 1970.

SEC. 10. All moneys and other things of value, excluding interests in lands, which are received by the city as a result of sales or exchanges authorized by this act shall be used only for those trust purposes defined in Chapter 83 of the Statutes of 1923, as amended by Chapter 178 of the Statutes of 1967 and as amended by Chapter 1383 of the Statutes of 1970, including, but not limited to, use as consideration for the conveyances, releases, quitclaims, and settlements entered into by the city pursuant to this act.

SEC. 11. The provisions of this act shall not be deemed exclusive with respect to the settlement or litigation of titles and boundaries of lands within either the present waterway or granted lands and this act shall not impair or alter the existing procedural or substantive rights or disabilities of any person or entity claiming title to, or an interest in, any lands in the present waterway and the granted lands in the defense or prosecution of any proceeding now or hereafter instituted under the laws of this state, nor affect the applicability to said lands of any other provisions of law.

SEC. 12. Section 6008 of the Public Resources Code is amended to read:

6008. In order to protect the public's access to, and use of, all state-owned lands in Humboldt Bay, no right to the use of any state lands, including but not limited to tide and submerged lands, in and adjacent to Humboldt Bay south of the

entrance to the bay shall be sold, leased, rented or otherwise conveyed or granted.

This section does not apply to any leases, permits, rentals, easements or other existing rights in such lands existing on October 1, 1961, or extensions or renewals of such rights, if such extensions or renewals are presently provided for in such agreements and such extensions or renewals do not expand or extend the areas presently covered.

This section shall not be applicable to settlements of title or boundary problems by the commission or to exchanges or leases or permits in connection therewith.

SEC. 13. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provisions or application, and to this end the provisions of this act are severable.

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