

CHAPTER 86

An act to amend Sections 1, 2, 3, 4, and 8 of, and to add Section 13.5 to, Chapter 1143 of the Statutes of 1991, relating to the Mission Bay Development Area, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor June 8, 1992. Filed with
Secretary of State June 9, 1992.]

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

SECTION 1. Section 1 of Chapter 1143 of the Statutes of 1991 is amended to read:

Section 1. As used in this act:

(a) "Boundary of the Port of San Francisco" means that line defining the boundary of Parcel "A" in the description of the lands transferred in trust to the City and County of San Francisco pursuant to Chapter 1333 of the Statutes of 1968 recorded on May 14, 1976, in

Book C169, pages 573 through 664 in the City and County of San Francisco Recorder's Office.

(b) "Burton Act trust" means the statutory trust imposed by the Burton Act (Chapter 1333 of the Statutes of 1968, as amended), pursuant to which the state conveyed to the City and County of San Francisco, in trust, by transfer agreement, and subject to certain terms, conditions, and reservations, the state's interest in certain tide and submerged lands, including lands within the Mission Bay Development Area.

(c) "City" means the City and County of San Francisco, a municipal corporation of the State of California, and where necessary to effectuate the land exchanges contemplated in this act, the city acting by and through the San Francisco Port Commission.

(d) "Granted tidelands" means tidelands or submerged lands, or any interest therein, located within the Mission Bay Development Area and heretofore conveyed or conveyed pursuant to this act by the state to the city.

(e) "Mission Bay Development Area" means those lands within the city which are located in the city above the present line of mean high tide and enclosed by a line beginning at the intersection of the northerly line of Mariposa Street (66.00 feet wide) with the easterly line of Pennsylvania Street (90.00 feet wide) running thence from that point of intersection easterly along the northerly line of Mariposa Street north $86^{\circ}49'04''$ east 940.17 feet; thence leaving that northerly line of Mariposa Street north $3^{\circ}10'56''$ west 433.04 feet; thence easterly and parallel with that northerly line of Mariposa Street north $86^{\circ}49'04''$ east 280.00 feet; thence north $3^{\circ}10'56''$ west 433.04 feet to the southerly line of Sixteenth Street (90.00 feet wide); thence easterly along that southerly line of Sixteenth Street north $86^{\circ}49'04''$ east 100.00 feet to the westerly line of Third Street (100.00 feet wide); thence southerly along the westerly line of Third Street south $3^{\circ}10'56''$ east 866.08 feet to that northerly line of Mariposa Street; thence easterly crossing Third Street and running along that northerly line of Mariposa Street north $86^{\circ}49'04''$ east 360.00 feet to the easterly line of Illinois Street (80.00 feet wide); thence southerly along that easterly line of Illinois Street south $3^{\circ}10'56''$ east 129.85 feet; thence north $35^{\circ}06'05''$ east 616.30 feet; thence northeasterly along an arc of a curve to the left tangent to the preceding course with a radius of 440.00 feet through a central angle of $12^{\circ}49'53''$ an arc distance of 98.54 feet; thence tangent to the preceding curve north $22^{\circ}16'12''$ east 700.07 feet; thence northerly along an arc of a curve to the left tangent to the preceding course with a radius of 340.00 feet through a central angle of $12^{\circ}28'00''$ an arc distance of 73.98 feet; thence tangent to the preceding curve north $9^{\circ}48'12''$ east 86.42 feet; thence northerly along the arc of a curve to the left tangent to the preceding course with a radius of 340.00 feet, through a central angle of $11^{\circ}58'09''$, an arc distance of 71.03 feet; thence tangent to the preceding curve north $2^{\circ}09'57''$ west 121.44 feet; thence north $3^{\circ}10'56''$ west 198.86 feet; thence north $2^{\circ}19'47''$ west 292.70 feet;

thence northwesterly along an arc of a curve to the left tangent to the preceding course with a radius of 481.57 feet through a central angle of 24°30'49", an arc distance of 206.04 feet; thence tangent to the preceding curve north 26°50'36" west 402.03 feet; thence northwesterly along an arc of a curve to the right tangent to the preceding course with a radius of 236.29 feet, through a central angle of 9°00'04" an arc distance of 37.12 feet; thence tangent to the preceding curve north 17°50'32" west 679.08 feet; thence south 86°49'04" west 282.38 feet; thence north 17°34'00" west 145.34 feet; thence north 72°26'00" east 13.36 feet; thence north 3°10'56" west 634.51 feet; thence south 86°49'04" west 112.12 feet; thence north 3°10'56" west 200.00 feet; thence north 47°36'05" east 456.59 feet; thence south 86°49'04" west 603.75 feet; thence south 64°21'26" west 108.21 feet to the point of intersection of the westerly line of Third Street (80.00 feet wide) with the southeasterly line of Channel Street (165.00 feet wide); running thence along that southeasterly line of Channel Street south 46°18'07" west 772.99 feet to the northeasterly line of Fourth Street (82.50 feet wide); thence along that northeasterly line of Fourth Street north 43°41'53" west 440.00 feet to the southeasterly line of Berry Street (82.50 feet wide); thence along that southeasterly line of Berry Street north 46°18'07" east 825.95 feet to the southwesterly line of Third Street; thence northwesterly along that southwesterly line of Third Street north 43°41'53" west 667.50 feet to the southeasterly line of Townsend Street (82.50 feet wide); thence along that southeasterly line of Townsend Street south 46°18'07" west 3,549.21 feet to the northeasterly line of Seventh Street (82.50 feet wide); thence along that northeasterly line of Seventh Street south 43°41'53" east 3,166.69 feet to a point on the easterly line of Pennsylvania Street (90.00 feet wide); thence southerly along that easterly line of Pennsylvania Street south 3°10'56" east 556.59 feet to the point of beginning and contains 317.91 acres, more or less.

Excepting therefrom the following described parcels.

Exception - Parcel 1

Beginning at the intersection of the westerly line of Illinois Street (80.00 feet wide) with the northerly line of Merrimac Street (66.00 feet wide), as those streets now exist, thence along that northerly line of Merrimac Street south 86°49'04" west 106.00 feet to the true point of beginning; thence north 3°10'56" west 400.00 feet; thence south 86°49'04" west 74.00 feet to the easterly line of Third Street (100.00 feet wide); thence along that easterly line of Third Street south 3°10'56" east 496.00 feet; thence north 86°49'04" east 74.00 feet; thence north 3°10'56" west 96.00 feet to the true point of beginning.

Containing 0.84 acres, more or less.

Exception - Parcel 2

Beginning at the intersection of the southerly line of Sixteenth Street (90.00 feet wide) with the easterly line of Third Street (100.00 feet wide) and continuing easterly along that southerly line of Sixteenth Street north 86°49'04" east 260.00 feet to a point on the easterly line of Illinois Street (80.00 feet wide), that point being the

northwesterly corner of parcel one as described in the deed to Esprit De Corps, a California corporation, recorded on July 12, 1988, on Reel E634 at Image 1334, Document No. E203992, in the Office of the Recorder of the City and County of San Francisco, that point also being the true point of beginning of this description; thence along the northerly line of that parcel one north 86°49'04" east 335.00 feet; thence along the easterly line of that parcel one south 14°29'32" east 107.08 feet, thence south 3°10'56" east 232.00 feet; thence south 26°50'57" west 72.77 feet to the most easterly corner of parcel two as described in that deed; thence along the easterly line of that parcel two south 26°50'57" west 92.41 feet; thence along the southerly line of that parcel two south 86°49'04" west 273.33 feet to the easterly line of Illinois Street; thence along the westerly line of that parcel two north 3°10'56" west 80.00 feet to the southwest corner of that parcel one; thence along the westerly line of that parcel one north 3°10'56" west 400.00 feet to the true point of beginning and containing 3.762 acres of land, more or less.

The bearings herein are based upon the bearing north 43°41'53" west on the northeasterly line of Seventh Street as shown on CalTrans right-of-way map no. R-174.14 and as shown on that certain Record of Survey Map of Mission Bay prepared by KCA Engineers, Inc. dated July 1990, and consisting of 21 sheets, which Record of Survey shall be filed with the State Lands Commission within 180 days of the effective date of this act.

(f) "Mission Bay Specific Plan" means that certain specific plan enacted by the planning commission of the city in satisfaction of the requirements of Article 8 (commencing with Section 65450) of Chapter 3 of Division 1 of Title 7 of the Government Code and the requirements of the charter of the city by Resolution No. 12040, dated September 27, 1990, and by Resolution No. 13017, dated February 14, 1991.

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

SEC. 2. Section 2 of Chapter 1143 of the Statutes of 1991 is amended to read:

Sec. 2. The Legislature hereby finds and declares as follows:

(a) Certain of the lands within the Mission Bay Development Area are tide or submerged lands which have been filled and reclaimed.

(b) The filled and reclaimed tide and submerged lands within the Mission Bay Development Area are useful for and in connection with, the highly beneficial plan of improvement for harbor development represented by the Mission Bay Specific Plan and related plans for developing consolidated modern port facilities outside the Mission Bay Development Area.

(c) Certain of the tide and submerged lands within the Mission Bay Development Area have been authorized to be, and have been, laid off and sold to private parties pursuant to various acts, including Chapter 41 of the Statutes of 1851, Chapter 160 of the Statutes of 1853,

Chapter 543 of the Statutes of 1867-68; Chapter 490 of the Statutes of 1871-72; Chapter 265 of the Statutes of 1903, Chapter 434 of the Statutes of 1947, and Chapter 1252 of the Statutes of 1953.

(d) Certain of the streets originally laid out within the Mission Bay Development Area are filled and not used, suitable, or necessary for navigation purposes and certain portions of those streets are not necessary for street purposes.

(e) Section 3 of Article X of the California Constitution allows the sale to any city, city and county, municipal corporation, private person, partnership, or corporation of tidelands reserved to the state solely for street purposes, which tidelands the Legislature finds and declares are not used and not necessary for navigation purposes, subject to such conditions as the Legislature may establish.

(f) There is a dispute between the city and the state with respect to the extent to which certain street areas within the Mission Bay Development Area may be subject to the public trust or other encumbrances that may have arisen because the lands were once sovereign lands of the state. The state contends that a total of approximately 40 disputed acres within the Mission Bay Development Area was (1) reserved to the state for street purposes, and (2) is held by the city subject to the public trust. The city contends that it holds those disputed street areas in fee simple free of the public trust or any other such encumbrances. It is in the public interest that this dispute be resolved in a manner that furthers public trust purposes.

(g) The existing fragmented pattern of public and private ownership within the Mission Bay Development Area, especially the industrial area street system and parcelization imposed on the area largely as the result of subdivisions and sales in the latter half of the 19th century, limit both the potential development of the area and the expansion of desirable public uses in the area consistent with the public trust and the Burton Act trust, such as open space and parks along the waterfront and elsewhere within the Mission Bay Development Area, public access to the shoreline, and consolidated, modern facilities for the city. Therefore, the city has developed and adopted the Mission Bay Specific Plan, and the city has negotiated a development agreement pursuant to Article 2.5 (commencing with Section 65864) of Chapter 4 of Division 1 of Title 7 of the Government Code with the current private owner of most of the real property within the Mission Bay Development Area to enable the redevelopment of the Mission Bay Development Area; to respond to and rectify the existing limitations on public trust uses which prevent implementation of the Mission Bay Specific Plan; and to facilitate development of consolidated, modern port facilities outside the Mission Bay Development Area. The Mission Bay Specific Plan and the development agreement approved by the city for the development of the Mission Bay Development Area contemplate that certain lands in dispute with the state and certain other lands subject to the public trust or the Burton Act trust shall be conveyed

free of those trusts to the current private owner of most of the real property within the Mission Bay Development Area, and the public trust and the Burton Act trust over certain other lands shall be terminated, in exchange for (1) the conveyance to the city subject to the public trust and the Burton Act trust of certain lands owned by that private owner, or the conveyance to the city of an easement over those lands which will permanently subject the lands to the public trust and the Burton Act trust, (2) the conveyance to the city of an easement over certain other lands in private ownership which will permanently encumber those lands with the public trust, and (3) the agreement by the city that certain of the street areas in dispute with the state and other areas shall be permanently subjected to the public trust by easement or otherwise. In preparing the Mission Bay Specific Plan, the city has considered present and future public trust and Burton Act trust needs and the purposes for which the city holds or may hold property subject to those trusts within the Mission Bay Development Area. The Mission Bay Specific Plan and that development agreement demonstrate that (1) those lands within the Mission Bay Development Area to be devoted to nonpublic trust purposes or purposes other than those stated in the Burton Act are no longer needed or required for public trust purposes or those purposes provided for in the Burton Act, and (2) the lands to be conveyed to the city, or which will be encumbered by a public trust easement, or which the city will agree to permanently subject to the trust, will be devoted to trust uses as provided for in the Mission Bay Specific Plan and other related plans for maritime development and will, therefore, be highly useful for public trust purposes and Burton Act trust purposes. Specifically, through acquisition of privately owned lands in the pier 70 through 80 area of the city, the city will be able to develop between four and nine container berths in the pier 70 through 80 area. Combining facilities in the pier 70 through 80 area through acquisition of those privately owned lands will also allow the city to take advantage of the existing container-oriented and intermodal infrastructure at piers 80 and 94-96, including the intermodal container transfer facility. In the Mission Bay Development Area, on the other hand, the consolidation of ownerships and the provision by the city of certain additional real property to be developed for public recreational use pursuant to license, together with the toxic remediation of all real property to be subjected to the public trust or the Burton Act trust or to be developed for recreational use will permit the development, pursuant to the Mission Bay Specific Plan, of improved open space, public access, waterfront parks, and other public facilities consistent with the public trust and the Burton Act trust. This development would otherwise not be feasible because of existing ownership patterns and lack of city funds. The consolidation of ownerships referred to in this section will also be facilitated by the resolution of the dispute with the state over the extent to which the street areas within the Mission Bay Development Area are subject to the public

trust. It is intended that the resolution of that dispute and the consolidation of public and private ownerships will be accomplished by and through the exchanges of lands previously referred to. These exchanges shall be for the purpose of effectuating the public trust uses provided for in the Mission Bay Specific Plan and related plans for developing consolidated modern port facilities. The proposed exchanges will not interfere with, and will, in fact, be consistent with and further the purposes of the public trust and the Burton Act trust provided that:

(1) The value of the lands or interests in lands to be conveyed to the city and subjected to the public trust or the Burton Act trust, the value of the public trust easement to be conveyed to the city over certain other lands, and the value of the public trust interest created by the agreement of the city that certain of the street areas in dispute with the state and other areas shall be subjected to the public trust by easement or otherwise are equal to, or greater than, the value of the lands to be conveyed by the city and the value of the public trust or Burton Act trust interest to be terminated pursuant to those exchanges.

(2) The lands or interests in lands to be exchanged by the city and over which the public trust or the Burton Act trust or both will be terminated have been filled and reclaimed, those parcels consisting entirely of dry land lying above the present ordinary high water mark, and are not necessary for the highly beneficial program for development of the harbor and waterfront of the city represented by the Mission Bay Specific Plan and related plans for developing consolidated modern port facilities.

(3) The lands to be exchanged by the city and over which the public trust or the Burton Act trust or both will be terminated are nonwaterfront, having been cut off from direct access to the waters of San Francisco Bay by past filling of intervening property or by a major roadway (China Basin Street), which has provided, and will continue to provide, lateral public access to the water along the entirety of the Mission Bay Development Area.

(4) The lands to be exchanged by the city and over which the Burton Act trust or the public trust or both will be terminated constitute a relatively small portion of the tide and submerged lands granted to the city.

(5) The lands to be exchanged by the city and over which the public trust or the Burton Act trust or both will be terminated are no longer needed or required for the promotion of the public trust or the Burton Act trust.

(h) Substantial portions of the approximately 40 acres of granted tidelands in dispute within the Mission Bay Development Area to be conveyed into private ownership were reserved to the state for street purposes and are not used or necessary for navigation purposes, and therefore under Section 3 of Article X of the California Constitution can and should be conveyed into private ownership for uses consistent with and in furtherance of the Mission Bay Specific

Plan.

(i) It is therefore the intent of the Legislature, on and subject to the terms and conditions set forth in this act, (1) to authorize, ratify, and confirm any agreement by the city to enter into an exchange or exchanges of granted tidelands and to terminate the public trust or the Burton Act trust or both over granted tidelands consistent with the findings and declarations stated in this act, and (2) to authorize the city to dispose of any and all granted tidelands originally laid out and reserved to the state for street purposes for private use free from those trusts consistent with and in furtherance of the Mission Bay Specific Plan.

SEC. 3. Section 3 of Chapter 1143 of the Statutes of 1991 is amended to read:

Sec. 3. (a) For the purposes of effectuating the exchanges of lands referred to in subdivision (g) of Section 2, including the conveyance of certain of those lands by the city free of the public trust and the Burton Act trust, the State Lands Commission is hereby authorized:

(1) To convey to the city by patent all of the right, title, and interest held by the state by virtue of its sovereign trust title to tide and submerged lands, including any public trust interest or Burton Act reservation or trust interest, and not heretofore conveyed, in and to all of the filled tidelands and submerged lands within the Mission Bay Development Area, subject to such reservations as the State Lands Commission may determine to be appropriate.

(2) To receive and accept on behalf of the state in its sovereign capacity any lands or any interest in lands, conveyed to the state in its sovereign capacity by the city or by any private party pursuant to this act and pursuant to any exchange authorized, ratified, or confirmed by this act, including, but not limited to, any public trust easement conveyed to the state in its sovereign capacity by the city or by a private party in any such lands.

(3) To convey to the city by patent all of the right, title, and interest of the state in any lands conveyed to the state in its sovereign capacity by the city or by any private party pursuant to this act and pursuant to any exchange authorized, ratified, or confirmed by this act, including, but not limited to, any public trust easement, conveyed to the state in its sovereign capacity by the city or by a private party, in any such lands, subject to such terms, conditions, and reservations as the State Lands Commission may determine are necessary to meet the requirements of Section 8.

(b) In any case where the state, pursuant to this act, conveys filled tidelands and submerged lands transferred to the city pursuant to Chapter 1333 of the Statutes of 1968, as amended, the state shall reserve all minerals and all mineral rights in the lands of every kind and character now known to exist or hereafter discovered, including, but not limited to, oil and gas and rights thereto, together with the sole, exclusive, and perpetual right to explore for, remove, and dispose of those minerals by any means or methods suitable to the

state or to its successors and assignees, except that, notwithstanding Chapter 1333 of the Statutes of 1968, as amended, or Section 6401 of the Public Resources Code, any such reservation shall not include the right of the state or its successors or assignees in connection with any mineral exploration, removal, or disposal activity, to do either of the following:

(1) Enter upon, use, or damage the surface of the lands or interfere with the use of the surface by any grantee or by the grantee's successors or assignees.

(2) Conduct any mining activities of any nature whatsoever above a plane located 500 feet below the surface of the lands without the prior written permission of any grantee of the lands or the grantee's successors or assignees.

(c) No private owner is required to transfer, pursuant to this act, any mineral rights which it does not own or possess, and similarly, neither the city nor the state is required to transfer any mineral rights which either does not own or possess.

SEC. 4. Section 4 of Chapter 1143 of the Statutes of 1991 is amended to read:

Sec. 4. (a) Subject to the requirements for action by the State Lands Commission specified in subdivision (b), whenever it is determined by the city that any portions of the granted tidelands are cut off from access to the waters of San Francisco Bay, constitute a relatively small portion of the tide and submerged lands granted to the city, and are no longer needed or required for the promotion of the public trust for commerce, navigation, and fisheries or the Burton Act trust or both; and when it is further determined that no substantial interference with those trust uses and purposes will ensue; and when it is further determined that an exchange of those lands and the termination of the public trust or the Burton Act trust will be consistent with the findings and declarations contained in Section 2, the city may terminate the public trust or the Burton Act trust, or both, over those portions of the granted tidelands and exchange those portions of the granted tidelands, or any interest in those lands, to any state agency, political subdivision, person, entity, or corporation, or the United States, or any agency thereof, for lands or interests in lands of equal or greater value, including lands that are or may be subject to the public trust or lands in dispute with the state which the city agrees to subject to the public trust or the Burton Act trust or both, which are useful for public trust or Burton Act trust purposes.

(b) No such exchange and trust termination shall be effective unless and until the State Lands Commission, at a regular open meeting with the proposed exchange and trust termination as a properly scheduled agenda item, does or has done both of the following:

(1) Finds, or has found, that the lands or interests in lands to be acquired by the city and the value of the public trust or Burton Act trust interest to be created by agreement of the city have a value

equal to or greater than the value of the granted tidelands for which they are to be exchanged and the value of the granted tidelands over which the public trust or the Burton Act trust or both will be terminated.

(2) Adopts, or has adopted, a resolution approving the proposed exchange, and trust termination which finds and declares that the granted tidelands to be exchanged and over which the public trust or the Burton Act trust or both will be terminated have been filled and reclaimed, are cut off from access to the waters of San Francisco Bay, constitute a relatively small portion of the tide and submerged lands granted to the city, and are no longer needed or required for the promotion of the public trust or the Burton Act trust; and, further, that no substantial interference with the public trust or Burton Act trust uses and purposes will ensue by virtue of the exchange and trust termination; and, further, that the exchange and trust termination is consistent with the findings and declarations in Section 2 and in the best interests of the state and the city. Upon adoption of the resolution, or at such time as may otherwise be specified in the resolution, the granted tidelands to be exchanged and with respect to which the public trust or the Burton Act trust or both are to be terminated shall thereupon be free from the public trust or the Burton Act trust or both.

SEC. 5. Section 8 of Chapter 1143 of the Statutes of 1991 is amended to read:

Sec. 8. (a) Any lands, or interests therein, received by the city pursuant to any exchange authorized by this act and located within the boundary of the Port of San Francisco or located outside the Mission Bay Development Area shall be held by the city subject to the Burton Act trust and subject to those exceptions and reservations to the state, including, but not limited to, subsurface mineral deposits, contained in Chapter 1333 of the Statutes of 1968, as amended, as if those lands had been transferred to the city pursuant to the provisions of Chapter 1333 of the Statutes of 1968, as amended, except that, notwithstanding this section or Chapter 1333 of the Statutes of 1968, as amended, any conveyance to the city of lands outside the Mission Bay Development Area shall not include minerals or mineral rights, including, but not limited to, oil and gas and rights thereto, if the owner of the lands has not held those minerals or mineral rights since January 1, 1990, and the owner of the minerals or mineral rights or that owner's successors or assignees, in connection with any mineral exploration, removal, or disposal activity, do not have the right to do either of the following:

(1) Enter upon, use, or damage the surface of the lands or interfere with the use of the surface by any grantee of those lands or by the grantee's successors or assignees.

(2) Conduct any mining activities of any nature whatsoever above a plane located 500 feet below the surface of the lands without the prior written permission of any grantee of the lands or the grantee's successors or assignees.

(b) Any lands, or interests in lands, received by the city outside the boundary of the Port of San Francisco, but within the Mission Bay Development Area, pursuant to any exchange authorized by this act shall be held by the city subject to the public trust and for the purposes of effectuating the public trust uses provided for in the Mission Bay Specific Plan, except for those lands or interests in lands with respect to which the public trust or the Burton Act trust is terminated pursuant to the exchange.

SEC. 6. Section 13.5 is added to Chapter 1143 of the Statutes of 1991, to read:

Sec. 13.5. 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.

SEC. 7. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

An immediate clarification of the authority of the State Lands Commission to reserve mineral rights is necessary in order to effectuate land exchanges necessary to promote public trust uses of lands in accordance with the Mission Bay Specific Plan adopted by the City and County of San Francisco and to thereby ensure the fullest use of those lands for the maximum benefit of public trust purposes. It is necessary therefore, that this act take effect immediately.