

Introduced by Senator Burton

February 25, 2004

An act relating to Treasure Island.

LEGISLATIVE COUNSEL'S DIGEST

SB 1873, as introduced, Burton. Treasure Island Public Trust Exchange Act.

The Treasure Island Conversion Act of 1997, subject to the public trust and the terms and conditions of the act, grants to, and vests in, the Treasure Island Development Authority, all of the state's right, title, and interest in the Treasure Island Development Authority trust lands, and, upon conveyance by the federal government to the agency, in appurtenances located on Treasure Island submerged lands. Existing law authorizes the agency to use, conduct, operate, maintain, manage, administer, regulate, improve, lease, and control the Treasure Island trust lands in conformance with the act and the public trust.

This bill would approve an exchange of public trust lands within the Treasure Island Development Authority property, whereby certain trust lands on Treasure Island that meet specified criteria and are not now useful for public trust purposes will be freed from the public trust and may be conveyed into private ownership, and certain other lands on Yerba Buena Island that are not now public trust lands and that are useful for public trust purposes will be made subject to the public trust.

The bill would declare that, due to the unique circumstances pertaining to the trust lands described in the bill and relating to the transfer of the Treasure Island Development Authority property out of federal ownership, a general statute within the meaning of specified provisions of the California Constitution cannot be made applicable and a special statute is necessary.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

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

- 1 SECTION 1. This act shall be known, and may be cited, as the
- 2 Treasure Island Public Trust Exchange Act.
- 3 SEC. 2. The following definitions apply for purposes of this
- 4 act:
- 5 (a) "Authority" or "TIDA" means the Treasure Island
- 6 Development Authority, a nonprofit public benefit corporation
- 7 established by the legislative body of the City and County of San
- 8 Francisco and the Conversion Act, and any successor agency with
- 9 redevelopment jurisdiction over some or all of the TIDA property.
- 10 (b) "City" means the City and County of San Francisco.
- 11 (c) "Commission" means the California State Lands
- 12 Commission.
- 13 (d) "Conversion act" means the Treasure Island Conversion
- 14 Act of 1997 (Chapter 898 of the Statutes of 1997).
- 15 (e) "Public trust" or "trust" means the public trust for
- 16 commerce, navigation, and fisheries.
- 17 (f) "Statutory trust" means those requirements for and
- 18 limitations on the use, management, and disposition of trust lands
- 19 imposed by Sections 6 through 11, inclusive, of the conversion act.
- 20 (g) "TIDA property" means that property defined in
- 21 subdivision (a) of Section 4 of the conversion act and includes the
- 22 lands commonly known as Treasure Island and a portion of the
- 23 lands commonly known as Yerba Buena Island.
- 24 (h) "Tidelands" means lands below the mean high tide line and
- 25 includes submerged lands.
- 26 (i) "Trust exchange" or "exchange" means the exchange of
- 27 trust lands on Treasure Island for lands on Yerba Buena Island not
- 28 presently subject to the trust, as authorized by this act.
- 29 (j) "Trust lands" means all lands, including, but not limited to,
- 30 tidelands, within the TIDA property that are presently subject to
- 31 the public trust or will be subject to the trust upon conveyance out
- 32 of federal ownership or following a trust exchange.
- 33 (k) "Trustee" means the authority and any successor agency
- 34 authorized to administer the trust over any or all of the trust lands.



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

3 (a) The purpose of this act is to facilitate the productive reuse
4 of the TIDA property in a manner that will further the purposes of
5 the public trust and the statutory trust. To effectuate this purpose,
6 this act approves and authorizes the commission to carry out an
7 exchange of lands under which certain nontrust lands on Yerba
8 Buena Island with substantial value for the public trust would
9 become subject to the public trust and statutory trust, and certain
10 trust lands on Treasure Island that are no longer useful for trust
11 purposes would be freed from public trust and statutory trust
12 restrictions.

13 (b) Treasure Island includes lands that were historically
14 tidelands subject to the public trust. In 1933, the Legislature
15 granted the tidelands that would become Treasure Island to the city
16 for construction of an airport (Chapter 912 of the Statutes of 1933),
17 and amended the grant in 1935 to authorize use of the lands for the
18 Golden Gate International Exposition (Chapter 162 of the Statutes
19 of 1935). The city built Treasure Island between 1936 and 1939 by
20 depositing sand and gravel on shoals north of Yerba Buena Island
21 and surrounding that fill with a rock retaining wall.

22 (c) Yerba Buena Island was acquired by the United States Navy
23 in 1898. In 1941, the city leased Treasure Island to the United
24 States, and Treasure Island and Yerba Buena Island became a
25 military base known as Naval Station Treasure Island. In 1942, the
26 Navy initiated federal court proceedings to condemn Treasure
27 Island and portions of the surrounding tidelands. In 1944, the Navy
28 took title to Treasure Island and certain adjacent tidelands pursuant
29 to a consent judgment in the condemnation action.

30 (d) Pursuant to a decision of the federal Base Realignment and
31 Closure Commission in 1993, Naval Station Treasure Island was
32 officially closed on September 30, 1997. That same year, the
33 conversion act was enacted, empowering the authority to serve as
34 redevelopment authority for the TIDA property upon its
35 conveyance to the city from the Navy. Under the conversation act,
36 the authority is the only entity that may lawfully accept from the
37 federal government title to trust lands on the TIDA property. The
38 Navy is presently in negotiations with the city and the authority for
39 the transfer of the TIDA property, or portions thereof, to the
40 authority.

1 (e) Redevelopment will require substantial investment in
2 seismic improvements on Treasure Island, including seismic
3 reinforcement of the perimeter of the island, to reduce the risk that
4 buildings and other facilities on the island will experience
5 structural failure caused by liquefaction and lateral spreading
6 during a severe earthquake. Redevelopment will also require
7 replacement or upgrading of all of the infrastructure and utility
8 systems on the islands. In addition, several historic buildings,
9 including those commonly known as Buildings 1, 2, and 3, the
10 Nimitz Mansion (Quarters 1) and Quarters 2 to 7, inclusive, and
11 10, will require substantial renovation to preserve them as historic
12 resources consistent with the trust. Redevelopment must generate
13 sufficient revenue to render the needed seismic and infrastructure
14 improvements and historic renovations financially feasible.

15 (f) All former and existing tidelands within the TIDA property
16 on which the public trust has not been terminated are subject to the
17 public trust upon their transfer from federal ownership. The
18 conversion act grants in trust to the authority the state's sovereign
19 interest in certain lands within the TIDA property and establishes
20 the authority as the trust administrator for those lands.

21 (g) The federal government has asserted that the fact and
22 manner of its acquisition and ownership of the TIDA property
23 have created uncertainty as to the nature and extent of the state's
24 sovereign interest in the TIDA property. It is in the best interests
25 of the people of this state to resolve this alleged uncertainty in a
26 manner that furthers trust purposes.

27 (h) The existing configuration of trust and nontrust lands
28 within the TIDA property is such that the purposes of the public
29 trust cannot be fully realized. Certain uplands on Yerba Buena
30 Island of high value to the public trust due to their existing or
31 potential recreational, scenic, and habitat uses are currently not
32 subject to the public trust. Specifically, upper portions of the island
33 afford sweeping and dramatic views of the bay and its environs,
34 including Mount Tamalpais and the Marin Headlands, Alcatraz,
35 Angel, and Treasure Islands, downtown San Francisco, the sites of
36 the South Bay and East Bay, and all five of the bay's bridges. The
37 island provides habitat for a variety of special status bird species,
38 such as American peregrine falcon, black-crowned night heron,
39 black oystercatcher, Brandt's cormorant, and California brown



1 pelican, and parts of the lower reaches of the island provide
2 haulout sites for the harbor seal.

3 (i) A substantial portion of the trust lands on Treasure Island are
4 interior lands that have been cut off from access to navigable
5 waters and are not useful for navigation, commerce, or fisheries.
6 Certain of these lands due to their location and attributes remain
7 useful to the trust for future open space uses, including the
8 following: a wetland restoration site; a major visual and pedestrian
9 corridor that traverses the island, linking proposed waterfront
10 parkland on one side of the island with a proposed ferry terminal
11 and plaza and other public waterfront amenities on the other side
12 of the island; and other public ways that will provide waterfront
13 access and enhance water views across the island. The remaining
14 interior lands do not have these capabilities and are no longer
15 needed or useful for trust purposes. Development of those lands
16 for nontrust uses that are consistent with the redevelopment goals
17 of the conversion act and state redevelopment law will not
18 interfere with trust purposes and will provide revenues needed to
19 improve the trust lands in a manner that will maximize their value
20 to the trust.

21 (j) Absent a trust exchange, the alleged uncertainties regarding
22 the sovereign trust title of lands within Treasure Island would
23 remain, and most of the lands on Yerba Buena Island that are of
24 high value to the public trust would remain free of the public trust,
25 and could thereby be cut off from public access and developed for
26 nontrust uses. In addition, the interior lands on Treasure Island not
27 useful for trust purposes, due to potential trust constraints, could
28 not be used for residential or other nontrust uses essential for the
29 economic redevelopment of the island and for the financial
30 feasibility of needed seismic upgrades, historic preservation, and
31 the development of the Treasure Island waterfront and adjacent
32 open space for public purposes in furtherance of the trust. An
33 exchange will render redevelopment of Treasure Island
34 economically feasible and will allow the trust lands within the
35 TIDA property to be successfully transferred out of federal
36 ownership and used to the greatest benefit of the people of the
37 state.

38 (k) A trust exchange resulting in the configuration of trust lands
39 substantially similar to that depicted on the diagram in Section 11
40 of this act maximizes the overall benefits to the trust, without



1 interfering with trust uses or purposes. Following the exchange, all
2 lands within the TIDA property adjacent to the waterfront, as well
3 as certain interior lands on Yerba Buena Island that have high trust
4 values, will be subject to the public trust and the statutory trust.
5 The lands that will be removed from the trust and the statutory trust
6 pursuant to the exchange have been filled and cut off from
7 navigable waters and are no longer needed or required for the
8 promotion of the public trust. These lands constitute a relatively
9 small portion of the granted tidelands within the city. This act
10 requires that the commission ensure that the lands added to the
11 trust pursuant to the exchange have a value equal to or greater than
12 the value of the lands taken out of the trust.

13 (l) During the period of federal ownership, the Navy
14 constructed a number of buildings and other structures on Treasure
15 Island that are not susceptible of trust-consistent uses. The
16 conversion act authorizes nontrust uses of certain of these
17 buildings for the duration of the buildings' useful lives, to a
18 maximum of 40 years. Among those buildings is a school currently
19 operated by the San Francisco Unified School District, which is
20 anticipated to continue in that use for the remainder of its useful
21 life. This act authorizes the authority and the commission to
22 include the school property in the trust exchange provided certain
23 conditions are met.

24 (m) This act advances the purposes of the Community
25 Redevelopment Law (Part 1 (commencing with Section 33000) of
26 Division 24 of the Health and Safety Code) and the public trust,
27 and is in the best interests of the people of this state.

28 SEC. 4. The Legislature hereby approves an exchange of trust
29 lands between Treasure Island and Yerba Buena Island, whereby
30 certain Treasure Island trust lands that meet the criteria set forth
31 in this act and therefore are not now useful for public trust purposes
32 will be freed from the public trust and the statutory trust and may
33 be conveyed into private ownership, and certain other lands on
34 Yerba Buena Island that are not now public trust lands and that are
35 useful for public trust purposes will be made subject to the public
36 trust and the statutory trust, provided all of the following
37 conditions are met:

38 (a) The exchange results in a configuration of trust lands
39 substantially similar to that shown on the diagram in Section 11 of
40 this act.



1 (b) The lands to be subject to the public trust are configured so
2 as to be accessible from the streets as finally configured within the
3 TIDA property.

4 (c) The exchange otherwise complies with the requirements of
5 this act.

6 (d) The exchange is consistent with and furthers the purposes
7 of the public trust and the conversion act.

8 SEC. 5. All lands exchanged into the trust under this act shall
9 be held by the trustee subject to the public trust and the statutory
10 trust, and all lands exchanged out of the trust under this section
11 shall be free of the public trust and the statutory trust.

12 SEC. 6. The precise boundaries of the lands to be taken out of
13 the trust and the lands to be put into the trust pursuant to the
14 exchange, including the proper locations and dimensions of streets
15 that should be subject to the trust, shall be determined by the
16 trustee, subject to the approval of the commission. The
17 commission is authorized to settle by agreement with the trustee
18 and the city any disputes as to the location of the mean high tide
19 line in its last natural state, and any other boundary lines which the
20 commission deems necessary to effectuate the exchange.

21 SEC. 7. (a) The commission is authorized to approve an
22 exchange trust lands between Treasure Island and Yerba Buena
23 Island that meets the requirements of this act. Pursuant to this
24 authority, the commission shall establish appropriate procedures
25 for effectuating the exchange. The procedures shall include
26 provisions for ensuring that lands are not exchanged into the trust
27 until all remedial action necessary to protect human health and the
28 environment with respect to the hazardous substances on the land
29 has been completed as determined by the United States
30 Environmental Protection Agency, the California Department of
31 Toxics Substances Control, and the Regional Water Quality
32 Control Board, pursuant to the Federal Facilities Agreement for
33 the Naval Station Treasure Island dated September 29, 1992, as
34 amended, and the United States has provided a warranty in
35 accordance with Section 9620(h)(3)(A) of Title 42 of the United
36 States Code, or the United States has obtained a warranty deferral,
37 approved by the Governor in accordance with Section
38 9620(h)(3)(C) of Title 42 of the United States Code, involving
39 land for which the commission has determined to execute a
40 certificate of acceptance of title.



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

3 (1) The configuration of trust lands upon completion of the
4 exchange will not differ significantly from the configuration
5 shown on the diagram in Section 11 of this act, and includes all
6 lands within the TIDA property that are presently below mean high
7 tide and consists of lands suitable to be impressed with the public
8 trust.

9 (2) The final layout of streets within the TIDA property will
10 provide access to the public trust lands and be consistent with the
11 beneficial use of the public trust lands.

12 (3) With respect to the trust exchange as finally configured and
13 phased, the value of the lands to be exchanged into the trust is equal
14 to or greater than the value of the lands to be exchanged out of the
15 trust. The commission may take into consideration the degree of
16 uncertainty, if any, as to whether the lands remain subject to the
17 trust or have been freed from the trust.

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

24 (5) The trustee has approved the exchange.

25 (c) Subject to the findings requirement of subdivision (b) of
26 this section, the commission, at the request of the authority, may
27 include in the lands to be exchanged out of the trust the schoolsite
28 referred to in subdivision (l) of Section 3 of this act and shown on
29 the diagram in Section 11 of this act. Notwithstanding paragraph
30 (3) of subdivision (b) of this section, if the commission finds that
31 removal of the schoolsite from the trust would cause the value of
32 the lands to be exchanged out of the trust to exceed the value of the
33 lands to be exchanged into the trust, the commission may approve
34 an exchange that includes the schoolsite if the commission
35 requires as a condition of the exchange a contribution to the Land
36 Bank Fund, established pursuant to Division 7 (commencing with
37 Section 8600) of the Public Resources Code, in an amount equal
38 to or greater than the difference in value of the lands to be
39 exchanged out of and into the trust.



1 (d) The commission shall impose additional conditions on its
2 approval of the exchange if the commission determines that these
3 conditions are necessary for the protection of the public trust.

4 (e) For purposes of effectuating the exchange authorized by
5 this section, the commission is authorized to do all of the
6 following:

7 (1) Receive and accept on behalf of the state any lands or
8 interest in lands conveyed to the state by the trustee, including
9 lands that are now and that will remain subject to the public trust.

10 (2) Convey to the trustee by patent all of the right, title, and
11 interest of the state in lands that are to be free of the public trust
12 and the statutory trust upon completion of an exchange of lands as
13 authorized by this act and as approved by the commission.

14 (3) Convey to the trustee by patent all of the right, title, and
15 interest of the state in lands that are to be subject to the public trust
16 and the statutory trust and the terms of this act upon completion of
17 the trust exchange, subject to the terms, conditions, and
18 reservations as the commission may determine are necessary to
19 meet the requirements of this act.

20 (f) The configuration of trust lands within the TIDA property
21 after completion of the trust exchange shall constitute the “trust
22 property” for purposes of the conversion act, notwithstanding
23 subdivision (b) of Section 4 of that act.

24 SEC. 8. This act shall not be construed as limiting the
25 authority of the commission to approve additional land exchanges
26 or to enter into boundary settlements involving the TIDA property
27 pursuant to the conversion act or any other provision of law.

28 SEC. 9. Any agreement for the exchange of, or trust
29 termination over, granted tidelands, or to establish boundary lines,
30 entered into pursuant to this act, shall be conclusively presumed
31 to be valid unless held to be invalid in an appropriate proceeding
32 in a court of competent jurisdiction to determine the validity of the
33 agreement commenced within 60 days after the recording of the
34 agreement.

35 SEC. 10. (a) An action may be brought under Chapter 4
36 (commencing with Section 760.010) of Title 10 of Part 2 of the
37 Code of Civil Procedure by the parties to any agreement entered
38 into pursuant to this act to confirm the validity of the agreement.
39 Notwithstanding any provision of Section 764.080 of the Code of
40 Civil Procedure, the statement of decision in the action shall



1 include a recitation of the underlying facts and a determination
2 whether the agreement meets the requirements of this act, Sections
3 3 and 4 of Article X of the California Constitution, and any other
4 law applicable to the validity of the agreement.

5 (b) For purposes of Section 764.080 of the Code of Civil
6 Procedure and unless the parties agree otherwise in writing, any
7 settlement and exchange agreement entered into pursuant to this
8 act shall be deemed to entered into on the date it is executed by the
9 executive officer of the commission, who shall be the last of the
10 parties to sign prior to the signature of the Governor. The effective
11 date of the agreement shall be deemed to be the date on which it
12 is executed by the Governor pursuant to Section 6107 of the Public
13 Resources Code.

14 SEC. 11. The following diagram is a part of this act:



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40

SEC. 12. Nothing in this act may be construed to nullify the trustee’s obligations for increasing, improving, and preserving the community’s supply of low- and moderate-income housing imposed by the Community Redevelopment Law (Part 1 (commencing with Section 33000) of Division 24 of the Health and Safety Code), including, but not limited to, the requirements of Sections 33334.2 and 33413 of the Health and Safety Code.

SEC. 13. Nothing in this act may be construed to authorize the development of housing on public trust land.

SEC. 14. The Legislature finds and declares that, because of the unique circumstances applicable only to the trust lands described in this act and relating to the transfer of the TIDA property out of federal ownership, a statute of general applicability cannot be enacted within the meaning of subdivision (b) of Section 16 of Article IV of the California Constitution. Therefore, this special statute is necessary.

O

