

**Senate Bill No. 833**

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Passed the Senate September 10, 2009

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*Secretary of the Senate*

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Passed the Assembly September 8, 2009

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*Chief Clerk of the Assembly*

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This bill was received by the Governor this \_\_\_\_\_ day  
of \_\_\_\_\_, 2009, at \_\_\_\_\_ o'clock \_\_\_\_M.

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*Private Secretary of the Governor*

## CHAPTER \_\_\_\_\_

An act to amend Sections 51177 and 51182 of the Government Code, to amend Sections 2772.7, 4291, 5096.518, 5097.98, and 30716 of the Public Resources Code, to amend Sections 7 and 12 of Chapter 543 of the Statutes of 2004, and to amend Sections 1 and 15 of Chapter 660 of the Statutes of 2007, relating to natural resources.

## LEGISLATIVE COUNSEL'S DIGEST

SB 833, Committee on Natural Resources and Water. Natural resources: mining: conservation lands: Native American historical sites: tidelands and submerged lands.

(1) Existing law requires that a person who owns, leases, controls, operates, or maintains an occupied dwelling or occupied structure in, upon, or adjoining a mountainous area, forest-covered land, brush-covered land, grass-covered land, or land that is covered with flammable material that is within a very high fire hazard severity zone, as designated by a local agency, shall maintain a defensible space of no greater than 100 feet from each side of the structure.

Existing law requires that a person who owns, leases, controls, operates, or maintains a building or structure in, upon, or adjoining a mountainous area, forest-covered land, brush-covered land, grass-covered land, or land that is covered with flammable material, within a state responsibility area, maintain a defensible space of no greater than 100 feet from each side of the structure. A violation of these provisions is a crime.

This bill would instead require the person described above to maintain a defensible space of 100 feet from each side and from the front and rear of the structure. The bill would also revise the definition of "fuel" for the purposes of fuels management. Because the bill would change the definition of a crime, it would impose a state-mandated local program.

(2) The Surface Mining and Reclamation Act of 1975 prohibits a person from conducting surface mining operations without obtaining a permit from the lead agency for those operations, and submitting and receiving approval for a reclamation plan and

financial assurances from the lead agency. Existing law requires a lead agency, upon approval of a reclamation plan or an amendment to a reclamation plan, to record a “Notice of Reclamation Plan Approval” with the county recorder.

This bill would require that notice to include the name of the owner of record of the mine operation, the name of the lead agency, and the acknowledged signature of the lead agency representative.

(3) Under existing law, for a charitable contribution claimed by a seller on certain conservation lands acquired using state funds, the seller is required to attach to his or her personal income tax return a copy of an appraisal of the charitable contribution, as described.

This bill would, instead, require the seller to attach to his or her income tax return a copy of the appraisal of the charitable contribution relied on by the acquisition agency.

(4) Existing law establishes the Native American Heritage Commission. Existing law requires the commission, once it receives notification of Native American human remains from a county coroner, to notify the most likely descendants, and the descendants, with permission of the landowner, may inspect the site and recommend appropriate dignified disposition of the human remains and grave goods. Existing law requires, when the commission is unable to identify descendants, the descendants fail to make a recommendation, or other specified circumstances occur, that the landowner reinter the human remains, and perform at least one of 3 activities to protect the site, including record a document with the county in which the property is located.

This bill would require that the document be titled “Notice of Reinterment of Native American Remains” and include a legal description of the property, the name of the owner of the property, and the owner’s acknowledged signature.

(5) The California Coastal Act of 1976 provides for the certification of port master plans by the California Coastal Commission. The act requires amendments to a port master plan to be submitted to the commission for approval and provides for a special procedure for the designation and approval of amendments to a port master plan that are de minimis.

This bill would revise the procedure for setting a public hearing or returning the proposed amendment if 3 members of the

commission object to the executive director's determination that the proposed amendment is de minimis.

(6) The Treasure Island Public Trust Exchange Act authorizes the State Lands Commission to 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 useful for public trust purposes are freed from the public trust and may be conveyed into private ownership, and certain other lands on Yerba Buena Island that are not public trust lands and that are useful for public trust purposes are made subject to the public trust. Among other requirements for approval, the commission is required to find that sufficient building height limitations are in place to ensure that views from public areas at Yerba Buena Island are not obstructed.

This bill would instead require a finding that sufficient building height limitations are in place to ensure that development on Yerba Buena Island will not significantly obstruct certain views, as of January 1, 2010, from the proposed trust lands on the eastern and western hilltop public park areas on Yerba Buena Island.

The bill would also revise the diagram of lands that is part of the act.

(7) Existing law grants to the City and County of San Francisco the right, title, and interest of the State of California in and to certain tidelands and submerged lands in trust for certain purposes. Under existing law, the Burton Act and the Burton Act transfer agreement, the interest of the state in and to the Harbor of San Francisco was transferred in trust to the City and County of San Francisco. The State Lands Commission has jurisdiction over tidelands and submerged lands of the state.

Existing law authorizes the City and County of San Francisco to lease, sell, or otherwise transfer all or any portion of certain tidelands and submerged lands constituting "paper streets" in the City and County of San Francisco to any person, as defined, free of the public trust and of any additional restrictions on use or transfer created by the Burton Act or Burton Act transfer agreement upon a finding and declaration of specified conditions by the State Lands Commission.

This bill would revise certain descriptions of those paper streets.

Existing law declares, until January 1, 2094, that certain parcels of real property denominated as the designated seawall lots, subject

to certain specified conditions, are free from the use requirements of the public trust, the Burton Act trust, and the Burton Act transfer agreement. The San Francisco Port Commission is authorized to lease all or a portion of the designated seawall lots provided that specified conditions are met.

This bill would revise those provisions to include a map of those designated seawall lots.

(8) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

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

SECTION 1. Section 51177 of the Government Code is amended to read:

51177. As used in this chapter:

(a) “Defensible space” means the area adjacent to a structure or dwelling where wildfire prevention or protection practices are implemented to provide defense from an approaching wildfire or to minimize the spread of a structure fire to wildlands or surrounding areas.

(b) “Director” means the Director of Forestry and Fire Protection.

(c) “Fuel” means any combustible material, including petroleum-based products and wildland fuels.

(d) “Fuel management” means the act or practice of controlling flammability and reducing resistance to control of fuels through mechanical, chemical, biological, or manual means or by fire, in support of land management objectives.

(e) “Local agency” means a city, county, city and county, or district responsible for fire protection within a very high fire hazard severity zone.

(f) “Single specimen tree” means any live tree that stands alone in the landscape so as to be clear of buildings, structures, combustible vegetation, or other trees, and that does not form a means of rapidly transmitting fire from the vegetation to an

occupied dwelling or structure or from an occupied dwelling or structure to vegetation.

(g) “State responsibility areas” means those areas identified pursuant to Section 4102 of the Public Resources Code.

(h) “Vegetation” means all plants, including trees, shrubs, grass, and perennial or annual plants.

(i) “Very high fire hazard severity zone” means an area designated by the director pursuant to Section 51178 that is not a state responsibility area.

(j) “Wildfire” means an unplanned, unwanted wildland fire, including unauthorized human-caused fires, escaped wildland fire use events, escaped prescribed fire projects, and all other wildland fires where the objective is to extinguish the fire.

SEC. 2. Section 51182 of the Government Code is amended to read:

51182. (a) A person who owns, leases, controls, operates, or maintains an occupied dwelling or occupied structure in, upon, or adjoining a mountainous area, forest-covered land, brush-covered land, grass-covered land, or land that is covered with flammable material, which area or land is within a very high fire hazard severity zone designated by the local agency pursuant to Section 51179, shall at all times do all of the following:

(1) Maintain defensible space of 100 feet from each side and from the front and rear of the structure, but not beyond the property line except as provided in paragraph (2). The amount of fuel modification necessary shall take into account the flammability of the structure as affected by building material, building standards, location, and type of vegetation. Fuels shall be maintained in a condition so that a wildfire burning under average weather conditions would be unlikely to ignite the structure. This paragraph does not apply to single specimens of trees or other vegetation that are well-pruned and maintained so as to effectively manage fuels and not form a means of rapidly transmitting fire from other nearby vegetation to a structure or from a structure to other nearby vegetation. The intensity of fuels management may vary within the 100-foot perimeter of the structure, the most intense being within the first 30 feet around the structure. Consistent with fuels management objectives, steps should be taken to minimize erosion.

(2) A greater distance than that required under paragraph (1) may be required by state law, local ordinance, rule, or regulation.

Clearance beyond the property line may only be required if the state law, local ordinance, rule, or regulation includes findings that the clearing is necessary to significantly reduce the risk of transmission of flame or heat sufficient to ignite the structure, and there is no other feasible mitigation measure possible to reduce the risk of ignition or spread of wildfire to the structure. Clearance on adjacent property shall only be conducted following written consent by the adjacent landowner.

(3) An insurance company that insures an occupied dwelling or occupied structure may require a greater distance than that required under paragraph (1) if a fire expert, designated by the fire chief or fire official from the authority having jurisdiction, provides findings that the clearing is necessary to significantly reduce the risk of transmission of flame or heat sufficient to ignite the structure, and there is no other feasible mitigation measure possible to reduce the risk of ignition or spread of wildfire to the structure. The greater distance may not be beyond the property line unless allowed by state law, local ordinance, rule, or regulation.

(4) Remove that portion of a tree that extends within 10 feet of the outlet of a chimney or stovepipe.

(5) Maintain a tree, shrub, or other plant adjacent to or overhanging a building free of dead or dying wood.

(6) Maintain the roof of a structure free of leaves, needles, or other vegetative materials.

(7) Prior to constructing a new dwelling or structure that will be occupied or rebuilding an occupied dwelling or occupied structure damaged by a fire in that zone, the construction or rebuilding of which requires a building permit, the owner shall obtain a certification from the local building official that the dwelling or structure, as proposed to be built, complies with all applicable state and local building standards, including those described in subdivision (b) of Section 51189, and shall provide a copy of the certification, upon request, to the insurer providing course of construction insurance coverage for the building or structure. Upon completion of the construction or rebuilding, the owner shall obtain from the local building official, a copy of the final inspection report that demonstrates that the dwelling or structure was constructed in compliance with all applicable state and local building standards, including those described in subdivision (b) of Section 51189, and shall provide a copy of the

report, upon request, to the property insurance carrier that insures the dwelling or structure.

(b) A person is not required under this section to manage fuels on land if that person does not have the legal right to manage fuels, nor is a person required to enter upon or to alter property that is owned by any other person without the consent of the owner of the property.

(c) The Department of Forestry and Fire Protection shall develop, periodically update, and post on its Internet Web site a guidance document on fuels management pursuant to this chapter. Guidance shall include, but not be limited to, regionally appropriate vegetation management suggestions that preserve and restore native species, minimize erosion, minimize water consumption, and permit trees near homes for shade, aesthetics, and habitat; and suggestions to minimize or eliminate the risk of flammability of nonvegetative sources of combustion such as woodpiles, propane tanks, decks, and outdoor lawn furniture.

SEC. 3. Section 2772.7 of the Public Resources Code is amended to read:

2772.7. (a) A lead agency, upon approval of a reclamation plan or an amendment to a reclamation plan, shall record a “Notice of Reclamation Plan Approval” with the county recorder. The notice shall read: “Mining operations conducted on the hereinafter described real property are subject to a reclamation plan approved by the \_\_\_\_ (lead agency), a copy of which is on file with the \_\_\_\_\_.”

(b) In addition to the information required by subdivision (a), the notice shall also include the name of the owner of record of the mine operation, the name of the lead agency, and the acknowledged signature of the lead agency representative.

SEC. 4. Section 4291 of the Public Resources Code is amended to read:

4291. (a) A person who owns, leases, controls, operates, or maintains a building or structure in, upon, or adjoining a mountainous area, forest-covered lands, brush-covered lands, grass-covered lands, or land that is covered with flammable material, shall at all times do all of the following:

(1) Maintain defensible space of 100 feet from each side and from the front and rear of the structure, but not beyond the property line except as provided in paragraph (2). The amount of fuel

modification necessary shall take into account the flammability of the structure as affected by building material, building standards, location, and type of vegetation. Fuels shall be maintained in a condition so that a wildfire burning under average weather conditions would be unlikely to ignite the structure. This paragraph does not apply to single specimens of trees or other vegetation that are well-pruned and maintained so as to effectively manage fuels and not form a means of rapidly transmitting fire from other nearby vegetation to a structure or from a structure to other nearby vegetation. The intensity of fuels management may vary within the 100-foot perimeter of the structure, the most intense being within the first 30 feet around the structure. Consistent with fuels management objectives, steps should be taken to minimize erosion. For the purposes of this paragraph, “fuel” means any combustible material, including petroleum-based products and wildland fuels.

(2) A greater distance than that required under paragraph (1) may be required by state law, local ordinance, rule, or regulation. Clearance beyond the property line may only be required if the state law, local ordinance, rule, or regulation includes findings that the clearing is necessary to significantly reduce the risk of transmission of flame or heat sufficient to ignite the structure, and there is no other feasible mitigation measure possible to reduce the risk of ignition or spread of wildfire to the structure. Clearance on adjacent property shall only be conducted following written consent by the adjacent landowner.

(3) An insurance company that insures an occupied dwelling or occupied structure may require a greater distance than that required under paragraph (1) if a fire expert, designated by the director, provides findings that the clearing is necessary to significantly reduce the risk of transmission of flame or heat sufficient to ignite the structure, and there is no other feasible mitigation measure possible to reduce the risk of ignition or spread of wildfire to the structure. The greater distance may not be beyond the property line unless allowed by state law, local ordinance, rule, or regulation.

(4) Remove that portion of a tree that extends within 10 feet of the outlet of a chimney or stovepipe.

(5) Maintain a tree, shrub, or other plant adjacent to or overhanging a building free of dead or dying wood.

(6) Maintain the roof of a structure free of leaves, needles, or other vegetative materials.

(7) Prior to constructing a new building or structure or rebuilding a building or structure damaged by a fire in an area subject to this section, the construction or rebuilding of which requires a building permit, the owner shall obtain a certification from the local building official that the dwelling or structure, as proposed to be built, complies with all applicable state and local building standards, including those described in subdivision (b) of Section 51189 of the Government Code, and shall provide a copy of the certification, upon request, to the insurer providing course of construction insurance coverage for the building or structure. Upon completion of the construction or rebuilding, the owner shall obtain from the local building official, a copy of the final inspection report that demonstrates that the dwelling or structure was constructed in compliance with all applicable state and local building standards, including those described in subdivision (b) of Section 51189 of the Government Code, and shall provide a copy of the report, upon request, to the property insurance carrier that insures the dwelling or structure.

(b) A person is not required under this section to manage fuels on land if that person does not have the legal right to manage fuels, nor is a person required to enter upon or to alter property that is owned by any other person without the consent of the owner of the property.

(c) (1) Except as provided in Section 18930 of the Health and Safety Code, the director may adopt regulations exempting a structure with an exterior constructed entirely of nonflammable materials, or, conditioned upon the contents and composition of the structure, the director may vary the requirements respecting the removing or clearing away of flammable vegetation or other combustible growth with respect to the area surrounding those structures.

(2) An exemption or variance under paragraph (1) shall not apply unless and until the occupant of the structure, or if there is not an occupant, the owner of the structure, files with the department, in a form as the director shall prescribe, a written consent to the inspection of the interior and contents of the structure to ascertain whether this section and the regulations adopted under this section are complied with at all times.

(d) The director may authorize the removal of vegetation that is not consistent with the standards of this section. The director may prescribe a procedure for the removal of that vegetation and make the expense a lien upon the building, structure, or grounds, in the same manner that is applicable to a legislative body under Section 51186 of the Government Code.

(e) The Department of Forestry and Fire Protection shall develop, periodically update, and post on its Internet Web site a guidance document on fuels management pursuant to this chapter. Guidance shall include, but not be limited to, regionally appropriate vegetation management suggestions that preserve and restore native species, minimize erosion, minimize water consumption, and permit trees near homes for shade, aesthetics, and habitat; and suggestions to minimize or eliminate the risk of flammability of nonvegetative sources of combustion such as woodpiles, propane tanks, decks, and outdoor lawn furniture.

(f) As used in this section, “person” means a private individual, organization, partnership, limited liability company, or corporation.

SEC. 5. Section 5096.518 of the Public Resources Code is amended to read:

5096.518. For a charitable contribution claimed by a seller that is over five thousand dollars (\$5,000) on conservation lands acquired using state funds, in order to substantiate the amount of the charitable contribution deduction claimed by the seller pursuant to Part 10 (commencing with Section 17001) or Part 11 (commencing with Section 23001) of Division 2 of the Revenue and Taxation Code, both of the following requirements shall apply:

(a) The seller shall attach to his or her California income tax return a copy of the appraisal of the charitable contribution relied on by the acquisition agency.

(b) The appraisal attached to the return shall be prepared by an appraiser licensed by the Office of Real Estate Appraisers pursuant to Part 3 (commencing with Section 11300) of Division 4 of the Business and Professions Code and shall comply with the applicable requirements of the Revenue and Taxation Code and the Internal Revenue Code for purposes of substantiating the amount of the contribution for California income and franchise tax purposes and federal income tax purposes.

SEC. 6. Section 5097.98 of the Public Resources Code is amended to read:

5097.98. (a) Whenever the commission receives notification of a discovery of Native American human remains from a county coroner pursuant to subdivision (c) of Section 7050.5 of the Health and Safety Code, it shall immediately notify those persons it believes to be most likely descended from the deceased Native American. The descendants may, with the permission of the owner of the land, or his or her authorized representative, inspect the site of the discovery of the Native American human remains and may recommend to the owner or the person responsible for the excavation work means for treatment or disposition, with appropriate dignity, of the human remains and any associated grave goods. The descendants shall complete their inspection and make recommendations or preferences for treatment within 48 hours of being granted access to the site.

(b) Upon the discovery of Native American remains, the landowner shall ensure that the immediate vicinity, according to generally accepted cultural or archaeological standards or practices, where the Native American human remains are located, is not damaged or disturbed by further development activity until the landowner has discussed and conferred, as prescribed in this section, with the most likely descendants regarding their recommendations, if applicable, taking into account the possibility of multiple human remains. The landowner shall discuss and confer with the descendants all reasonable options regarding the descendants' preferences for treatment.

(1) The descendants' preferences for treatment may include the following:

(A) The nondestructive removal and analysis of human remains and items associated with Native American human remains.

(B) Preservation of Native American human remains and associated items in place.

(C) Relinquishment of Native American human remains and associated items to the descendants for treatment.

(D) Other culturally appropriate treatment.

(2) The parties may also mutually agree to extend discussions, taking into account the possibility that additional or multiple Native American human remains, as defined in this section, are located in the project area, providing a basis for additional treatment measures.

(c) For the purposes of this section, “conferral” or “discuss and confer” means the meaningful and timely discussion and careful consideration of the views of each party, in a manner that is cognizant of all parties’ cultural values, and where feasible, seeking agreement. Each party shall recognize the other’s needs and concerns for confidentiality of information provided to the other.

(d) (1) Human remains of a Native American may be an inhumation or cremation, and in any state of decomposition or skeletal completeness.

(2) Any items associated with the human remains that are placed or buried with the Native American human remains are to be treated in the same manner as the remains, but do not by themselves constitute human remains.

(e) Whenever the commission is unable to identify a descendant, or the descendants identified fail to make a recommendation, or the landowner or his or her authorized representative rejects the recommendation of the descendants and the mediation provided for in subdivision (k) of Section 5097.94, if invoked, fails to provide measures acceptable to the landowner, the landowner or his or her authorized representative shall reinter the human remains and items associated with Native American human remains with appropriate dignity on the property in a location not subject to further and future subsurface disturbance. To protect these sites, the landowner shall do one or more of the following:

(1) Record the site with the commission or the appropriate Information Center.

(2) Utilize an open-space or conservation zoning designation or easement.

(3) Record a document with the county in which the property is located. The document shall be titled “Notice of Reinterment of Native American Remains” and shall include a legal description of the property, the name of the owner of the property, and the owner’s acknowledged signature, in addition to any other information required by this section. The document shall be indexed as a notice under the name of the owner.

(f) Upon the discovery of multiple Native American human remains during a ground disturbing land development activity, the landowner may agree that additional conferral with the descendants is necessary to consider culturally appropriate treatment of multiple Native American human remains. Culturally appropriate treatment

of the discovery may be ascertained from a review of the site utilizing cultural and archaeological standards. Where the parties are unable to agree on the appropriate treatment measures the human remains and items associated and buried with Native American human remains shall be reinterred with appropriate dignity, pursuant to subdivision (e).

(g) Notwithstanding Section 5097.9, this section, including those actions taken by the landowner or his or her authorized representative to implement this section and any action taken to implement an agreement developed pursuant to subdivision (l) of Section 5097.94, shall be exempt from the requirements of the California Environmental Quality Act (Division 13 (commencing with Section 21000)).

(h) Notwithstanding Section 30244, this section, including those actions taken by the landowner or his or her authorized representative to implement this section and any action taken to implement an agreement developed pursuant to subdivision (l) of Section 5097.94, shall be exempt from the requirements of the California Coastal Act of 1976 (Division 20 (commencing with Section 30000)).

SEC. 7. Section 30716 of the Public Resources Code is amended to read:

30716. (a) A certified port master plan may be amended by the port governing body, but an amendment shall not take effect until it has been certified by the commission. Any proposed amendment shall be submitted to, and processed by, the commission in the same manner as provided for submission and certification of a port master plan.

(b) The commission shall, by regulation, establish a procedure whereby proposed amendments to a certified port master plan may be reviewed and designated by the executive director of the commission as being minor in nature and need not comply with Section 30714. These amendments shall take effect on the 10th working day after the executive director designates the amendments as minor.

(c) (1) The executive director may determine that a proposed certified port master plan amendment is de minimis if the executive director determines that the proposed amendment would have no impact, either individually or cumulatively, on coastal resources,

is consistent with the policies of Chapter 3 (commencing with Section 30200), and meets the following criteria:

(A) The port governing body, at least 21 days prior to the date of submitting the proposed amendment to the executive director, has provided public notice, and provided a copy to the commission, which specifies the dates and places where comments will be accepted on the proposed amendment, contains a brief description of the proposed amendment, and states the address where copies of the proposed amendment are available for public review, by one of the following procedures:

(i) Publication, not fewer times than required by Section 6061 of the Government Code, in a newspaper of general circulation in the area affected by the proposed amendment. If more than one area will be affected, the notice shall be published in the newspaper of largest circulation from among the newspapers of general circulation in those areas.

(ii) Posting of the notice by the port governing body both onsite and offsite in the area affected by the proposed amendment.

(iii) Direct mailing to the owners and occupants of contiguous property shown on the latest equalized assessment roll.

(B) The proposed amendment does not propose any change in land use or water uses or any change in the allowable use of property.

(2) At the time that the port governing body submits the proposed amendment to the executive director, the port governing body shall also submit to the executive director any public comments that were received during the comment period provided pursuant to subparagraph (A) of paragraph (1).

(3) (A) The executive director shall make a determination as to whether the proposed amendment is de minimis within 10 working days from the date of submittal by the local government. If the proposed amendment is determined to be de minimis, the proposed amendment shall be noticed in the agenda of the next regularly scheduled meeting of the commission, in accordance with Section 11125 of the Government Code, and any public comments forwarded by the port governing body shall be made available to the members of the commission.

(B) If three members of the commission object to the executive director's determination that the proposed amendment is de minimis, the proposed amendment shall be set for public hearing

in accordance with the procedures specified in subdivision (a) or, at the request of the port governing body, returned to the port governing body. If set for public hearing under subdivision (a), the time requirements set by this section and Section 30714 shall commence from the date on which the objection to the de minimis designation was made.

(C) If three or more members of the commission do not object to the de minimis determination, the de minimis amendment shall become a part of the certified port master plan 10 days from the date of the commission meeting.

(4) The commission may, after a noticed public hearing, adopt guidelines to implement this subdivision, which shall be exempt from review by the Office of Administrative Law and from Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. The commission shall file any guidelines adopted pursuant to this paragraph with the Office of Administrative Law.

SEC. 8. Section 7 of Chapter 543 of the Statutes of 2004, as amended by Section 20 of Chapter 660 of the Statutes of 2007, is amended to read:

Sec. 7. (a) The commission is authorized to approve an exchange of trust lands between Treasure Island and Yerba Buena Island that meets the requirements of this act. Pursuant to this authority, the commission shall establish appropriate procedures for effectuating the exchange. The procedures shall include provisions for ensuring that lands are not exchanged into the trust until either of the following have occurred:

(1) All remedial action necessary to protect human health and the environment with respect to hazardous substances on the land has been completed as determined by the United States Environmental Protection Agency, the California Department of Toxics Substances Control, and the Regional Water Quality Control Board, pursuant to the Federal Facilities Agreement for the Naval Station Treasure Island dated September 29, 1992, as amended, and the United States has provided a warranty in accordance with Section 9620(h)(3)(A) of Title 42 of the United States Code.

(2) The United States has obtained a warranty deferral, approved by the Governor in accordance with Section 9620(h)(3)(C) of Title 42 of the United States Code, involving land for which the commission has determined to execute a certificate of acceptance

of title. Prior to approving a warranty deferral, the Governor, the California Department of Toxics Substances Control, and the Regional Water Quality Control Board shall confer and consult with the commission to reasonably ensure that the terms of the warranty deferral and underlying documents and agreements provide sufficient standards and financial assurances to ensure that the remediation of any affected trust lands will be completed in a manner consistent with the intended public trust use of these lands and in a reasonable period of time.

(b) The commission shall not approve an exchange of trust lands pursuant to this act unless it finds all of the following:

(1) The configuration of trust lands upon completion of the exchange will do all of the following:

(A) Not differ significantly from the configuration shown on the diagram in Section 12 of this act.

(B) Include all lands within the TIDA property that are presently below the line of mean high tide and subject to tidal action.

(C) Consist of lands suitable to be impressed with the public trust.

(2) The final layout of streets within the TIDA property will provide access to the public trust lands and be consistent with the beneficial use of the public trust lands, including, but not limited to, roadway access to serve the public along the western shoreline of Treasure Island.

(3) The value of the lands to be exchanged into the trust is equal to or greater than the value of the lands to be exchanged out of the trust, as the exchange is finally configured and phased. The commission may take into consideration any uncertainties concerning whether the lands to be exchanged are currently subject to the public trust.

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

(5) Sufficient building height limitations are in place to ensure that development on Yerba Buena Island will not significantly obstruct views from public hilltop areas on Yerba Buena Island as framed by structures existing as of January 1, 2010. For the

purposes of this paragraph, “public hilltop areas” means the westernmost hilltop on Yerba Buena Island, having an elevation of approximately 320 feet, and easternmost hilltop on Yerba Buena Island, having an elevation of approximately 340 feet. This paragraph does not limit the authority of a public agency to impose additional or more stringent height limitations or other requirements relating to the protection of views in connection with development on Yerba Buena Island.

(6) The trustee has approved the exchange and will hold fee title to all lands to be subject to the trust upon completion of the exchange.

(c) Any portion of the Job Corps parcel may be added to or removed from the trust, all at once or in phases, as part of the exchange authorized by this act, provided all of the following conditions are met:

(1) No Job Corps parcel lands are removed from the trust in advance of the exchange of lands authorized in subdivision (b) of this section.

(2) The commission finds all of the following:

(A) Any Job Corps parcel lands to be exchanged into the trust will enhance the configuration of trust lands on Treasure Island.

(B) Any Job Corps parcel lands to be exchanged out of the trust have been filled and reclaimed, are cut off from access to navigable waters, are no longer needed or required for the promotion of the public trust, and constitute a relatively small portion of the granted tidelands within the city.

(C) The inclusion of the Job Corps parcel lands in the exchange will not result in substantial interference with trust uses and purposes.

(D) Any Job Corps parcel lands to be subject to the trust are accessible from the streets as finally configured within the TIDA property, consistent with the beneficial use of those lands.

(E) The cumulative value of all of the TIDA property exchanged into the trust is equal to or greater than the cumulative value of all of the TIDA property exchanged out of the trust, after the Job Corps parcel lands are included in the exchange. The following shall apply to the determination of cumulative value by the commission:

(i) For purposes of calculating the value of any lands added to or removed from the trust in an earlier phase of the exchange, the

commission shall utilize the value of those lands as determined by the commission at the time of the commission's approval of the earlier phase, adjusted to account for any apportionment of development costs pursuant to clause (ii) and adjusted for inflation in a manner approved by the commission.

(ii) For purposes of calculating value of the Job Corps parcel lands to be added to or removed from the trust, the commission shall apportion to those lands a prorated share of any direct or indirect development, project requirement, and other costs accepted by the commission in its valuation of any lands involved in an earlier phase of the exchange where such costs are for activities or improvements not borne by the United States that benefit the Job Corps parcel lands, including, but not limited to, the direct and indirect costs of shoreline stabilization, environmental remediation, infrastructure, transportation facilities, and open-space improvements, adjusted for inflation in a manner approved by the commission.

(iii) The commission may take into consideration any uncertainties concerning whether the Job Corps parcel lands are currently subject to the trust.

(F) The trustee will hold fee title to all lands to be subject to the trust upon completion of the exchange.

(3) The commission and the trustee have approved the addition of the Job Corps parcel lands to the exchange.

(d) The commission shall impose additional conditions on its approval of the exchange if the commission determines that these conditions are necessary for the protection of the public trust. These conditions may include a contribution to the Land Bank Fund, established pursuant to Division 7 (commencing with Section 8600) of the Public Resources Code, or exchanging lands into the trust in addition to those on Yerba Buena Island, if the value of the land brought into the public trust does not equal or exceed the value of the land removed from the public trust.

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

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

(2) Convey to the trustee by patent all of the right, title, and interest of the state in lands that are to be free of the public trust and the statutory trust upon completion of the exchange.

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

(f) Following the completion of any phase of the trust exchange, the resulting configuration of trust lands within the TIDA property shall constitute the “trust property” for purposes of the conversion act, notwithstanding subdivision (b) of Section 4 of that act.

SEC. 9. Section 12 of Chapter 543 of the Statutes of 2004, as amended by Section 21 of Chapter 660 of the Statutes of 2007, is amended to read:

Sec. 12. The following diagram is a part of this act:

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SEC. 10. Section 1 of Chapter 660 of the Statutes of 2007 is amended to read:

Sec. 1. As used in this act:

(a) “BCDC” means the San Francisco Bay Conservation and Development Commission established under Section 66620 of the Government Code.

(b) “Burton Act” means Chapter 1333 of the Statutes of 1968, as amended.

(c) “Burton Act lands” means those tidelands granted to the city by the Burton Act.

(d) “Burton Act Map” means that certain map entitled “MAP OF LANDS TRANSFERRED IN TRUST TO THE CITY AND COUNTY OF SAN FRANCISCO,” recorded in Book W of Maps, Page 66, of the City and County of San Francisco Recorder’s Office.

(e) “Burton Act transfer agreement” means that certain agreement dated January 24, 1969, between the state and the city, relating to the transfer of the Port of San Francisco from the state to the city, and any amendments to that agreement in accordance with its terms.

(f) “Burton Act trust” means the statutory trust imposed by the Burton Act, by which the state conveyed to the city, in trust and subject to certain terms, conditions, and reservations, the state’s interest in certain tidelands, including filled lands, and lands dedicated or acquired by the city as assets of the trust.

(g) “Capital plan” means the plan developed by the port dated February 2007, as may be amended from time to time, identifying projects to improve the infrastructure and buildings on trust lands on the San Francisco waterfront, including preservation of and structural repairs and improvements to historic piers, and the construction of public access within and around historic piers.

(h) “City” means the City and County of San Francisco, a charter city and county.

(i) “Commission” means the State Lands Commission.

(j) “Designated seawall lot” or “designated seawall lots” means any or all of the parcels of real property located in the city commonly known as seawall lots 328, 330, 337, and 347S, including a portion of Mission Rock Street, as shown on that certain map entitled “designated seawall lots,” which is reproduced in Section 15 and is on file with the commission and the port.

(k) “Harbor fund” means the separate fund in the treasury of the city established and maintained in accordance with Section B6.406 of the charter of the city and Section 4 of the Burton Act.

(l) “Historic pier” means any of the piers, marginal wharves, pier sheds, bulkhead buildings, and other buildings and structures in the San Francisco waterfront between and including Pier 48 and Pier 45 that have been included in the Port of San Francisco Embarcadero Historic District and that either are individually listed or eligible for listing on the National Register of Historic Places; or have been designated as, or meet the standards for, resources contributing to the historic significance of the Port of San Francisco Embarcadero Historic District under federal law.

(m) “Historic structure” means any building, structure, or other facility that is located on port property and either is individually listed or eligible for listing on the National Register of Historic Places; or has been designated as, or meets the standards for, a resource contributing to the historic significance of a national register listed or eligible for listing as a historic district under federal law.

(n) “Lease” means a ground lease or space lease of real property, license agreement for use of real property, temporary easement, right-of-way agreement, development agreement, or any other agreement granting to any person any right to use, occupy, or improve real property under the jurisdiction of the port.

(o) “McAteer-Petris Act” means Title 7.2 (commencing with Section 66000) of the Government Code.

(p) “Paper street” or “paper streets” means any or all of those areas of real property, located in the city, consisting of certain portions of lands designated as streets on the Burton Act Map, and more particularly described as follows:

(1) That portion of Daggett Street lying between the easterly prolongation of the northerly line of Sixteenth Street and the southeasterly prolongation of the southwesterly line of Seventh Street.

(2) That portion of Texas Street lying between the easterly prolongation of the southerly line of Sixteenth Street and the Pueblo Line of 1883, as shown on Sheet 4 of the Burton Act Map.

(3) That portion of Custer Avenue lying southerly of a line parallel with, and distant 100 feet landward, from the mean High Water Line of San Francisco Bay.

(4) That portion of Evans Avenue adjacent to block 77 as shown on Sheet 6 of the Burton Act Map lying easterly and northerly of the Line of Ordinary High Tide of 1868-1869 as shown on Sheet 6 of the Burton Act Map, and westerly of a line parallel with, and distant 100 feet landward, from the mean High Water Line of San Francisco Bay.

(5) That portion of Davidson Avenue lying easterly of the Line of Ordinary High Tide of 1868-1869 as shown on Sheet 6 of the Burton Act Map, and westerly of a line parallel with, and distant 100 feet landward, from the mean High Water Line of San Francisco Bay.

(6) That portion of Ingalls Street lying southerly of the westerly prolongation of the southerly line of Custer Avenue, northeasterly of the Ordinary High Tide Line of 1868-1869, and southeasterly of a line parallel with, and distant 100 feet landward, from the mean High Water Line of San Francisco Bay.

(7) Subject to approval by the commission, any portion of former Arthur Avenue lying southwesterly of the southwesterly line of Cargo Way, as dedicated on November 10, 1978, by Resolution Number 834-78 of the Board of Supervisors of the city, and as shown on Map T-27-85 on file in the office of the County Surveyor of the city, lying easterly of the easterly line of Third Street, abutting Assessor Parcel Numbers 5203-023, 5203-025, 5203-038, 5203-046, 5203-047, 5203-048, 5203-049, 5203-050, 5203-051, 5203-052, 5203-053, 5203-054, 5203-055, 5203-056, and 5203-057, inclusive, and Assessor Parcel Number 4570-019, excepting therefrom that portion thereof lying between the northeasterly prolongations of the northwesterly and southeasterly lines of Mendell Avenue; the foregoing shall include, without limitation, any portion of Arthur Avenue shown as lying outside of Parcel "A" as depicted on the Burton Act Map, provided that the commission finds and declares that there is uncertainty as to the nature or extent of the state's sovereign interest in these lands and that the public interest would be served by the resolution of that uncertainty by a settlement.

(q) "Person" means any private person, corporation, limited liability company, partnership, joint venture, business entity, business trust, association or other private organization or private entity, or any governmental entity or agency.

(r) “Port of San Francisco” or “port” means the city acting by and through the San Francisco Port Commission.

(s) “Preservation” means the rehabilitation, restoration, or preservation of historic piers or other historic structures in accordance with the Secretary of the Interior’s Standards for Rehabilitation. Preservation includes seismic retrofitting, substructure repair, and other structural and life-safety improvements, provided that the improvements are necessary for and in furtherance of the preservation of historic piers or other historic structures.

(t) “Public trust” or “trust” means the common law public trust for commerce, navigation, and fisheries.

(u) “San Francisco waterfront” means those lands placed by the city under the management, supervision, and control of the port.

(v) “Seaport plan” means the San Francisco Bay Area Seaport Plan, adopted by BCDC and the Metropolitan Transportation Commission, as amended in 2003, and as may be amended from time to time.

(w) “Special area plan” means the San Francisco Waterfront Special Area Plan, dated July 20, 2000, adopted by BCDC, as amended in 2002, and as may be amended from time to time.

(x) “State” means the State of California.

(y) “Subarea” or “subareas” means one or more of the waterfront subareas identified in the waterfront land use plan, as may be amended from time to time, except as otherwise provided in this act.

(z) “Tidelands” means the lands lying below the elevation of ordinary high water, whether filled or unfilled, and includes submerged lands.

(aa) “Waterfront land use plan” means the Port of San Francisco Waterfront Land Use Plan, including, but not limited to, the waterfront design and access element, adopted by the port under Resolution No. 97-50, as may be amended from time to time.

SEC. 11. Section 15 of Chapter 660 of the Statutes of 2007 is amended to read:

Sec. 15. The following map is a part of this act:

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SEC. 12. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.









Approved \_\_\_\_\_, 2009

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*Governor*