CHAPTER 542

An act relating to the Oakland Estuary.

[Approved by Governor September 15, 2004. Filed with Secretary of State September 15, 2004.]

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

SECTION 1. This act shall be known, and may be cited, as the Oak Street to 9th Avenue District Exchange Act.

SEC. 2. For purposes of this act, the following definitions apply unless the context requires otherwise.

(a) "1911 grant" means Chapter 654 of the Statutes of 1911, as amended by Chapter 146 of the Statutes of 1939, Chapter 1737 of the Statutes of 1965, and Chapter 1016 of the Statutes of 1981.

(b) "1960 grant" means Chapter 15 of the Statutes of 1960, First Extraordinary Session.

(c) "After-acquired trust lands" means all or any portion of the Oak Street to 9th Avenue property that is not historic tide and submerged lands, whose title is not derived from the legislative grants and that was acquired with public trust funds derived from port operations.

(d) "Area of the estuary plan" means those lands encompassed within that area between Adeline Street on the west, Interstate 880 on the north, the south bank of Damon Slough on the east, and the estuary shoreline on the south.

(e) "BCDC" means the San Francisco Bay Conservation and Development Commission.

(f) "Charter" means the Charter of the City of Oakland, as amended.

(g) "City" means the City of Oakland or the Town of Oakland, as applicable.

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

(i) "Estuary" means that arm of San Francisco Bay being a body of tidal water lying between the city on the east and north, the City of Alameda on the west and south and including both the Middle and Outer Harbor of the port encompassed within the legislative grants.

(j) "Estuary plan" means the estuary policy plan of the city and the port, accepted by the Board of Port Commissioners on February 10, 1999, and adopted by the city on June 8, 1999, including any subsequent amendment.

(k) "Final trust lands" means those lands within the Oak Street to 9th Avenue property that will be confirmed as subject to the public trust and to the Oak Street to 9th Avenue legislative grants upon the completion of the sale and exchange authorized by this act and are generally depicted in the diagram referenced in Section 12.

(*l*) "Granted lands" means the portion of the Oak Street to 9th Avenue property that is historic tide and submerged lands held by the city pursuant to the Oak Street to 9th Avenue legislative grants and that is managed or controlled by the port pursuant to the charter.

(m) "Implementation measures" means protective measures intended to ensure the completion of investigation and remediation of hazardous materials at, on, or under the Oak Street to 9th Avenue property pursuant to the remedial plan. Implementation measures may include, without limitation, letters of credit, surety bonds, or other guaranteed funds, set-aside letters issued by financial institutions, or insurance policies.

(n) "Legislative grants" means those certain grants of salt marsh, tidelands, and submerged lands by the Legislature to the city for public trust purposes. The Oak Street to 9th Avenue legislative grants are such grants.

(o) "Liability measures" means protective measures intended to protect the commission, the state, and public trust funds from increased responsibility or liability associated with hazardous materials at, on, or under the Oak Street to 9th Avenue property. Liability measures may include, without limitation, the commission's right to approve the remedial plan, applicable indemnities, or insurance policies.

(p) "Middle Harbor" means those lands lying south and west of Middle Harbor Road and consisting of berths 55 through 63, inclusive, as well as those lands encompassed within berths 67 and 68 that are part of what is currently known as the Inner Harbor.

(q) "Oak Street to 9th Avenue exchange lands" means those portions of the granted lands that are, subject to the findings of the commission required by this act, no longer needed or required for the promotion of the public trust or the purposes set forth in the Oak Street to 9th Avenue legislative grants.

(r) "Oak Street to 9th Avenue legislative grants" means the 1911 grant and the 1960 grant to the city by the Legislature of salt marsh, tidelands, and submerged lands for public trust purposes and encompassing all or a part of the Oak Street to 9th Avenue property.

(s) "Oak Street to 9th Avenue property" or the "property" is generally shown in the diagram in Section 12, and includes that certain land lying in the city whose perimeter description follows:

BEGINNING at the intersection of the northwesterly line of Homewood Suites Lease Boundary as said boundary is described in that certain lease between the Port of Oakland and JBN Lodging, a California limited liability company, recorded on January 2, 1997, as Document Number 97000487, Alameda County Recorder, and the southerly boundary of the Embarcadero; thence along the northwesterly boundary of said lease and the southwesterly prolongation thereof, South 65°32′30″ West, 365.14 feet; thence South 26°30′11″ West, 208.87 feet to a point on a line perpendicular to the southerly line of the Oakland city limits; thence southerly along said line, South 24°28′12″ East, 316.71 feet more or less to a point on the southerly line of the Oakland city limits; thence southwesterly along said city limits line to a point on the southeasterly prolongation of the easterly 1960 Grant Line, Chapter 15, Statutes of 1960; thence northwesterly along said southeasterly prolongation along said line, and along the northwesterly prolongation of said line, to a point on the southwesterly prolongation of the southeasterly line of Tract 4391, as said tract is shown on that certain map entitled "Tract 4391 FOR CONDOMINIUM PURPOSES", filed for record on October 30, 1980, in Book 122 of Maps at pages 60 and 61; thence northeasterly along said southwesterly prolongation and said southeasterly line, to a point on the southerly line of the Embarcadero; thence easterly and southeasterly along the southerly line of the

Embarcadero to the TRUE POINT OF BEGINNING.

EXCEPTING THEREFROM:

All of the lands of Silveira, as said lands are described in that certain Grant Deed recorded on November 3, 1967, in Reel 2068 at image 141, Alameda County Records.

EXCEPTING THEREFROM:

All of the lands of Schultz, as said lands are described in that certain Grant Deed filed for record on December 13, 1979, as Document Number 79-252704, Alameda County Records.

The Bearing South 65°21′44″ East between the two found Monuments "SHIP", as said monument is shown on that certain Record of Survey No. 990 filed for record on July 19, 1994, in Book 18 of Survey at pages 50 through 60, inclusive in the Office of the Recorder of Alameda County and Monument "H130", as said monument and said monument "SHIP" are shown on that certain unrecorded Record of Survey, entitled "Monument and Plan lines of the Embarcadero between 5th and 19th Avenue, an undedicated Street within the Port Area of the City of Oakland, California", was taken as the basis of bearings for this description.

All bearings in this description are based upon the North American Datum of 1983, California Coordinate System of 1983 (CCS83), Zone III. All distances are ground distances, to obtain grid distances, multiply ground distances by 0.9999293.

(t) "Outer Harbor" means the lands encompassing berths 8 through 38, inclusive, the former Oakland Army Base, and lands adjacent thereto.

(u) "Oversight agency" means the state, regional, or local agency exercising primary jurisdiction over the investigation and remediation of hazardous materials at, on, or under the Oak Street to 9th Avenue property.

(v) "Port" means, as the context requires, the port department of the city, or all of the lands granted to the city by the legislative grants and all after-acquired trust lands, together with the improvements to those lands.

(w) "Port improvement plans" means those capital projects or plans adopted or implemented by the Board of Port Commissioners of the port that are in furtherance of the legislative grants or the public trust and will be located within or adjacent to the Middle Harbor or Outer Harbor.

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

(y) "Remedial plan" means the written plan approved by the oversight agency for investigation and remediation of hazardous materials at, on, or under the Oak Street to 9th Avenue property, including the establishment of screening and remediation goals therefor.

(z) "Trust exchange parcel" means a parcel or parcels of land selected by the port and approved by the commission that meet the criteria set forth in subdivision (b) of Section 4.

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

(a) The purpose of this act is to authorize reconfiguration of certain public trust lands within one area of the estuary plan, specifically the Oak Street to 9th Avenue district. The authorization will effectuate the principles and objectives contained in regional and local land use plans, especially the estuary plan, the San Francisco Bay Plan and the San Francisco Bay Area Seaport Plan (both adopted by BCDC), and the port improvement plans, to the extent that they are consistent with the public trust. The completion of the reconfiguration of public trust lands will further the purposes of the public trust and the Oak Street to 9th Avenue legislative grants, and, if the trust exchange parcels lie outside of the lands encompassed within the Oak Street to 9th Avenue legislative grants or the area of the estuary plan, the legislative grants. To achieve these purposes, this act approves and authorizes the port to carry out and the commission to approve and to effectuate a sale and an exchange of lands, provided that the commission makes the necessary findings supporting the sale and exchange. Through the sale and exchange, certain lands within the Oak Street to 9th Avenue property presently subject to the public trust and the Oak Street to 9th Avenue legislative grants and no longer useful for public trust purposes will be freed from public trust ownership and use restrictions. Through a sale, significant funds will be generated for the port to apply to public trust purposes. Through an exchange, the trust exchange parcel will be brought into public trust ownership and made subject to the public trust and the Oak Street to 9th Avenue legislative grants or the legislative grants, as applicable, and the title to the final trust lands will be confirmed.

(b) Commencing in 1852, the city received a series of grants of public trust lands from the Legislature.

(c) Certain of the legislative grants, including the Oak Street to 9th Avenue legislative grants, purport to encompass the entirety of the Oak Street to 9th Avenue property. In addition, some or all of the Oak Street to 9th Avenue property was included within the perimeter description of Tideland Survey No. 22, which may have been invalid. Other parts of the property may have been included within Rancho San Antonio, parts of which were confirmed and patented to Antonio Maria Peralta in June 1874, and other parts of which were confirmed and patented to Domingo and Vincente Peralta in February 1877. Because of these and possibly

other factors related to the land title history of portions of the Oak Street to 9th Avenue property, there is uncertainty as to land titles within the property and the actual location of the boundaries of the granted lands and the after-acquired trust lands.

(d) The Oak Street to 9th Avenue property abuts the estuary on either side of the arm of the estuary which continues on to Lake Merritt. It has historically been used for industrial purposes, including shipping. The Oak Street to 9th Avenue property includes both granted lands and after-acquired trust lands. The title to, and boundary between, the granted lands and the after-acquired trust lands are uncertain, and will be settled by the port and the commission in connection with the exchange authorized by this act.

(e) In connection with a highly beneficial program of harbor development, the majority of the Oak Street to 9th Avenue property has been filled and reclaimed. As described below, the Oak Street to 9th Avenue exchange lands are, subject to the findings of the commission required by this act, no longer needed or required for the promotion of the public trust or any of the purposes set forth in the Oak Street to 9th Avenue legislative grants. Other portions of the property, the final trust lands, not now available for certain public trust uses, are or will be made or improved to be useful for other public trust purposes that may include, but are not limited to, open space, public access, water-related recreation, such as a marina and boat launch, commercial services to visitors as necessary, such as food service, plant and animal habitat, such as wetlands, circulation to and along the waterfront, or similar uses. In addition, through the settlement and exchange authorized by this act, any uncertain title within the final trust lands thereof will be settled as sovereign lands subject to the public trust and the Oak Street to 9th Avenue legislative grants.

(f) In 1927, the port was established by amendment to the charter. According to the charter, the purpose of the port is to promote and ensure the comprehensive and adequate development of the Port of Oakland through continuity of control, management, and operation, including the lands held by the city pursuant to the legislative grants. The Board of Port Commissioners, in whom the charter vests control of the port, has the complete and exclusive power, and the duty, on behalf of the city, to manage the port, including the Oak Street to 9th Avenue property. The port controls and manages more than 17,000 acres of land on which it operates, among other public trust functions, marine cargo terminals, and an international airport.

(g) In response to, among other matters, regional and local environmental concerns, the increasing size of container vessels and containers, and need for greater efficiency in moving containers to their destinations with the least relative environmental impact, the port is in

the process of consolidating, reconfiguring, or expanding its existing marine terminals pursuant to port improvement plans. Port improvement plans are intended to result in port maritime terminal facilities that will allow the port to achieve the year 2020 cargo throughput demand forecasts set forth in the BCDC's San Francisco Bay Area Seaport Plan.

(h) BCDC's San Francisco Bay Area Seaport Plan projected cargo handling requirements within the Oak Street to 9th Avenue property are supported by an analysis of cargo needs and facilities throughout the San Francisco Bay area. Prior to 2003, BCDC's San Francisco Bay Area Seaport Plan designated certain areas of the port for port priority use, including a portion of the Oak Street to 9th Avenue property, the 9th Avenue Terminal, which was used to handle break bulk cargo. In 2003, BCDC removed the port priority use designation from the 9th Avenue Terminal, finding that the regional demand for handling break bulk cargo was adequately met by the remaining regionwide capacity. In addition, in recognition of the improved efficiencies and increased maritime cargo capability proposed in port improvement plans and to ensure the availability of adequate land for port ancillary uses, BCDC amended the San Francisco Bay Plan and the San Francisco Bay Area Seaport Plan in 2001 to add certain lands to its designated port priority use area, retain the port priority use designation over other areas of the port, and remove the designation from other port lands.

(i) With respect to the Oak Street to 9th Avenue property, a portion of the property was a break bulk cargo terminal until the terminal ceased operation in about 1998. There are dredging depth limits beginning to the west of the property as a result of the Posey and Webster Tubes which provide vehicular access to the City of Alameda. The dredging depth limits the size of break bulk or container carriers that can access any terminal lying within the property. Further, the break bulk terminal that had existed would have required extensive repairs and remediation of pollution if it were to continue to accept cargo. The port concluded that break bulk cargo deliveries would not generate sufficient revenue to support costs of remediation and renovation of the terminal. Other regional ports with less container capability have absorbed the shipments that previously took place at the terminal on the property.

(j) The only currently operating industrial facility within the Oak Street to 9th Avenue property is a sand and gravel operation, which the port has leased to the sand and gravel operator through 2015. The continued operation of this facility beyond its current lease term is incompatible with contemplated public uses set forth in the estuary plan, including visitor access and shoreline improvement and circulation within the Oak Street to 9th Avenue property.

(k) When the break bulk and other industrial uses were active within the Oak Street to 9th Avenue property, they cut off or prevented public access, closed or narrowed view corridors, and prohibited or made impossible open-space amenities that would draw and permit the public to use and enjoy the estuary. The public, local and regional agencies, and national groups voiced significant concerns about the condition, use of, and access to the estuary and its shoreline. These concerns instigated public examination and reconsideration of land uses and facility operations along the estuary and made concrete the regional desire to revive the estuary waterfront. The estuary plan was the result and sets forth standards regarding protection and promotion of public uses along the estuary within and beyond the Oak Street to 9th Avenue property.

(*l*) The estuary plan recognizes that the estuary is a public resource of city, regional, and statewide significance. The estuary plan is intended to promote and strengthen a sense of community, to bring people to the waterfront to revitalize the estuary shoreline and to make it an inviting and vibrant part of the bay area. That this is a shared regional goal is evidenced by the adoption of City Measure DD, a nearly $200,000,000 bond issue to, among other matters, restore and help provide access to the estuary.

(m) The estuary plan also recognizes that continued siting of new heavy industrial facilities using, handling, storing, or generating pollutants next to a sensitive, publicly visible waterway is no longer appropriate for certain portions of the estuary shoreline, including the shoreline of the Oak Street to 9th Avenue property.

(n) The Oak Street to 9th Avenue property, as currently configured and in its present state, is constrained by conditions that make it difficult for redevelopment and require either a public or private entity to assume the considerable costs necessary to make any redevelopment possible. These present constraints include poor freeway and public transportation access, site contamination, unstable soils, and relatively poor infrastructure.

(o) While significant changes in container vessels, container shipping and processing, and land use plans have made portions of the Oak Street to 9th Avenue property no longer useful for shipping purposes, other portions of the property, the final trust lands, remain valuable to the public trust for, among other matters, open space, public access, water-related recreation, such as a marina and boat launch, commercial services to visitors as necessary, such as food service, plant and animal habitat, such as wetlands, circulation to and along the waterfront, or similar uses. These portions of the property are not now accessible to the public and require improvement and remediation.

(p) There are other public trust uses for which the Oak Street to 9th Avenue property is not currently needed or useful: oil and gas

development; airports; vehicular bridges and other water-dependent or water-related commercial transportation facilities (other than possible ferry service or boat landings); warehousing and storage of commercial goods related to port and airport use (because of the distance from existing large rail and container storage and movement yards at the port and inadequate truck access to I-880); maritime offices (because there is no market for new maritime office space within the property due to the existence of existing or planned maritime office space closer to downtown Oakland and to existing maritime and airport facilities); and hotels (because of the location of the property between other port sites with substantial numbers of hotel rooms and plans for future expansion).

(q) The port has encouraged development of significant public access and open space along the Oak Street to 9th Avenue property shoreline by removing defunct and dilapidated industrial uses, and then soliciting proposals for redevelopment that would include access and open-space opportunities. A mixed-use development has been proposed for the property. That improvement is part of the port's efforts to redevelop and to transform the shoreline in the Oak Street to 9th Avenue property area by converting the property into a vital waterfront district. The redevelopment of the property will revitalize, remediate, renew, and make accessible a now inaccessible and decayed waterfront area. This development will create trails, paths, view corridors, and significant public spaces enhancing public trust lands remaining following a sale and exchange, and will provide new public access and circulation to an area long cut off from the region.

(r) Although a substantial portion of the Oak Street to 9th Avenue property is now no longer needed or required for the promotion of the public trust, other portions of the property, the final trust lands, are of value to the public trust, and are needed and required for public trust uses, such as open space, public access, water-related recreation, such as a marina and boat launch, commercial services to visitors as necessary, such as food service, plant and animal habitat, such as wetlands, circulation to and along the waterfront, or similar uses. Absent a trust exchange and sale, certain interior lands not useful for trust purposes would be restricted to trust-consistent uses and could not be used for residential or other nontrust uses as a part of a mixed-use project that establishes, promotes, and maintains public trust uses on the waterfront and near-shoreline portions of the property and facilitates public trust purposes and goals including those set forth in the estuary plan, other applicable land use plans, to the extent they are consistent with the public trust, and the legislative grants, including the Oak Street to 9th Avenue legislative grants.

(s) A trust exchange of the Oak Street to 9th Avenue exchange lands and sale of after-acquired trust lands resulting in the geographic

configuration and extent of the final trust lands substantially as shown on the diagram contained in Section 12 maximizes the overall benefits to the trust, without interfering with trust uses or purposes. Following an exchange and sale, all lands within the Oak Street to 9th Avenue property adjacent to the waterfront, as well as interior lands determined by the port and the commission to retain public trust value, will remain subject to the public trust. The lands that will be removed from the trust pursuant to the exchange and sale, subject to approval of the commission, are landward of navigable waters and are no longer needed or required for the promotion of the public trust. The Oak Street to 9th Avenue exchange lands to be freed of the public trust constitute a relatively small portion of the lands granted to the city by the legislative grants. This act requires that the commission ensure that the trust exchange parcel added to the trust pursuant to the exchange is of equal or greater value than the Oak Street to 9th Avenue exchange lands taken out of the trust. The trust exchange parcel shall be selected by the port, subject to commission approval. The trust exchange parcel shall be owned as a public trust asset and be subject to the public trust and to either the legislative grants, including the Oak Street to 9th Avenue legislative grants, or to the legislative grants applicable to the remainder of the port, according to the location of the trust exchange parcel.

(t) The completion of the sale and exchange authorized by this act will have numerous benefits to the public trust. These benefits include, but are not limited to, all of the following:

(1) The repair and enhancement of the shoreline within the Oak Street to 9th Avenue property through the creation or improvement of a wide variety of open-space areas, bike trails, walking and jogging paths, marinas, an aquatic/sailing center, a maritime museum, restaurants, and small-scale, visitor-serving retail.

(2) Access to more than a mile of now inaccessible shoreline across the entirety of the waterfront of the property.

(3) In conjunction with the redevelopment of the property, remediation of soil contamination to improve water quality in the estuary.

(4) A significant deposit of money to the port fund, generated from the sale of the after-acquired trust lands, to be used for public trust purposes.

(5) Acquisition of the trust exchange parcel useful to, in support of, and consistent with the public trust and the purposes or objectives of the estuary plan, or the port improvement plans, as applicable, to the extent they are consistent with the public trust.

(6) Settlement of title issues.

(u) The completion of the authorized exchange and acquisition of the trust exchange parcel and the sale of after-acquired trust lands will

produce or support revenue generation by the port for port operations by, among other means, increasing visitor activities within the port and by assisting remediation of the Oak Street to 9th Avenue property.

(v) It is, therefore, the intent of the Legislature, on and subject to the terms and conditions set forth in this act, to authorize, ratify, and confirm any agreement between the commission and the port to enter into and effectuate an exchange of lands within the Oak Street to 9th Avenue property and a sale of after-acquired trust lands, as the port may propose and the commission may approve pursuant to this act and to terminate the public trust and the Oak Street to 9th Avenue legislative grants over the Oak Street to 9th Avenue exchange lands consistent with the findings and declarations stated in this act.

(w) The Legislature reaffirms and adopts those findings contained in Section 8602 of the Public Resources Code.

(x) The findings made in this act are applicable only to the transactions authorized and approved by Section 4.

SEC. 4. The Legislature hereby approves the following transactions within the Oak Street to 9th Avenue property: a land exchange of the Oak Street to 9th Avenue exchange lands and a sale for fair market value of after-acquired trust lands. Through the exchange and sale, certain lands within the property that meet the criteria set forth in this act and therefore are not now useful for public trust purposes will be freed from the public trust and may be conveyed into private ownership, certain other lands that are useful for public trust purposes and are not now subject to the public trust or the legislative grants will be made subject to the public trust and to the Oak Street to 9th Avenue legislative grants or to the legislative grants, as applicable, and the title to the final trust lands will be confirmed as being subject to the public trust and to the Oak Street to 9th Avenue legislative grants provided all of the following conditions are met, including approval by the commission:

(a) The lands or interests in lands to be exchanged or sold by the port and over which the public trust and the Oak Street to 9th Avenue legislative grants are to be terminated have been filled and reclaimed and consist entirely of dry lands lying landward of the present line of mean high water which are no longer needed or required for the purposes of the public trust or the Oak Street to 9th Avenue legislative grants.

(b) The consideration for exchange of the Oak Street to 9th Avenue exchange lands shall be the conveyance into public trust ownership of the trust exchange parcel which shall become public trust land subject to the legislative grants, including the Oak Street to 9th Avenue legislative grants or to the legislative grants, applicable to the remainder of the port, as appropriate, and shall meet all of the following criteria:

(1) The value of the trust exchange parcel shall be equal to or in excess of the value of the Oak Street to 9th Avenue exchange lands in which the

public trust and the Oak Street to 9th Avenue legislative grants are terminated.

(2) The trust exchange parcel shall be selected by the port and approved by the commission according to the following criteria and order of priority:

(A) First priority shall be for land that lies within the area of the estuary plan.

(B) Second priority shall be for land contiguous to the area of the estuary plan.

(C) Third priority shall be for land that lies within or adjacent to the Middle Harbor.

(D) Fourth priority shall be for land that lies within or adjacent to the Outer Harbor provided, however, that any first or second priority land acquired in accordance with this section shall support or relate to the purposes or objectives of the estuary plan to the extent these purposes or objectives are consistent with the public trust. If the only land available within the first priority has been designated in the estuary plan for a use that is not consistent with the public trust, then that land may be acquired by the port, but its acquisition shall support or relate to the purposes or objectives of the public trust and the legislative grants. It is further provided that any third or fourth priority land acquired in accordance with this section shall be for land that supports the purposes or objectives of the port improvement plans to the extent that their purposes and objectives are consistent with the public trust and the legislative grants.

(c) The port shall demonstrate to the commission that the trust exchange parcel selected by the port complies with the criteria of this section. If the commission, when considering an exchange, does not approve the trust exchange parcel and the commission determines that the port has made all reasonable efforts to locate a trust exchange parcel, an exchange agreement entered into consistent with Section 7 may provide that the port may deposit and the commission accept on behalf of the port the funds to be used to acquire a trust exchange parcel and sequester those funds in the Land Bank Fund established pursuant to Section 8610 of the Public Resources Code to be held solely for acquisition of a trust exchange parcel on which the port and the commission both agree according to the priorities in this section.

(d) All moneys resulting from the sale of after-acquired trust lands authorized in this act shall be retained by the port, and shall be used only for purposes consistent with the public trust and the legislative grants and this act, and shall be accounted for in compliance with Section 6306 of the Public Resources Code.

(e) Any sale of after-acquired trust lands shall occur only in conjunction with an exchange of the state's sovereign title in the Oak Street to 9th Avenue exchange lands pursuant to Section 7.

(f) Upon the completion of any sale of after-acquired trust lands authorized in this act by the recording of a deed from the port to a private party for the after-acquired trust lands authorized to be sold, any right, title, or interests sold therein shall be free from the public trust.

(g) Following the exchange and sale, the final trust lands shall be preserved, improved, or enhanced for public trust uses, such as open space, public access, water-related recreation, such as a marina and boat launch, commercial services to visitors as necessary, such as food service, plant and animal habitat, such as wetlands, circulation to and along the waterfront, or similar uses.

(h) The final trust lands will provide vertical access from public streets to the shoreline and continuous lateral public access consistent with policies OAK-9, OAK-10, OAK-11, and OAK-12 of the estuary plan in effect on June 1, 2004, for the Oak Street to 9th Avenue property to the water along the entirety of the Oak Street to 9th Avenue property.

(i) The Oak Street to 9th Avenue exchange lands exchanged into private ownership and over which the public trust and the Oak Street to 9th Avenue legislative grants will be terminated constitute a relatively small parcel of granted tide and submerged lands within the city.

(j) Upon completion of the exchange and sale contemplated by this section, the final trust lands shall meet all of the following criteria:

(1) The geographic configuration and extent of the final trust lands shall substantially conform to the geographic configuration and extent of the trust lands shown in the diagram in Section 12; provided that in no event shall the geographic configuration and extent, including depth as measured perpendicularly from the shoreline, length as measured laterally along the shoreline, and total square footage, of these lands be less than the geographic configuration and extent of these lands shown in the diagram in Section 12. However, the port, subject to the approval of the commission, may make minor changes in the geographic configuration and extent of final trust lands if the port and the commission both find that this change would better further public trust purposes. Any increase in the geographic configuration and extent of the final trust lands shall be as required by the commission, considering needs for public uses in walkways, parks, marinas and boat launch, habitat areas, and visitor-serving commercial facilities including, but not limited to, food service; provided, however, that in determining whether any increase in geographic configuration and extent of the final trust lands is required, the commission shall take into account the determinations of the port and the city to meet reasonable needs for the

above-described public trust uses as reflected in local entitlements for any development on the Oak Street to 9th Avenue property.

(2) No uses shall be allowed on the final trust lands other than open space, public access, water-related recreation, such as a marina and boat launch, commercial services to visitors as necessary, such as food service, plant and animal habitat, such as wetlands, circulation to and along the waterfront, or similar uses, as the port and the commission determine may be required to support the activities and goals of the estuary plan or the Oak Street to 9th Avenue legislative grants.

(3) Streets and other transportation facilities located on public trust lands shall be designed to be compatible with the public trust, and to serve primarily public trust purposes of access to shoreline improvements and shoreline circulation rather than serving nontrust purposes.

(4) Any surveys or legal descriptions required for the parcels in conjunction with the exchange and sale shall be approved by the commission.

SEC. 5. Any exchange or sale made or accomplished pursuant to this act is hereby found to be of statewide significance, and, therefore, any ordinance, charter provision, or other provision of local law inconsistent with this act shall not be applicable to the exchange or sale.

SEC. 6. Any lands or interests in lands exchanged or confirmed in public trust ownership following an exchange and sale, including the trust exchange parcel and the final trust lands, shall be held by the city as sovereign lands of the state and subject to the public trust and to either the Oak Street to 9th Avenue legislative grants, or to the legislative grants applicable to the remainder of the port according to the location of the lands or interests in lands.

SEC. 7. (a) The commission may approve an exchange of public trust lands that meets the requirements of this act and enter into an exchange agreement. Pursuant to this authority, the commission shall establish appropriate procedures for effectuating the exchange including, but not limited to, the following:

(1) Procedures for ensuring that lands or interests in lands are not exchanged or confirmed into the trust until all remedial action necessary to protect human health and the environment with respect to hazardous substances has been completed as determined by the oversight agency. However, the commission may approve an exchange and sale that calls for lands to be exchanged or confirmed into the trust prior to the completion of remedial action if the commission finds that sufficient liability measures and implementation measures will be in place upon the completion of the exchange. With respect to the commission's right to approve the remedial plan, the Legislature recognizes that the remedial plan shall first be approved by the oversight agency and that the

oversight agency has special expertise in evaluating and supervising the investigation and remediation of hazardous materials. Therefore, the commission shall consider and give reasonable weight to the oversight agency's approval of the remedial plan, including any supplements or amendments thereto. The commission may delegate to the executive officer of the commission the authority to approve or disapprove supplements or amendments to the remedial plan, subject to such terms and conditions as the commission may deem appropriate.

(2) Procedures for reviewing the port's selection of the trust exchange parcel and for ensuring that all reasonable efforts have been made to locate a trust exchange parcel.

(b) The commission may not approve the exchange and sale of any trust lands unless it finds all of the following:

(1) The configuration of trust lands within the Oak Street to 9th Avenue property upon completion of the exchange and sale meets the requirements of subdivision (j) of Section 4 and includes all lands within the Oak Street to 9th Avenue property that are presently waterward of the mean high water line.

(2) The final layout of streets in the property will provide access to the public trust lands and be consistent with the beneficial use of the remaining public trust lands.

(3) The trust exchange parcel will promote the purposes or objectives of the estuary plan, legislative grants, or the port improvement plans, as applicable, to the extent these purposes or objectives are consistent with the public trust.

(4) The trust exchange parcel has been selected according to the criteria in paragraph (2) of subdivision (b) of Section 4.

(5) With respect to the exchange as finally configured, the value of the trust exchange parcel to be exchanged into the trust is equal to or greater than the value of the Oak Street to 9th Avenue exchange lands.

(6) The Oak Street to 9th Avenue exchange lands over which the public trust will be terminated have been filled and reclaimed, those parcels consisting entirely of dry land lying landward of the present line of mean high water, and are no longer needed or required for the purposes of the public trust and constitute a relatively small portion of the lands originally granted to the city, and that the exchange will not result in substantial interference with public trust uses and purposes, nor with the Oak Street to 9th Avenue legislative grants.

(7) The proposed exchange is consistent with this act.

(8) Vertical access from public streets to the shoreline and continuous lateral public access to the water along the entirety of the Oak Street to 9th Avenue property consistent with policies OAK-9, OAK-10, OAK-11, and OAK-12 of the estuary plan in effect on June 1, 2004, for the Oak Street to 9th Avenue property will be provided.

(9) The trust exchange parcel and final trust lands shall be held subject to the public trust and the terms of this act.

(10) No substantial interference with public trust uses and purposes shall ensue by virtue of the proposed exchange.

(11) The exchange is in the best interests of the statewide public.

(12) The port has approved the exchange after holding at least one public hearing.

(c) For purposes of effectuating the exchange authorized by this act, the commission may do all of the following:

(1) Receive and accept on behalf of the state the trust exchange parcel to be brought into the public trust as an exchange parcel in exchange for the Oak Street to 9th Avenue exchange lands in which the public trust and the Oak Street to 9th Avenue legislative grants are terminated.

(2) Receive and accept on behalf of the state a conveyance from the port of interests held by virtue of the Oak Street to 9th Avenue legislative grants or as after-acquired trust lands as part of an exchange or sale of public trust lands as approved, including the final trust lands.

(3) Convey to the port or to its designee 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 Oak Street to 9th Avenue legislative grants upon completion of the exchange of the Oak Street to 9th Avenue exchange lands as authorized by this act and as approved by the commission.

(4) Convey to the city or port by patent all of the right, title, and interest of the state in sovereign lands subject to the public trust and the terms of this act and the Oak Street to 9th Avenue legislative grants or the legislative grants, as applicable, upon completion of the exchange and sale of lands authorized by this act and as approved by the commission, subject to the terms, conditions, and reservations as the commission may determine are necessary to meet the requirements of this act.

(5) Determine or settle through an exchange the title to, or location of, the boundaries of the granted or after-acquired trust lands or any other boundary lines that the commission deems necessary to effectuate the exchange or the purposes of this act.

(d) In any case where the state, pursuant to this act, conveys filled tidelands and submerged lands transferred to the port or the city pursuant to the Oak Street to 9th Avenue legislative grants, 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 the legislative grants, 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.

(e) The requirement to reserve minerals and mineral rights described in subdivision (d) shall not apply if the state receives and retains minerals and mineral rights in the trust exchange parcel.

SEC. 8. In any case where the state, pursuant to this act, conveys filled tidelands and submerged lands transferred to the city pursuant to the 1911 grant or the 1960 grant, the state shall reserve the right to fish in the waters on which these lands may front with right of convenient access to the waters over these lands for that purpose.

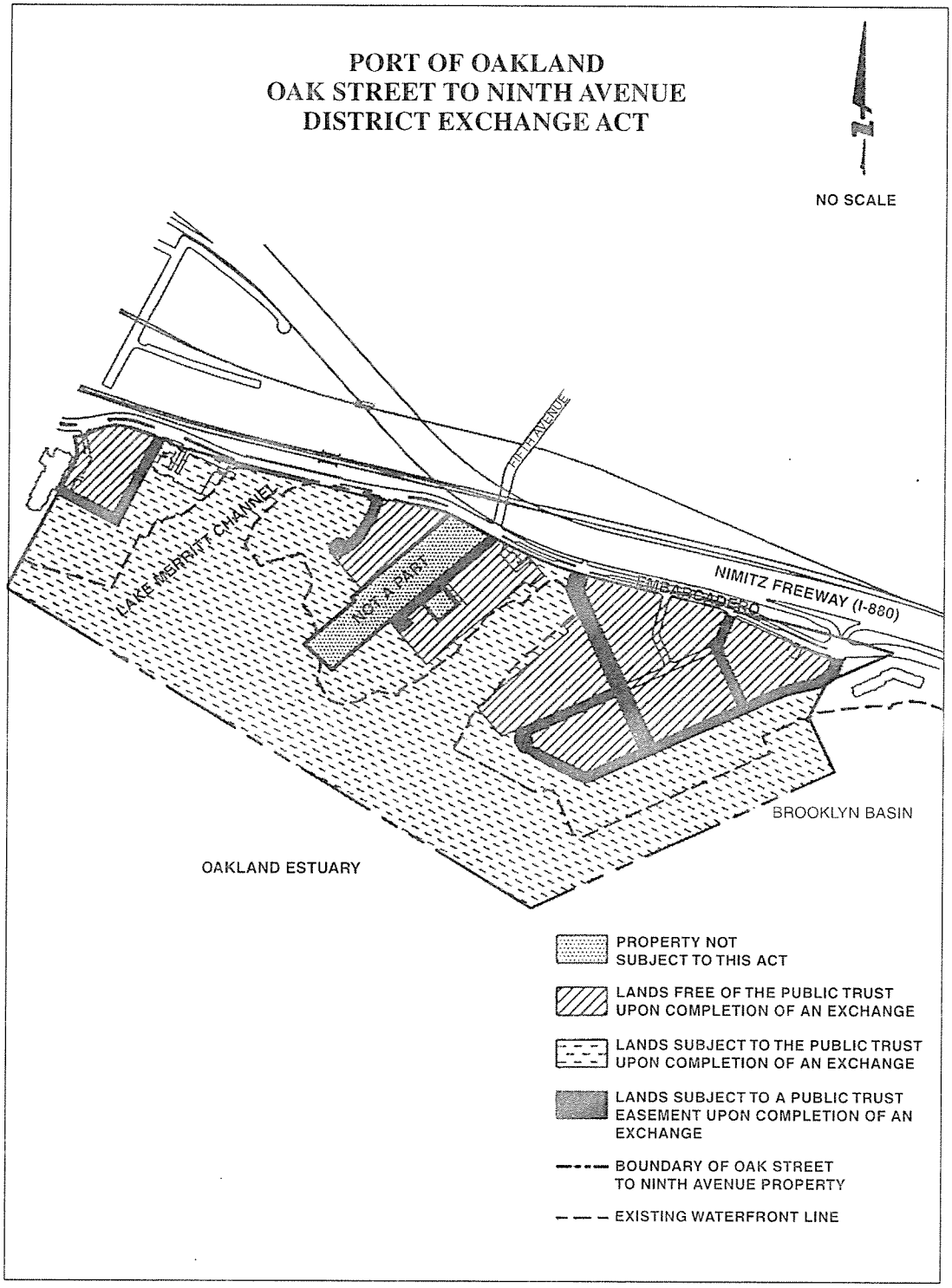
SEC. 9. The commission and the port shall work expeditiously toward completing the exchange authorized by this act.

SEC. 10. Any agreement for the exchange of, or trust termination over, granted tidelands, or to establish boundary lines, entered into pursuant to this act, shall be conclusively presumed to be valid unless held to be invalid in an appropriate proceeding in a court of competent jurisdiction to determine the validity of the agreement commenced within 60 days after the recording of the agreement.

SEC. 11. (a) 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.

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

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


PORT OF OAKLAND
OAK STREET TO NINTH AVENUE
DISTRICT EXCHANGE ACT
NO SCALE
FIFTH AVENUE
LAKE MERRITT CHANNEL
NOT A PART
EMBARCADERO
NIMITZ FREEWAY (I-880)
BROOKLYN BASIN
OAKLAND ESTUARY
PROPERTY NOT SUBJECT TO THIS ACT
LANDS FREE OF THE PUBLIC TRUST UPON COMPLETION OF AN EXCHANGE
LANDS SUBJECT TO THE PUBLIC TRUST UPON COMPLETION OF AN EXCHANGE
LANDS SUBJECT TO A PUBLIC TRUST EASEMENT UPON COMPLETION OF AN EXCHANGE
BOUNDARY OF OAK STREET TO NINTH AVENUE PROPERTY
EXISTING WATERFRONT LINE