

**CALENDAR ITEM
67**

A	19	04/06/11 AD 557 W 26279 PRC 6414 G11-00.7 G11-01
S	6	M. Bell K. Colson G. Kato J. Lucchesi J. Rusconi

CONSIDERATION OF: A TITLE SETTLEMENT, PUBLIC TRUST LAND EXCHANGE AND BOUNDARY LINE AGREEMENT AND A CANDLESTICK POINT STATE RECREATION AREA RECONFIGURATION, IMPROVEMENT AND TRANSFER AGREEMENT, PURSUANT TO CHAPTER 203, STATUTES OF 2009, BETWEEN THE SAN FRANCISCO REDEVELOPMENT AGENCY, THE PORT OF SAN FRANCISCO, THE CITY/COUNTY OF SAN FRANCISCO, THE CALIFORNIA DEPARTMENT OF PARKS AND RECREATION, AND THE STATE LANDS COMMISSION INVOLVING CERTAIN PARCELS WITHIN THE FORMER HUNTERS POINT NAVAL SHIPYARD AND CANDLESTICK POINT, LOCATED WITHIN THE CITY/COUNTY OF SAN FRANCISCO, INCLUDING THE TERMINATION OF LEASE NO. PRC 6414 AND ISSUANCE OF A NEW GENERAL LEASE – PUBLIC AGENCY USE 66-YEAR LEASE TO THE CALIFORNIA DEPARTMENT OF PARKS AND RECREATION FOR CERTAIN LANDS WITHIN CANDLESTICK POINT

PARTIES:

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State Lands Commission
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State of California
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San Francisco Redevelopment Agency
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City and County of San Francisco
Office of Economic and Workforce Development
City Hall, Rm. 448
1 Dr. Carlton B. Goodlett Place
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Port of San Francisco
Pier 1, The Embarcadero
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INTRODUCTION:

The City of San Francisco, acting by and through its Redevelopment Agency (“Agency”) has requested that the State Lands Commission (“Commission”) consider and approve a Title Settlement, Public Trust Land Exchange and Boundary Line Agreement (“Trust Agreement”); a Candlestick Point State Recreation Area Reconfiguration, Improvement and Transfer Agreement (“Transfer Agreement”); Termination of Lease No. PRC 6414; and Issuance of a new Public Agency Use Lease to the California Department of Parks and Recreation for certain lands within Candlestick Point. The purpose of these agreements is to facilitate the Hunters Point Shipyard and Candlestick Point Phase II Project, a redevelopment of more than 700 acres of waterfront land along San Francisco’s southeastern shores, and the redevelopment of the Candlestick Point State Recreation Area.

PROPOSED TITLE SETTLEMENT, PUBLIC TRUST LAND EXCHANGE AND BOUNDARY LINE AGREEMENT:

The parties to the Trust Agreement are the State of California (“State”), acting by and through the Commission; the State of California, acting by and through the California Department of Parks and Recreation (“State Parks”); the Agency; the City and County of San Francisco, a charter city and county, acting by and through its Board of Supervisors (“City”); and the City and County of San Francisco, a charter city and county, acting by and through its Port Commission (“Port”).

The area that is subject to the Trust Agreement (“Trust Agreement Subject Area”) includes lands within Candlestick Point and the former Hunters Point Naval Shipyard (“Shipyard”) that: (1) were historic tide or submerged lands subject to the common law public trust for commerce, navigation, and fisheries (“Public Trust”); (2) were historic uplands that were not subject to the Public Trust; and (3) were historic tidelands in which the Public Trust may have been terminated. The Trust Agreement Subject Area, depicted in Exhibit A (Location and Site Map), consists of the following parcels of land: The Public Trust Parcels; The Trust Termination Parcels; The Alice Griffith Site; and The Hunters Point Submerged Lands. Also, see Exhibit C (Illustrative Plat of Final Public Trust Configuration). The purpose of the Trust Agreement is to settle certain

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boundary and title disputes within the Trust Agreement Subject Area related to the Public Trust, and to establish and reconfigure the location of lands subject to the Public Trust and lands free of the Public Trust within the Trust Agreement Subject Area.

The Parties desire through this Trust Agreement to establish the Public Trust on the Public Trust Parcels and terminate the Public Trust in the Trust Termination Parcels through a land exchange. The lands to be included in the exchange lie within the following eleven exchange areas: the Shipyard Site; the Parcel A Site; the Hilltop Trust Streets; the CP State Park Site; the Non-Park Commission Land; the Yosemite Slough Addition; the Navy ROW; the Walker Drive Site; the Old Stadium Development Site; the Park Addition; and the Port Site. See Exhibit B (Illustrative Plat of Exchange Areas).

The Parties also desire through this Trust Agreement to enter into a boundary line agreement for the purposes of fixing the Agreed 1869 Ordinary High Water Mark within Candlestick Point, and to confirm that the Public Trust does not encumber certain lands within the Alice Griffith Site. In addition, the Parties desire through this Trust Agreement to effectuate a conveyance from the Port to the Agency of the Hunters Point Submerged Lands, subject to the Public Trust. The Parties also desire, through the Trust Agreement, to terminate Lease No. PRC 6414 to State Parks and approve a new lease to State Parks for certain Public Trust Parcels within the CP State Park Site.

The Exchange will be accomplished through the following recorded conveyances and occur in several phases as outlined in the phasing provisions, conditions of closing, and other terms and conditions of the Trust Agreement:

1. The Agency will convey to the Commission by quitclaim deed all of its right, title and interest in those portions of the Public Trust Parcels and Trust Termination Parcels lying within the Shipyard Site, the Navy ROW, the Parcel A Site, the Old Stadium Development Site, and the Park Addition.
2. The City will convey to the Commission by quitclaim deed all of its right, title and interest in those portions of the Public Trust Parcels and Trust Termination Parcels lying within the Shipyard Site, the Hilltop Trust Streets, the CP State Park Site, the Non-Park Commission Land, the Yosemite Slough Addition, the Walker Drive Site, the Old Stadium Development Site, and the Park Addition.
3. The Port will convey to the Commission by quitclaim deed all of its right, title and interest in those portions of the Public Trust Parcels and Trust Termination Parcels lying within the CP State Park Site, the Non-Park Commission Land, the Walker Drive Site, Old Stadium Site, and the Port Site.
4. State Parks will convey to the Commission by quitclaim deed ("Lease Quitclaim") all of its right, claim, title, or interest arising by virtue of or pursuant to that certain

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lease designated Lease PRC 6414, and approved by the Commission on April 28, 1983.

5. The Commission will accept the Lease Quitclaim from State Parks.
6. State Parks will convey to the Commission by quitclaim deed all of its right, title and interest in those portions of the Public Trust Parcels and Trust Termination Parcels lying within the CP State Park Site.
7. The Commission will accept the CP State Park Site Public Trust Parcel as sovereign lands subject to the Public Trust, and will lease that parcel to State Parks for a term of 66 years.
8. The Commission will accept the CP State Park Site Trust Termination Parcel and the Navy ROW Trust Termination Parcel, and will convey to State Parks by quitclaim, free of the Public Trust and any statutory trust, all of its right, title and interest in those parcels.
9. The Commission will accept the Shipyard Site Public Trust Parcel, the Parcel A Public Trust Parcel, the Yosemite Slough Addition Public Trust Parcel, the Walker Drive Site Public Trust Parcel, the Old Stadium Development Site Public Trust Parcel, the Park Addition Public Trust Parcel, and the Port Site Public Trust Parcel, and will convey to the Agency by patent, as sovereign lands subject to the Public Trust and the Statutory Trust, all of its right title and interest in those parcels.
10. The Commission will accept the Hilltop Trust Streets Public Trust Parcel and will convey to the City by patent, as sovereign lands subject to the Public Trust and the Statutory Trust, all of its right title and interest in that parcel.
11. The Commission will accept the Shipyard Site Trust Termination Parcel, the Parcel A Site Trust Termination Parcel, the Non-Park Commission Land Trust Termination Parcel, the Yosemite Slough Addition Trust Termination Parcel, the Old Stadium Development Site Trust Termination Parcel, the Park Addition Trust Termination Parcel, and the Port Site Trust Termination Parcel, and will convey to the Agency by patent, free of the Public Trust and the Statutory Trust, all of its right title and interest in those parcels.

It is anticipated that the entire exchange will take several years to complete. Following the Exchange, the entire waterfront within the Trust Agreement Subject Area, as well as certain interior lands that have high Public Trust values, will be subject to the Public Trust. See Exhibit C (Illustrative Plat of Final Public Trust Configuration).

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BACKGROUND:

Beginning in 1861, certain of the tidelands within the Trust Agreement Subject Area were conveyed into private ownership by the State of California pursuant to various state statutes. Portions of those tidelands were subsequently filled and reclaimed. The Public Trust status of portions of the reclaimed tidelands is uncertain. Due to differences in the various statutes authorizing the conveyance of certain portions of the tidelands into private ownership, as well as other historical circumstances, some of the reclaimed tidelands, including lands located well inland from the current shoreline, have remained subject to the Public Trust, while other reclaimed tidelands, including most of the lands adjacent to the shoreline, may have been freed from the Public Trust.

Former Hunters Point Naval Shipyard

The Shipyard Site contains lands that were historic uplands and lands that were below the historic ordinary high water mark. The uplands were a part of Rancho Rincon de las Salinas y Potrero Nuevo confirmed in 1857. Beginning in the 1860's, the Legislature authorized the conveyance of tide and submerged lands at the Shipyard Site, through various statutes, including with special application to the Shipyard Site (Chapter 325, Statutes of 1863), and through statutes of general application, such as those pertaining to the sale of sovereign lands by the Board of Tide Land Commissioner's ("BTLC") (Chapter 543, Statutes of 1868 and Chapter 388, Statutes of 1870) and through tideland patents.

In 1939, the United States began acquiring lands, in part by condemnation, for purposes of constructing and operating what came to be the Hunters Point Naval Shipyard ("Shipyard"). The Shipyard was closed by the United States in 1974. The State and the federal government disagree as to the effect of federal condemnations on the existence of the Public Trust in the Shipyard lands. This disagreement adds to the Public Trust title uncertainties within the Shipyard. In addition, the City asserts certain reserved rights and interests in the Shipyard, including but not limited to rights and interests in former street areas. Pursuant to federal legislation closing the Shipyard, the United States Navy is authorized to convey the Shipyard, or portions of the Shipyard, to the City or to a local reuse authority approved by the City. The Agency is the approved local reuse authority for the Shipyard. The Shipyard Site and the Navy ROW comprise that portion of the Shipyard within the Trust Agreement Subject Area presently owned by the United States.

Pursuant to a 2004 conveyance agreement with the Agency, the United States Navy conveyed a portion of the Shipyard, commonly known as "Parcel A," to the Agency and has agreed to transfer the remainder to the Agency following hazardous materials remediation. The Commission approved a boundary line agreement between the

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Agency and the State on December 9, 2004 (Minute Item #45, Commission File No. BLA 274), establishing the boundary between lands within Parcel A that are free any Public Trust interest and lands that may be subject to the Public Trust.

The Hunters Point Submerged Lands consist of submerged lands held by the Port under the Burton Act that lie waterward of the submerged lands owned by the Navy, but within the boundaries of the Hunters Point Shipyard Redevelopment Area adopted by the Agency. Certain of the piers located at the Shipyard and owned by the Navy extend beyond the Navy owned lands and onto the Hunters Point Submerged Lands, and will ultimately be conveyed to the Agency under the Agency's agreement with the Navy.

Candlestick Point

The State's sovereign interest in the filled tidelands at Candlestick Point involves primarily BTLC reserved streets and portions of a former railroad right-of-way. In 1958, the State, through Chapter 2 of the Statutes of 1958, First Extraordinary Session ("1958 Act"), authorized the sale of a portion of the State's sovereign interests in Candlestick Point to the City for the purpose of developing a sports stadium. The State received consideration for the sale.

In 1968, the Legislature enacted the Burton Act (Chapter 1333 of the Statutes of 1968, as amended), which granted to the City the State's remaining interest in tidelands within the City, including the State's sovereign interests in the portion of Candlestick Point outside of the stadium site. This grant was made subject to the Public Trust and to the terms and conditions of the Burton Act. The lands granted to the City under the Burton Act are now held by the Port. At Candlestick Point, the lands held by the Port pursuant to the Burton Act consist primarily of streets and a former railroad right-of-way.

In 1973, the Legislature authorized State Parks to acquire and develop real property at Candlestick Point for the state park system. State Parks subsequently prepared a park acquisition plan including areas near and along the shoreline of Candlestick Point, and acquired certain private lands within the acquisition plan area to create the Candlestick Point State Recreation Area ("CPSRA"). In 1984, the City quitclaimed to the Commission those lands within the CPSRA boundary that the City had acquired under the 1958 Act and under the Burton Act ("1984 Quitclaim"). The 1984 Quitclaim reserved to the City a right of reversion in the event certain improvements were not made at the CP State Park Site. A portion of the lands described in the 1984 Quitclaim, which are primarily in the form of paper streets and a former railroad right of way, are held in fee by the Commission and, with the exception of certain portions of historic Carroll Avenue, Donner Avenue, Fitch Street and those portions of the former railroad right of way lying within San Francisco County Assessors Blocks 4853, 4876, 4884, 4885 and 4906, are currently leased to State Parks for a term of 49 years, of which 25 years remain, pursuant to Commission Lease PRC 6414.

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Candlestick Point, including the Alice Griffith Site, consists in part of former tidelands. The precise location of the boundary between lands that, prior to impacts of artificial influences, were landward of the mean high tide line and the lands that were waterward of the mean high tide line is uncertain. The historic uplands are within confirmed Mexican land grants, were never sovereign lands, and are not subject to the Public Trust. Portions of the former tidelands were conveyed by the State into private ownership pursuant to Chapter 543 of the Statutes of 1868 (BTLC), and are free of the Public Trust by application of the decision of the California Supreme Court in City of Berkeley v. Superior Court (1980) 26 Cal. 3d 515. The State, through the BTLC, reserved the remaining portions of the former tidelands within the Alice Griffith Site as streets. A portion of the reserved streets were conveyed to the City free of the Public Trust pursuant to the 1958 Act. In 1960, the State conveyed its interest in the remainder of the streets by patent to the Housing Authority of the City and County of San Francisco pursuant to an exchange authorized by Chapter 1573 of the Statutes of 1955, as amended by Chapter 1999 of the Statutes of 1957. Both the patent and a subsequent act of the Legislature (Chapter 1273 of the Statutes of 1963) resulted in the termination of the Public Trust in the patented lands.

Hunters Point Shipyard and Candlestick Point Phase II Project

The Hunters Point Shipyard and Candlestick Point Phase II Project ("Phase II Project") is designed, over the expected 15-20 year phased build out, to provide over 10,500 residential units, over 300 acres of new waterfront parks, approximately 700,000 square feet of destination retail and entertainment space and over 2.5 million square feet of commercial space. The project is also being designed to accommodate a new football stadium for the San Francisco 49ers, should the 49ers decide to stay in San Francisco. The first phase of the Shipyard's development is already underway ("Shipyard Phase I"). Up to 1,600 homes and 26 acres of open space will be built on Shipyard Parcel A.

In 2007, the City and the Agency undertook an integrated planning effort for the Phase II Project, which resulted in the adoption of a Conceptual Framework for Development ("Conceptual Framework"). The Conceptual Framework calls for a mixed use project within the Trust Agreement Subject Area that will provide, among other things, much needed parks and open space, including a major renovation of the CPSRA to enhance access by visitors to the waterfront; new business and employment opportunities; new housing opportunities affordable for residents of the neighboring Bayview Hunters Point community; a site for a new sports stadium on the Shipyard, with alternative uses if the San Francisco 49ers elect to build a new stadium elsewhere; and other economic and public benefits for the community and the City as a whole and the statewide public. In June 2008, the voters of the City approved Proposition G, the "Mixed Use Development Project for Candlestick Point and Hunters Point Shipyard."

In 2009, the Legislature enacted Chapter 203, Statutes of 2009 ("SB 792") for the purpose of facilitating the productive reuse of the former Hunters Point Naval Shipyard

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and Candlestick Point in a manner that furthers the purposes of the Public Trust and the Community Redevelopment Law. SB 792 authorizes the Commission to carry out an exchange of lands that will place or confirm the Public Trust on lands within the Trust Agreement Subject Area with substantial value for the Public Trust, and terminate the Public Trust in lands that are no longer useful for Public Trust purposes. SB 792 authorizes the Agency to hold Public Trust lands as trustee on behalf of the people of California, and grants to the Agency in trust all of the State's sovereign right, title and interest in lands within the Trust Agreement Subject Area in which the Agency owns or acquires fee title. The Trust Agreement and the Transfer Agreement are in furtherance of the Legislature's direction contained in SB 792.

PROPOSED CANDLESTICK POINT STATE RECREATION AREA RECONFIGURATION, IMPROVEMENT AND TRANSFER AGREEMENT:

In addition to authorizing a Public Trust exchange, SB 792 authorizes a reconfiguration of the CPSRA. The Parties to the Transfer Agreement are the Commission, State Parks and the Agency. Pursuant to the proposed Transfer Agreement, State Parks, the Commission and the Agency agree to make certain conveyances to implement the CPSRA reconfiguration authorized by SB 792, subject to the terms and conditions of the Transfer Agreement.

Specifically, the Transfer Agreement provides for the phased conveyance by the Commission of portions of the CP State Park Site Public Trust Parcel to the Agency, in trust, and the phased conveyance by State Parks of the CP State Park Site Trust Termination Parcel to the Agency in exchange for \$50 million in improvements. See Exhibit D (Illustrative Plat of Transfer Parcels). Also included are dedicated operations and maintenance funding to State Parks for the CPSRA and the conveyance by the Agency of the Yosemite Slough Addition Public Trust Parcel and the Park Addition Public Trust Parcel to the Commission, and the Yosemite Slough Addition Trust Termination Parcel and the Park Addition Trust Termination Parcel to State Parks, for inclusion in the CPSRA. The conveyances of lands within the CP State Park Site that are called for in the Transfer Agreement are part of the Initial Closing Phase and are intended to precede the conveyances of those portions of the CP State Park Site designated for transfer to the Agency under the Transfer Agreement.

In addition to providing for the reconfiguration of the CPSRA, another primary purpose of the Park Transfer Agreement is to facilitate the redesign and improvement of the CPSRA. To that end, State Parks has embarked on a General Plan Revision for the CPSRA, which is anticipated to include trail improvements, habitat restoration, increased public access, and enhanced public recreational facilities.

LEGAL REQUIREMENTS:

As required by SB 792, and to comply with Article X, Section 3 of the California Constitution, the Commission, to approve the proposed Trust Agreement and the proposed Transfer Agreement, must make the following findings:

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a. The portions of the lands or interests in lands to be exchanged out of the Public Trust have been filled and reclaimed, are cut off from access to the waters of San Francisco Bay and are no longer in fact tidelands or submerged lands or navigable waterways, are relatively useless for Public Trust purposes, and constitute a relatively small portion of the granted lands within the City;

b. The lands or interests in lands to be impressed with the Public Trust have a monetary value equal to or greater than the monetary value of the lands or interests in lands to be exchanged out of the Trust;

c. No substantial interference with Public Trust uses and purposes, including public rights of navigation and fishing, will ensue by virtue of the Exchange;

d. The lands or interests in lands impressed with the Public Trust will provide a significant benefit to the Public Trust and are useful for the particular Trust purposes authorized by SB 792;

e. The configuration of the Public Trust Parcels upon completion of the Exchange is substantially similar to the configuration shown on the diagram in Section 25 of SB 792, includes all lands within the Subject Area that are presently below mean high tide, and consists of lands suitable to be impressed with the Public Trust;

f. The final layout of streets in the Subject Area will provide access to the Public Trust Parcels and will be consistent with the beneficial use of the Public Trust Parcels;

g. The lands to be subject to the Public Trust are configured so as to be accessible from the streets as finally configured in the Subject Area;

h. Streets and other transportation facilities located on Public Trust Parcels will 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;

i. All surveys and legal descriptions required for the parcels in conjunction with the Exchange have been approved by the Commission;

j. The trustees who own or will own fee title in the Public Trust Parcels have approved this Agreement;

k. The Exchange otherwise complies with the requirements of SB 792;

l. The Exchange is consistent with and furthers the purpose of the Public Trust and SB 792;

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m. The Exchange is otherwise in the best interest of the statewide public;

The Commission also must make the following additional findings with respect to the phasing of the Trust Agreement, as required by SB 792:

n. Based on the Commission's consideration of the appraisals, legal analyses, Public Trust land configuration pertaining to each of the Primary Phase Areas and Secondary Phase Areas, the Commission has determined that the findings listed above (a-m), apply regardless of the order in which the Subsequent Closing Phases occur;

o. After the Initial Closing Phase, and after each Subsequent Closing Phase, the cumulative monetary value of all of the lands or interests in lands that have been exchanged into the Public Trust will be equal to or greater than the cumulative monetary value of all of the lands or interests in lands that have been exchanged out of the Public Trust;

p. After the Initial Closing Phase, and after each Subsequent Closing Phase, the lands or interests in lands exchanged into the Public Trust at each phase will be configured in a way that furthers the purposes of the overall exchange, including, but not limited to, having access to streets as finally configured in the Subject Area.

ANALYSIS AND STAFF RECOMMENDATION:

Commission staff has reviewed and analyzed in-house documents and other information submitted for the proposed Agreements, including appraisals, surveys, title reports, historic use reports, Phase I site assessments and other studies conducted for the proposed Trust Agreement and Transfer Agreement. Commission staff has also been engaged in extension negotiations with the staffs of the various parties to these agreements.

The Trust Agreement provides a mechanism for implementing the trust exchange contemplated in SB 792 through a series of conveyances that will result in the configuration of Public Trust lands substantially similar to that depicted on the diagram in Section 25 of SB 792. Following the conveyances, the Trust Termination Parcels will be freed of the Public Trust, as well as any applicable statutory trust; the Public Trust Parcels will be impressed with the Public Trust; and those Public Trust Parcels conveyed to the Agency will be impressed additionally with the Statutory Trust. The conveyances will also terminate any Statewide Interest Restrictions, resulting from the 1958 Act, in the lands conveyed, and will eliminate the City's reversionary interest in the CP State Park Site, pursuant to the 1984 Quitclaim, and any residual right, title or interest of the City in the Shipyard Site.

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The lands that will be removed from the Public Trust pursuant to the exchange have been filled and reclaimed, been cut off from navigable waters, are no longer needed or required for the promotion of the Public Trust, and constitute a relatively small portion of the granted public trust lands within the City. Further, no substantial interference with Public Trust uses and purposes, including public rights of navigation and fishing, will occur by virtue of the exchange.

In the interest of settlement, the Parties have conducted independent studies and evaluations of their respective factual and legal positions relating to the disputed title claims. Appraisals and property interest evaluation studies reviewed or completed by Commission staff have shown that the monetary value of the lands and interests to be exchanged into the Public Trust under the Agreements is equal to or greater than the monetary value of the lands and interests to be exchanged out of the Public Trust. Further, Commission staff has determined that after the Initial Closing Phase and after each Subsequent Closing Phase, as defined below, the cumulative monetary value of all of the lands or interests in lands that have been exchanged into the Public Trust will be equal to or greater than the cumulative monetary value of all of the lands or interests in lands that have been exchanged out of the Public Trust.

Final Public Trust Configuration

As shown in Exhibit C (Illustrative Plat of Final Public Trust Configuration), the final configuration of the Public Trust Parcels upon completion of the exchange is substantially similar to the configuration shown on the diagram of Section 25 of SB 792, includes all lands within the Trust Agreement Subject Area that are presently below mean high tide, and consists of lands suitable to be impressed with the Public Trust.

The Trust Agreement contemplates that the conveyances called for hereunder will occur in a series of phased closings (each a "Closing Phase"). The initial Closing Phase ("Initial Closing Phase") will effectuate the exchange within the CP State Park Site, the Parcel A Site, the Non-Park Commission Land, Yosemite Slough Addition, Walker Drive Site, and the Hilltop Trust Streets, as depicted for illustrative purposes in Exhibit E (Illustrative Plat of Initial Closing Phase Areas).

Subsequent Closing Phases (each a "Subsequent Closing Phase") will occur as the Agency acquires portions of the Shipyard Site and Navy ROW from the Navy, and, with respect to the Old Stadium Development Site and Park Addition, after the 49ers Lease expires or terminates and the Agency acquires the lands from City. See Exhibits F (Illustrative Plat of Primary Phase Areas) and G (Illustrative Plat of Secondary Phase Areas). It is anticipated that each Subsequent Closing Phase will be in substantial conformance with the phasing requirements set forth in the Trust Agreement. After the Initial Closing Phase, and after each Subsequent Closing Phase, the lands or interests in lands exchanged into the Public Trust at each phase will be configured in a way that furthers the purposes of the overall exchange, including, but not limited to, having access to streets as finally configured in the Trust Agreement Subject Area. As

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provided in the Trust Agreement, the Commission will review each Subsequent Closing Phase for conformity with the phasing requirements provided in the Trust Agreement.

Two parcels of land described in the Trust Agreement as the Yosemite Slough Addition Parcels may have private access rights attached to them. Pursuant to the Trust Agreement, neither the Commission nor State Parks is required to accept these parcels unless it is satisfied with the condition of title to the two parcels.

Hillside Open Space

SB 792 declares that a portion of the Shipyard, delineated as "Hillside Open Space" provides substantial value to the Public Trust as an open space and trust consistent recreational resource affording exceptional views of San Francisco Bay and the waterfront. Accordingly, SB 792 requires the Commission to ensure that significant view corridors to the waterfront are protected, adequate public access is provided, and other conditions related to the Hillside Open Space are met. To this end, the Trust Agreement requires that construction of new buildings within the Shipyard conform to certain height limitations in order to ensure views of San Francisco Bay and maintains public pedestrian and vehicular access between the Hillside Open Space and the waterfront. Further, the Trust Agreement provides that parking be made available to the public for regional and statewide use and not be restricted to residential parking. In addition, the Trust Agreement protects the State and the Agency, as trustee, from any liability to the owners of properties upslope of the Hillside Open Space from any ground failure that should occur on lands of the Hillside Open Space. Finally, the Trust Agreement also protects the Commission from liability to the owners of property on the southerly down slope side of the Hillside Open Space from any ground failure that should occur on the lands of the Hillside Open Space.

Streets Layout and Access

SB 792 requires that streets and other transportation facilities located on Public Trust Parcels will 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. To this end, the Trust Agreement: (a) provides access to the Public Trust Parcels and is consistent with the beneficial use of those lands; (b) provides for streets and transportation facilities located on the Public Trust Parcels that are compatible with the Public Trust and serve primarily Public Trust purposes of access to shoreline improvements and shoreline circulation; (c) maintains reasonable public pedestrian and vehicular access between the Hillside Open Space and the waterfront, and in addition, between the top of the Hillside Open Space and other areas of the city; (d) provides direct vehicular and pedestrian access from the lower portions of the Shipyard Site to the top of the Hillside Open Space; and, (e) provides adequate parking areas adjacent to the lower portion of the Hillside Open Space that is accessible to the public to support regional and statewide use of the Hillside Open Space.

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Public Trust Benefits

The Trust Agreement and the Transfer Agreement will provide significant benefits to the Public Trust by reconfiguring and consolidating public trust ownership along the waterfront within the Trust Agreement Subject Area. This reconfiguration and consolidation will allow for these Public Trust Parcels to be improved and enhanced through the development of a wide variety of open space areas, bike trails, walking and jogging paths, viewing areas to experience expansive views of San Francisco Bay, visitor-serving facilities and other trust consistent uses. Additionally, the CP State Park Site Public Trust Parcel, which is proposed to be leased to State Parks by the Commission, will benefit from the \$50 million in improvements and dedicated operations and maintenance funding for the CPSRA that State Parks will be receiving pursuant to the Transfer Agreement.

Implementation and Liability Measures for Hazardous Materials

The Shipyard Site is currently owned by the United States Navy. Under the terms of the 2004 Conveyance Agreement, the United States is required to transfer the Shipyard Site to the Agency after all the necessary hazardous materials clean up is complete. Under the Conveyance Agreement, California's Department of Toxic Substances Control and the Federal Environmental Protection Agency must concur that the property is safe for both people and the environment, in the context of the intended reuse of the property, before any transfer to the Agency. The United States Navy is currently in the process of remediating the Shipyard Site.

The Parties presently anticipate that some or all of the lands within the Shipyard Site will be remediated by the United States prior to transfer to the Agency, and that the United States will provide a warranty for the lands. However, it is possible that a portion of the lands within the Shipyard Site will be conveyed to the Agency by early transfer, prior to complete remediation by the United States. The Trust Agreement provides that lands within the Shipyard Site for which no warranty has been obtained may not be exchanged unless and until the United States has obtained a warranty deferral for the lands, approved by the Governor, and the Commission has found that sufficient liability measures and implementation measures will be in place upon the completion of the exchange.

Proposed Boundary Line Agreement

By this Agreement, the Parties also seek to confirm that the Alice Griffith Site is not encumbered by the Public Trust, or any other right, title or interest of the State. The Trust Agreement permanently fixes the Agreed 1869 Ordinary High Water Mark within Candlestick Point, including the Alice Griffith Site. See Exhibit H (Illustrative Plat of Agreed 1869 Ordinary High Water Mark). In addition, the State, by this Agreement, confirms that the Public Trust has been terminated on all former tidelands within the Alice Griffith Site, and disclaims any right, title or interest of the State in the Alice Griffith Site. The Parties believe that the Agreed 1869 Ordinary High Water Mark represents

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the best available evidence of the location of the boundary between historic uplands and former tidelands. Pursuant to Section 22 of SB 792, the Parties consider it expedient and necessary and in the best interests of the Parties and the public to settle by agreement the location of the Agreed 1869 Ordinary High Water Mark within Candlestick Point and to confirm the State's prior conveyance free of the Public Trust of the former tidelands within the Alice Griffith Site, thereby permanently fixing, establishing, and forever setting to rest any and all questions relating to the existence of any State sovereign interests in this location.

Proposed General Lease – Public Agency Use 66-Year Lease to State Parks

SB 792 authorizes the Commission to lease the CP State Park Site Public Trust Parcel to State Parks for a term of 66 years. Staff recommends that the Commission, as part of the Trust Agreement, authorize a lease of the CP State Park Site Public Trust Parcel to State Parks for the operation and management of the CPSRA and the restoration and remediation of Yosemite Slough. See Exhibit I (Location and Site Map of Lease to State Parks of CP State Parks Site Public Trust Parcels). State Parks is currently in the process of amending the CPSRA Master Plan. State Parks, through this lease, agrees to consult with Commission staff during this amendment process and to submit a lease amendment application to the Commission upon the CPSRA Master Plan Amendment being finalized.

Best Interests of the State

The Trust Agreement and Transfer Agreement are in the best interests of the State for a variety of reasons including:

- The reconfiguration and consolidation of Public Trust lands to better serve the purposes of the Public Trust;
- The improvement and enhancement of the Public Trust Parcels through the development of a wide variety of open space areas, bike trails, walking and jogging paths, viewing areas to experience expansive views of San Francisco Bay, visitor-serving facilities and other trust consistent uses;
- The reconfiguration, redesign and improvement of the CPSRA for regional and statewide visitors;
- Settlement of title and boundary issues;
- Hazardous material remediation; and
- Protection from liability for hazardous material and slope failure.

STAFF RECOMMENDATION:

As described in the preceding paragraphs, based upon the Commission's staff's research, the documents and other information contained in the Commission's files, and this Calendar Item, the facts support each of the necessary findings the Commission must make. Commission staff and the Attorney General's Office have reviewed the proposed Trust Agreement and Transfer Agreement and believe all necessary legal elements have been met. Staff therefore recommends that the Commission (1) approve

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this Calendar Item and adopt its recommended findings pursuant to SB 792 and Article X, Section 3, of the California Constitution; (2) approve the Trust Agreement and the Park Transfer Agreement in the forms substantially similar to those currently on file in the Commission's Sacramento office; and (3) authorize execution of the Trust Agreement and Transfer Agreement and the execution and recordation of all documents necessary to implement them.

OTHER PERTINENT INFORMATION:

1. The State, acting by and through the Commission, is authorized under Division 6 of the Public Resources Code, and section 6357 and section 6307 of such code and specifically pursuant to Chapter 203, Statutes of 2009, to enter into the proposed Trust Agreement and Transfer Agreement.
2. Pursuant to Section 6501.1 of the Public Resources Code, the Commission has the authority to lease Sovereign Lands for specified purposes.
3. Pursuant to Calendar Item C19 the Commission will be considering, at its April 6, 2011 meeting, an amendment to Lease No. PRC 6414. The purpose of this lease amendment is to authorize the Yosemite Slough Restoration Project and allow for this project to proceed until escrow can close for the Initial Phase of the Trust Agreement and the Termination of Lease No. PRC 6414 and the issuance of the new 66-year lease to State Parks can become effective.
4. **For the Trust Agreement and Transfer Agreement:** Pursuant to the Commission's delegation of authority and the State CEQA Guidelines (Title 14, California Code of Regulations, section 15061), staff has determined that this activity is exempt from the requirements of CEQA as a statutorily exempt project. The project is exempt because it involves settlement of title and boundary problems.

Authority: Public Resources Code Section 21080.11

5. **For the Termination of Lease No. PRC 6414:** Pursuant to the Commission's delegation of authority and the State CEQA Guidelines [Title 14, California Code of Regulations, section 15060(c)(3)], staff has determined this activity is not subject to the provisions of CEQA because it is not a "project" as defined by CEQA and the State CEQA Guidelines.
6. **For the 66-Year Lease to State Parks:** For the portion of the lease that is part of the Yosemite Slough Restoration Project, a Mitigated Negative Declaration [SCH#2005122023] was prepared by the California Department of Parks and Recreation and adopted on June 5, 2006. The California State

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Lands Commission's staff has reviewed such document. A Mitigation Monitoring Program was adopted by the California Department of Parks and Recreation.

For the remaining portions of the lease, pursuant to the Commission's delegation of authority and the State CEQA Guidelines (Title 14, California Code of Regulations, section 15061), staff has determined that this activity is exempt from the requirements of CEQA as a statutorily exempt project. The project is exempt because it involves settlement of title and boundary problems.

Authority: Public Resources Code Section 21080.11

7. This activity involves lands identified as possessing significant environmental values pursuant to Public Resources Code sections 6370, et seq., but such activity will not affect those significant lands. Based upon the staff's consultation with the persons nominating such lands and through the CEQA review process, it is the staff's opinion that the project, as proposed, is consistent with its use classification.
8. The Final Environmental Impact Report ("EIR") on the Candlestick Point – Hunters Point Shipyard Phase II Project [SCH #2007082168] was certified by the Agency and City Planning Commission on Thursday, June 3, 2010. On Tuesday, July 13, 2010, the City/County of San Francisco Board of Supervisors affirmed the certification of the Final EIR by the Planning Commission. Subsequently, project opponents challenged the adequacy of the City's EIR. It is estimated that it will take approximately one year before a hearing and decision by the trial court on the matter.
9. The Agency approved the Trust Agreement and Transfer Agreement through its approval of Agency Resolution No. 67-2010, on June 3, 2010. The City approved the Trust Agreement and Park Transfer Agreement through its approval of Board Resolution No. 348-10 on July 27, 2010. The Port approved the Trust Agreement and the Transfer Agreement through its approval of Port Resolution No. 10-40 on June 8, 2010.
10. State Parks has approved the Trust Agreement and Transfer Agreement.

EXHIBITS:

- A. Location and Site Map
- B. Illustrative Plat of Exchange Areas
- C. Illustrative Plat of Final Public Trust Configuration
- D. Illustrative Plat of the Transfer Parcels

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- E. Illustrative Plat of Initial Closing Phase Areas
- F. Illustrative Plat of Primary Phase Areas
- G. Illustrative Plat of Secondary Phase Areas
- H. Illustrative Plat of Agreed 1869 Ordinary High Water Mark
- I. Location and Site Map of Lease to State Parks of the CP State Parks Site Public Trust Parcels
- J. Land Description of Trust Agreement Subject Area
- K. Land Description of Hunters Point Submerged Lands
- L. Land Description of Agreed 1869 Ordinary High Water Mark
- M. Land Description of Trust Termination Parcels (Initial Phase)
- N. Land Description of Final Public Trust Parcels (Initial Phase)
- O. Land Description of Lease to State Parks of CP State Parks Site Public Trust Parcels
- P. 2010 Mean High Tide Line Survey

RECOMMENDED ACTION:

It is recommended that the Commission:

CEQA FINDING:

Trust Agreement and Transfer Agreement: Find that the activity is exempt from the requirements of CEQA pursuant to 14 California Code of Regulations 15061 as a statutorily exempt project pursuant to Public Resources Code Section 21080.11, Settlement of Title and Boundary Problems and from the Subdivision Map Act pursuant to Government Code Section 66412(e).

Termination of Lease No. PRC 6414: Find that the activity is not subject to the requirements of CEQA pursuant to Title 14, California Code of Regulations, section 15060(c)(3) because the activity is not a project as defined by Public Resources Code section 21065 and Title 14, California Code of Regulations, section 15378.

66-Year Lease to State Parks: For the portion of the lease that is part of the Yosemite Slough Restoration Project, find that a Mitigated Negative Declaration [SCH#2005122023] and a Mitigation Monitoring Program were prepared by the California Department of Parks and Recreation and adopted on June 5, 2006 for this Project and that the Commission has reviewed and considered the information contained therein.

Adopt the Mitigation Monitoring Program, as contained in the Sacramento Offices of the State Lands Commission.

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For the remaining portions of the lease, find that the activity is exempt from the requirements of CEQA pursuant to 14 California Code of Regulations 15061 as a statutorily exempt project pursuant to Public Resources Code Section 21080.11, Settlement of Title and Boundary Problems and from the Subdivision Map Act pursuant to Government Code Section 66412(e).

Find that this activity is consistent with the use classification designated by the Commission for the land pursuant to Public Resources Code sections 6370, et seq.

AUTHORIZATION:

1. Based upon the foregoing, the information contained in the Commission's files and presented at the public meeting on the Trust Agreement, find that, with respect to the Trust Agreement and the Transfer Agreement:
 - i. The portions of the lands or interests in lands to be exchanged out of the Public Trust have been filled and reclaimed, are cut off from access to the waters of San Francisco Bay and are no longer in fact tidelands or submerged lands or navigable waterways, are relatively useless for Public Trust purposes, and constitute a relatively small portion of the granted lands within the City.
 - ii. The lands or interests in lands to be impressed with the Public Trust have a monetary value equal to or greater than the monetary value of the lands or interests in lands to be exchanged out of the Trust.
 - iii. No substantial interference with Public Trust uses and purposes, including public rights of navigation and fishing, will ensue by virtue of the Exchange.
 - iv. The lands or interests in lands impressed with the Public Trust will provide a significant benefit to the Public Trust and are useful for the particular Trust purposes authorized by SB 792.
 - v. The configuration of the Public Trust Parcels upon completion of the Exchange is substantially similar to the configuration shown on the diagram in Section 25 of

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SB 792, includes all lands within the Subject Area that are presently below mean high tide, and consists of lands suitable to be impressed with the Public Trust.

- vi. The final layout of streets in the Subject Area will provide access to the Public Trust Parcels and will be consistent with the beneficial use of the Public Trust Parcels.
- vii. The lands to be subject to the Public Trust are configured so as to be accessible from the streets as finally configured in the Subject Area.
- viii. Streets and other transportation facilities located on Public Trust Parcels will 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.
- ix. The trustees who own or will own fee title in the Public Trust Parcels have approved the Trust Agreement and the Transfer Agreement.
- x. The Exchange otherwise complies with the requirements of SB 792.
- xi. The Exchange is consistent with and furthers the purpose of the Public Trust and SB 792.
- xii. The Exchange is otherwise in the best interest of the statewide public.
- xiii. The findings numbered 1.i through 1.xii apply to the Initial Closing Phase and to each Subsequent Closing Phase, which are in substantial conformance with the phasing requirements of the Trust Agreement.
- xiv. The findings numbered 1.i through 1.xii apply regardless of the order in which the Subsequent Closing Phases occur.
- xv. After the Initial Closing Phase, and after each Subsequent Closing Phase, the cumulative monetary value of all of the lands or interests in lands that have been exchanged into the Public Trust will be equal to or

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greater than the cumulative monetary value of all of the lands or interests in lands that have been exchanged out of the Public Trust.

- xvi. After the Initial Closing Phase, and after each Subsequent Closing Phase, the lands or interests in lands exchanged into the Public Trust at each phase will be configured in a way that furthers the purposes of the overall exchange, including, but not limited to, having access to streets as finally configured in the Subject Area.
2. Accept PRC 6414 Lease Quitclaim by the California Department of Parks and Recreation.
 3. Approve and authorize the issuance of a 66-year General Lease – Public Agency Use – of the CP State Park Site Public Trust Parcel to California Department of Parks and Recreation, as provided for in the Trust Agreement, in substantially the form of the copy of such Lease on file in the Sacramento Office of the Commission.
 4. Approve the land descriptions attached as Exhibits J, K, L, M, N, and O.
 5. Approve the 2010 Mean High Tide Line Survey, on file in the Sacramento Office of the Commission.
 6. Approve and authorize the execution, acknowledgment, and recordation of the Hunters Point Shipyard/Candlestick Point Title Settlement, Public Trust Land Exchange and Boundary Line Agreement and Candlestick Point State Recreation Area Reconfiguration, Improvement and Transfer Agreement and associated deeds and acceptances by the Commission's Executive Officer on behalf of the California State Lands Commission, in substantially the form of the copies of such agreements on file in the Sacramento Office of the Commission.
 7. Authorize and direct staff of the Commission and/or the California Attorney General to take all necessary or appropriate action on behalf of the Commission, including the execution, acknowledgement, acceptance and recordation of all documents as may be necessary or convenient, to carry out the Hunters Point Shipyard/Candlestick Point

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Title Settlement, Public Trust Land Exchange and Boundary Line Agreement and Candlestick Point State Recreation Area Reconfiguration, Improvement and Transfer Agreement; and to appear on behalf of the Commission in any legal proceeding relating to the subject matter of the Hunters Point Shipyard/Candlestick Point Title Settlement, Public Trust Land Exchange and Boundary Line Agreement and Candlestick Point State Recreation Area Reconfiguration, Improvement and Transfer Agreement.