

San Francisco Bay Conservation and Development Commission

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TO: Commissioners and Alternates

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SUBJECT: Revised Staff Report and Recommendation on Pending Legislation
(For Commission consideration on April 20, 2023)

From the Executive Director:

With regard to the initial Staff Report and Recommendation on Pending Legislation for the Commission's April 20, 2023 Commission meeting, I regret to inform the public that it contained a significant FACTUAL error by including the following sentence in that report during its creation relating to SB 273 (Wiener): "California Natural Resources Secretary Wade Crowfoot has consistently signaled his support for this type of legislation specific to Pier 30-32." This statement is incorrect. While Secretary Crowfoot has urged BCDc staff to work closely with the Port of San Francisco, the State Lands Commission, the project proponents, and Senator Wiener's office, he has not CONVEYED support for such legislation. IN FACT, Administration officials do not take positions on proposed bills in advance of the Governor's Office.

I take full responsibility for that mistake, I have apologized to Secretary Crowfoot for that error, and I do so as well to the public.

As a result, staff has posted this "Revised Staff Report and Recommendation on Pending Legislation" that deletes that sentence.

Summary and Recommendations

The staff recommends that the Commission support the following bills: (1) Senate Bill 272 (Laird) *Sea level rise: planning and adaptation*; and (2) Assembly Bill 748, (Villapudua) *California Abandoned and Derelict Commercial Vessel Program*.

The staff recommends that the Commission consider one of four options regarding Senate Bill 273 (Wiener) *Tidelands and submerged lands: City and County of San Francisco: Piers 30-32: mixed-use development*.

Staff Report

There are several bills of interest to the Commission in the first year of the Legislature's current two-year session.

Senate Bill 272. *Sea level rise: planning and adaptation*

Introduced by Senator John Laird, SB 272 has passed the Senate Natural Resources and Water Committee and been referred to the Senate Government and Finance Committee. This bill was Introduced last year as SB 867 with essentially identical language to the current bill.



The Commission took a position of support on SB 867, which passed the legislature but was subsequently vetoed by the Governor, who cited the costs associated with the bill in light of declining state revenues.

The bill would require local governments within the jurisdiction of either BCDC or the California Coastal Commission to address rising sea level planning and adaptation through a San Francisco Bay shoreline coastal resiliency plan or a Local Coastal Program, respectively. The bill states that the goal is to have the plans submitted by 2029; however, the plans must be submitted by 2039. Plans approved by 2029 shall be prioritized for sea level rise funding, upon appropriation by the Legislature, for the implementation of projects in the local government's approved sea level rise adaptation plan. BCDC and the California Coastal Commission, in close coordination with the Ocean Protection Council and the California Sea Level Rise State and Regional Support Collaborative, would establish guidelines by December 31, 2024, for the preparation of the required plans. The planning and adaptation would include, at a minimum: (1) use of best available science; (2) vulnerability assessments that include efforts to ensure equity for at-risk communities; (3) A sea level rise adaptation plan; and (4) a timeline for updates, as needed, based on conditions and projections and as determined by the local government in agreement with the Coastal Commission or BCDC, as applicable, for the sea level rise planning and adaptation elements. These updates would include adaptation approaches that build upon the adaptation plans and economic analyses of critical infrastructure. While a policy bill cannot provide funding, the bill states that: "The operation of this division is contingent upon an appropriation for its purposes by the Legislature in the annual Budget Act or another statute."

The requirements of this bill overlap those of SB 379 (Chapter 608, 2015), which requires local governments to address climate change through updating their general plans. However, SB 272 is specific to sea level rise and includes an incentive for implementing its provisions. It is imperative that local governments prepare for and adapt to sea level rise and that their work is integrated with adjacent entities, as well as across the region. BCDC has worked collaboratively with regional partners and stakeholders to move towards this goal. Importantly, this bill would provide for consistency, not only between and among Bay local, regional, and state government bodies, but across the state.

Just as importantly, while BCDC's Bay Adapt Program has moved forward successfully by using a voluntary and collaborative approach to adaptation and, ultimately, toward a regional shoreline adaptation resilience plan, this legislation would mandate that local governments pursue such plans within a specific period; however, as noted previously, that would be contingent on the appropriation of funds to prepare and review the plans.

The "San Francisco Bay shoreline coastal resiliency plan" referred to in the bill is a new construct, so BCDC would need to provide definition and parameters for these plans beyond the general direction provided in the bill. If the bill becomes law, BCDC will use the Bay Adapt and Adapting to Rising Tides programs to work with stakeholders as it prepares the guidelines with the Ocean Protection Council, the California Coastal Commission, and the California Sea Level Rise State and Regional Support Collaborative.

The Bay Area Council, Bay Planning Coalition, and the Building Industry Association have taken an opposed unless amended position on the Bill. Their proposed amendments to the bill (Attached) would add findings regarding the need for coordinated regional adaptation planning for the Bay and a description of Bay Adapt. Staff believes the above changes to the findings are appropriate. They would also, among other things: (1) remove the provision for BCDC to prepare the guidelines in coordination with OPC, Coastal Commission, and the California Sea Level Rise State and Regional Support Collaborative, and instead provide that BCDC guidelines recognize and reflect the Bay Adapt guiding principles; (2) change the provision requiring BCDC or Coastal Commission approval of local government plans to instead have BCDC or the Coastal Commission simply review the consistency of the plans with BCDC's guidelines; and (3) state explicitly that the bill does not establish any penalty or consequence for a local government not complying with the bill's provisions, other than not receiving priority for state funding. Staff opposes this second set of changes as the guidelines should be prepared collaboratively to reflect state-wide interests and coordination, BCDC should affirmatively approve the plans rather than simply review them, and there is no need to state the absence of penalties in the bill. Senator Laird stated in the policy committee that he will work to address their concerns.

Staff Recommendation. Staff recommends that the Commission support SB 272. Staff will work with the author to further improve and refine the bill language.

https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202320240SB272

AB 748. California Abandoned and Derelict Commercial Vessel Program

Introduced by Assemblymember Carlos Villapudua, the bill is pending in the Assembly Judiciary Committee. The bill is identical to SB 1065 from the 2022 legislative session. The Commission took a position of support on SB 1065. SB 1065 passed the legislature, but it was subsequently vetoed by the Governor, who cited the costs associated with the bill in light of declining state revenues.

This bill would prohibit a commercial vessel that is at risk of becoming derelict from occupying, or anchoring, mooring, or otherwise being secured in or on, the waters of the state. The bill would authorize a peace officer to find that a commercial vessel is at risk of becoming derelict if specified conditions exist. The bill would subject a person who violates this prohibition to a civil penalty of not less than \$1,000 and not more than \$5,000 per violation, and would prescribe other requirements related to a civil action, including the assessment of a civil penalty and the recovery of other specified costs, for a violation of this prohibition. The bill would also authorize a peace officer to seize or order the removal of a commercial vessel that is at risk of becoming derelict.

This bill would also establish the California Abandoned and Derelict Commercial Vessel Program within the Natural Resources Agency, to be administered by the State Lands Commission (SLC), to bring federal, state, and local agencies together to identify, prioritize, and, based upon availability of funds, remove abandoned and derelict commercial vessels from state waters. The bill would establish the Abandoned and Derelict Commercial Vessel Program Trust Fund for the removal of such vessels. The bill would require the SLC, as part of the program, to create an inventory of abandoned and derelict commercial vessels on the waters of the state and develop a plan to prevent or reduce them. This bill would establish the California Abandoned and Derelict

Commercial Vessel Program Coordinating Council, with seven voting members and four non-voting members within the Natural Resources Agency, to oversee and provide policy direction for the program, coordinate the removal of abandoned and derelict commercial vessels, and develop a system for prioritizing the removal of the abandoned and derelict commercial vessels.

While this bill does not cover recreational vessels, abandoned and derelict commercial vessels are the most difficult and expensive to abate. Staff recommends that the Coordinating Council—which is mainly composed of state-wide or federal agencies, but includes one member from the Delta Protection Commission—also include a representative from BCDC.

Staff Recommendation: Support, and request that the bill be amended to include a representative from BCDC on the Coordinating Council.

https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202320240AB748

Senate Bill 273. *Tidelands and submerged lands: City and County of San Francisco: Piers 30-32: mixed-use development*

Introduced by Senator Scott Wiener, the bill is pending in the Senate Natural Resources and Water Committee and is scheduled for its first hearing on Tuesday, April 25, 2023. This bill addresses replacement of the dilapidated Pier 30-32 along the San Francisco waterfront. The current redevelopment proposal would construct a major mixed-use development including over a half-million square feet of general office on a new pier that would be seismically safe and resilient to rising sea level to 2100. It would also provide a deep-water berth for visiting ships. The project would bolster the sea wall adjacent to the pier to make it seismically safe and resilient to rising sea levels. Passage of this legislation would provide the development proposal with public trust consistency, thus, in effect, eliminating BCDC's authority to find the development inconsistent with the public trust.

The Bay is a state-protected resource. For over 50 years, BCDC's law and policies have reserved the Bay for Bay-oriented uses that are public trust consistent, such as for ports, marinas, and public recreation. In that time, BCDC has not approved such a major project on the Bay with general office unless that general office space is ancillary to the project itself (such as with San Francisco's Pier 27, which houses the Port's Cruise Ship Terminal) because these uses are not consistent with the public trust and can be built on upland areas. Absent this legislation, therefore, neither the SLC nor BCDC could find the proposed project consistent with the public trust and issue approvals.

The legislation would overcome this impediment by making a legislative finding of public trust consistency, predicated on the SLC making certain findings provided in the legislation. These findings would include, among other things, providing the deep-water berth, upgrading the sea wall, and providing public benefits that bring the public to the shore. Two previous state bills for this site regarding trust consistency also included non-trust commercial space. However, the first bill by Assemblymember Kevin Shelley in 2001 was intended to authorize a major cruise terminal, and the second bill by Assemblymember Phil Ting in 2013 was intended to authorize a Golden State Warriors arena that would have provided Bay-oriented public recreation. Both of those purposes are trust consistent uses.

The bill would also remove, as part of any Commission consideration of a permit for the mixed-use project, the requirements in the McAteer-Petris Act that any Bay fill be for a water-oriented use and not have an alternate upland location. As stated previously, it would also remove BCDC's ability to make its own public trust determination.

This proposal is for a large mixed-use development of non-trust uses that includes ancillary trust consistent public benefits. While it provides for public access and resilience to rising sea level and earthquakes, BCDC would require any proposed project in the Bay to include maximum feasible public access and to be constructed to be resilient to rising sea level and earthquakes.

The legislation includes a statement that it does not set a precedent for any other projects. However, it is possible that others will conclude that they can make a project trust consistent if they can persuade the legislature to make similar legislative findings. This approach arguably weakens the public trust across the state.

The project proponents state that the high cost of removing the old pier and constructing in the Bay requires significant revenues and that there are limited revenue sources that are trust consistent, and therefore, the large volume of general office and public retail on the new pier are needed to pay for the project. BCDC staff believes that other avenues should first be pursued further to reduce the amount of non-trust uses needed to finance the project, leading to a smaller project that is more consistent with the trust and that would still provide public benefits. These include using the removal of those portions of the existing pier that would not be replaced by the new smaller pier as mitigation for other fill needed by the City, such as shoreline protection for San Francisco International Airport. Staff also believes that the issues surrounding the public trust and defraying the cost of providing resilience to rising sea level should be addressed in a state-wide context, rather than in a single proposed project. BCDC and SLC staff have agreed that we should jointly undertake such a public policy study through a process that includes a wide variety of stakeholders. Such a study would provide guidelines for such projects in the future. In order to accomplish this study, the bill could be made into a two-year bill that would be further considered in the second year of the two-year legislative session.

Through removal of the water-oriented use and alternative upland location requirements of the McAteer-Petris Act from the project, the bill grants permitting exceptions to the project and the Port of San Francisco that would not otherwise apply. The San Francisco Waterfront Special Area Plan (SAP) provided for such permitting exceptions to wholly reconstructed piers along the San Francisco Waterfront in the historic district, in exchange for the Port of San Francisco agreeing to provide public benefits along the waterfront consistent with the public trust and state goals outlined in the San Francisco Bay Plan. This bill would expand those exceptions, and staff believes the Port should at minimum be required to ensure those public benefits that are due under the SAP are completed at the time the project comes before BCDC.

As the bill is now drafted, staff has identified four other major areas of concern that require some type of change. They are:

1. That the bill should specifically state that no residential uses be established within BCDC's Bay jurisdiction;
2. That the bill should specifically authorize a BCDC-SLC-Department of Justice study to address the impacts of rising sea levels on public trust lands and resources within San Francisco Bay;
3. That BCDC's permitting authority should not be limited by the legislation outside of the specific public trust issue; and,
4. That the Port of San Francisco should be required to be in compliance with any existing San Francisco Waterfront Special Area Plan at the time that the development's proponent(s) apply for a BCDC permit.

Recommendation: BCDC staff recommends that the Commission consider one of at least four options available to it, including (but perhaps not limited to):

1. Opposition to the legislation as written;
2. Opposition to the legislation unless amended;
3. Requesting that the author, Senator Wiener, consider amendments to the bill; or,
4. Take no action at this time and provide specific direction to staff regarding next steps.

https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202320240SB273