

San Francisco Bay Conservation and Development Commission

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TO: Commissioners and Alternates
FROM: Lawrence J. Goldzband, Executive Director (415/352-3653; larry.goldzband@bcdc.ca.gov)
SUBJECT: **Staff Report on Senate Bill 273 (Wiener) Tidelands and Submerged Lands: City and County of San Francisco: Piers 30-32: Mixed-Use Development**
(For Commission consideration on June 1, 2023)

Background

SB 273, introduced by Senator Scott Wiener of San Francisco, is sponsored by the Port of San Francisco. The bill would define a proposed mixed-use commercial project that includes general office on a rebuilt Piers 30-32 along the Embarcadero as being consistent with the public trust. (Both the Minutes of the April 20, 2023 Commission meeting at which the Commission discussed the legislation, and the initial staff report on SB 273, are available here: [April 20, 2023 Commission Meeting \(ca.gov\)](#), and the legislation is available here: [Bill Text - SB-273 Tidelands and submerged lands: City and County of San Francisco: Piers 30-32: mixed-use development. \(ca.gov\)](#)).

At its April 20, 2023 meeting, the Commission approved on a vote of 19-0-2 a motion by Commissioner Addiego “that Chair Wasserman appoint an *ad hoc* committee to consider SB 273 and proposed amendments to discuss and as appropriate negotiate with Senator Wiener’s office, the sponsors, and any other legislators as appropriate, to have the authority to put on the record an “oppose unless amended” position on behalf of BCDC if progress is not being made, and to report back to the Commission.” The *ad hoc* committee met twice virtually, and has not met since April 28. The committee’s two conversations concluded that four issues required discussion, and possible negotiations and amendments to the bill, by BCDC and Port representatives:

1. The commencement of a study to be conducted by BCDC and the State Lands Commission (SLC), with assistance from the California Natural Resources Agency, on the ramifications of rising sea levels on lands governed by the public trust throughout the Bay shoreline, which would provide guidance for future development proposals and Commission actions;
2. BCDC’s requirement that it retains its authority and jurisdiction on all permitting issues not linked directly to the bill’s specific provisions about public trust authority and McAteer-Petris Act requirements;
3. That there be no residential uses as part of the mixed-use development; and,
4. That the Port of San Francisco be in compliance with the San Francisco Waterfront Special Area Plan (SAP) when project proponents apply for a BCDC permit for the prospective mixed-use development.



Chair Wasserman and Commissioner Peskin met with Port and SLC representatives on May 3, 2023, and Chair Wasserman met with Port representatives on May 17, 2023 (Commissioner Peskin was unavoidably absent). Staff from BCDC were present at both meetings. Chair Wasserman provided the Commission with updates during the Commission's May 4, 2023 and May 18, 2023 meetings, and indicated that progress toward resolution was being made in all respects.

Current Status

Negotiations between Chair Wasserman and representatives of the Port have addressed each of the four issues. The italicized language below has been tentatively agreed to by Chair Wasserman, representatives of the Port, and (in the case of the public trust study) the State Lands Commission. Chair Wasserman has specifically and directly told representatives of the Port and the SLC that only the Commission has the authority to agree or disagree with the language below, and that he would propose such language to the Commission for its approval.

Public Trust Study

Based upon language suggested by the State Lands Commission, the following has been agreed to by all parties:

Finding

The climate crisis and sea level rise are existential threats that require broad, innovative, and comprehensive coordination and collaboration across all levels of government to develop, fund, and implement resiliency and adaptation strategies. Adapting to sea level rise is expensive, often requiring a combination of private and public investment. Local government trustees of public trust lands and resources within San Francisco Bay face unique challenges in managing these lands in the face of the climate crisis and sea level rise in a manner consistent with their statutory trust grants and the public trust. The State Lands Commission and BCDC have a long history of coordination and collaboration to advance an understanding of sea level rise in San Francisco Bay.

Study Description

Subject to the availability of funding, the State Lands Commission and the San Francisco Bay Conservation and Development Commission, in consultation with the California Natural Resources Agency, shall develop guiding principles, including responsible funding strategies, to address impacts of sea level rise on public trust lands, assets, and resources within San Francisco Bay. The guiding principles should build on and be consistent with current San Francisco Bay adaptation and management documents and principles, including the Bay Plan, Adapting to Rising Tides, and Bay Adapt. The development of guiding principles must include meaningful consultation and engagement with tribal governments, environmental justice communities, ports, harbors, local governments, private landowners, and members of the public on how best to prepare the waterfront from the impending threats from rising sea levels, and ensure that the guiding principles capture the diversity of the San Francisco Bay, from ports and harbors, to working waterfronts, to wetlands, dunes, and beaches.

BCDC Authority and Jurisdiction

Based upon language suggested by Chair Wasserman, the following language has been agreed to by the Port. The language retains BCDC’s ability to approve or deny permit(s) for the project in its regular course of business except that the legislation eliminates the ability of BCDC to deny a permit based upon a finding that the project is not consistent with the public trust, is not a maritime-related, or can be constructed at an alternative upland location. These exceptions would exist because SB 273, *per se*, authorizes the construction of the mixed-use project as a public trust-consistent action, and BCDC’s retention and use of those specific public trust and McAteer-Petris Act authorities would negate the bill’s purpose:

“Except as specifically provided in this act, including subdivision (b) of Section 5 and the first sentence of this Section 7, nothing in this act limits the authority or discretion of BCDC to approve or deny permits for those aspects of a mixed-use development on Pier 30-32 in a manner otherwise consistent with the McAteer-Petris Act, the Bay Plan, and the Special Area Plan, including the authority and discretion of BCDC to impose terms and conditions on permits for the project. Except as provided in subdivision (b) of Section 5 and the first sentence of this Section 7, the findings of the State Lands Commission pursuant to subdivision (a) of Section 5 shall not be conclusive on BCDC in the exercise of its discretion to determine whether the project is consistent with the McAteer Petris Act, the policies of the Bay Plan, and the Special Area Plan and to make findings and impose conditions regarding the same, which findings and conditions shall be made independent from the State Lands Commission’s findings pursuant to Section 5.”

Housing Not Included in the Mixed Use Project

To ensure that no residential uses be established within BCDC’s jurisdiction, Chair Wasserman required, and the Port agreed, that the legislation should be amended to include the following language (which will appear in a separate section per the request of the SLC):

“The project at Pier 30-32 shall not include residential use.”

San Francisco Waterfront Special Area Plan (SAP)

The original approach regarding the SAP was to amend the legislation to require the Port either to be in compliance with, or be actively seeking to be in compliance with, the SAP when the mixed-use project proponents apply for a BCDC permit. Instead, based on recommendations from both BCDC and Port staffs, Chair Wasserman and BCDC staff have agreed that BCDC staff and Port staff will immediately begin work on a Memorandum of Understanding to describe the timing, process, and cost of two groups of amendments to the current SAP.

The first group would address (or “carve out”) two issues in the near term from the existing larger scale shoreline-wide SAP process to form a smaller and quicker initial SAP amendment process – the Port/Exploratorium obligation to remove fill in the Bay at an undetermined location and the ability of the Port to make improvements in the Fisherman’s Wharf area. The goal of the Port/Exploratorium portion would be to consider substituting for the Port/Exploratorium’s current fill removal plan, which is a public benefit requirement, a school- and community-based education program that addresses rising sea levels, would cost no less

than the amount required to remove all required fill, and add significant value to the Exploratorium's existing climate-related programs and BCDC's own educational efforts. The proposed program would need to be approved by the Commission. The Fisherman's Wharf portion of the smaller amendments would consider removal of the Replacement Fill Policy in the SAP (also known as the 50% rule) from the Fisherman's Wharf area. Existing policy in the SAP allows the Port to request such a change to the Replacement Fill Policy at Fisherman's Wharf because the Port has completed certain public benefits in that location. BCDC and Port staff believe that the initial amendment would occur within a 12-18 month timeframe.

The second larger and longer-term SAP amendment would address the Port's overall large-scale remaining plans and obligations now required by the existing SAP. The Commission initiated Bay Plan Amendment No. 3-17 in 2019 to update the existing overall SAP but, due to a variety of factors, it has been delayed. Rather than proceed with such a comprehensive amendment now, the MOU will outline the processes to consider both the narrower, near-term amendment and a longer-term, more comprehensive amendment following the completion of the Public Trust Study and approval of guidance for the Regional Shoreline Adaptation Plan. No changes to BCDC's laws and policies concerning the SAP process would be affected by such a process. Staff will bring revised descriptive notices to the Commission and hold a public hearing to seek Commission approval to modify the SAP amendment process.

Staff Recommendation

Staff recommends that the Commission take a neutral position on SB 273 subject to the three amendments being accepted by Senator Wiener and the Assembly sponsors (Assemblymembers Ting and Haney) and becoming part of the legislation.

At the bill's policy hearing before the Senate Natural Resources Committee on April 25, 2023, Senator Wiener told the Committee that he looked forward to working with BCDC to ameliorate any concerns of the Commission. The State Senate approved SB 273 without any amendments on a vote of 38-0-2 on May 15, 2023. It appears that the State Assembly also will approve the legislation. Staff's recommendation is based on the following factors:

1. The Commission faces a choice of opposing the legislation based on its opposition to the change in the public trust and amendments to the McAteer-Petris Act, or conceding the bill's likely passage and improving the legislation by requesting with the Port and the SLC that the Legislature agree to the amendments listed above that improve the legislation, including clarification of BCDC's continuing permit authority over the project;
2. The public trust guidance study, and BCDC's active participation in it, will offer the Commission a much clearer path to determining the appropriateness and value of future Bay shoreline developments, especially in combination with Bay Adapt's progress and in light of future subregional rising sea level planning programs;
3. Including the third amendment listed above will ensure that no residential uses will be incorporated into the development;

4. The BCDC/SF Port MOU will provide the Commission with a much-needed roadmap to increase public awareness of rising sea levels and guide the progress of a larger-scale plan to integrate public access and resilience on the San Francisco Embarcadero; and,
5. This action makes no determination about the proposed project itself, which is not before the Commission now and likely will not come before the Commission for several years. If the project moves forward, it will come before the Commission in the normal course of a permit application.