

SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION

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June 14, 2013

TO: Commissioners and Alternates
FROM: Lawrence Goldzband, Executive Director (415/352-3653 lgoldzband@bcdc.ca.gov)
Steve Goldbeck, Chief Deputy Director (415/352-3611 steveg@bcdc.ca.gov)
SUBJECT: Revised Staff Recommendation for AB 1273 (Ting): The Piers 30-32 Revitalization Act
(For Commission consideration on June 20, 2013)

Summary and Recommendation

Assembly Bill 1273 (mailed May 3, 2013) by Assembly Member Ting (San Francisco) was introduced February 22, 2013 at the request of the Mayor of San Francisco and the Port of San Francisco to amend and update earlier state legislation (AB 1389) for Piers 30-32 on the San Francisco waterfront to set standards for consistency with the public trust doctrine and the Burton Act trust regarding a proposed development by the Golden State Warriors to rehabilitate the piers and construct a new multi-use venue and basketball arena, open space, maritime, retail and parking uses and construct other improvements on Seawall Lot 330. As currently pending in the legislature, the bill would authorize the use of Piers 30-32 for the proposed multi-use venue project (subject to compliance with CEQA and other regulatory requirements) and satisfy requirements for findings of consistency with the public trust doctrine and the Burton Act if the Port Commission finds that the conditions set forth in the proposed bill are satisfied.

Pursuant to the direction of the San Francisco Bay Conservation and Development Commission (BCDC) on May 16, 2013, the staff has engaged in active and intensive discussions with staff representatives of the Port, the City, the State Lands Commission (SLC) and the Golden State Warriors to resolve issues regarding the proposed legislation. Staff believes it has implemented the direction of the Commission and that the discussions have resulted in productive substantive agreements to amend the bill, including: (1) a requirement that the project include off-site public benefits and a process to ensure that the public benefits are subject to the approval of the Commission; (2) express acknowledgment of Commission's ability to require a San Francisco Waterfront Special Area Plan amendment and granting authority to the Commission, in its discretion, to take into account the public benefits in determining consistency with policies of the Special Area Plan, and in either case approve the required public benefits package ; (3) a reduction of the maximum amount of venue serving, non-trust retail use; (4) express acknowledgment of the Commission's ability to establish a maximum number of parking



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spaces on the piers and parking management operational measures for such parking; and (5) consistent with the agreement of the Port at the earlier Commission meeting, a provision ensuring that ensures that SLC, rather than the Port, makes the final public trust determination. However, because several large issues remain outstanding which the Commission likely will want to see resolved prior to passage of the legislation and not all the issues can be resolved within the short deadlines of the current legislative session. BCDC staff recommends that:

1. The Commission not adopt a position on AB 1273 (similar to the approach of SLC); and
2. The Commission request that Assembly Member Ting make AB 1273 a two-year bill to allow greater resolution of outstanding issues, and inform the legislature of this request; and
3. The Commission support continued staff-to-staff discussions to narrow and/or resolve outstanding issues improve the bill, and better define the proposed project, and to keep the Commission informed regarding the legislation and the proposed project.

Development on Piers 30-32 Subject to AB 1273

As described in the Port's briefing to the Commission on May 16, 2013, the development subject to AB 1273 includes an approximately 125 foot-tall, 550,000-square-foot pile-supported sports and entertainment venue and multi-purpose indoor arena along the Embarcadero at the east end of Piers 30-32, although the project sponsor has provided a revised project design since that time.¹ The arena is the tallest building proposed on the approximately 13-acre pier. Lower-scale retail buildings are proposed to be built along the Embarcadero. The conceptual site plan shows that different development elevations are proposed at the project site. Retail uses and pedestrian access are proposed at the Embarcadero or street level. Additional retail and parking are proposed at levels 2 and 3 (approximately 10 and 30 feet above the Embarcadero). A 50,000-square-foot plaza/concourse and access to the arena is proposed at a level approximately 35 feet above the Embarcadero, and an 85,000-square-foot upper plaza terrace is proposed at a level approximately 50 above the Embarcadero.

The multi-purpose 17,000-19,000 seat indoor arena is being proposed as the new home of the Golden State Warriors, and as an event venue for other public assembly uses, including conventions, performing arts, and other purposes.² According to the Port, the arena would host approximately 43 Warriors home games per year (not including playoff games) and 150 additional events, with annual expected paid attendance of 2,240,000 persons. The project proponents state that the development would include a significant amount of public open space, 105,000 square feet of visitor-serving retail and restaurants, a 500-space parking garage, a 21,000-square-foot basketball practice facility, and 40,000 square feet of event management and team office space.

Part of the proposed development involves construction on undeveloped portions of Seawall Lot 330, which is located across the Embarcadero from Piers 30-32. Seawall Lot 330 is filled tidelands, approximately 2.3-acres (101,330 square feet), and is outside BCDC's jurisdiction. Portions of Seawall Lot 330 are no longer subject to the public trust pursuant to a land exchange approved by SLC in 2003, and the remainder of Seawall Lot 330 is subject to legislation enacted in 2007 (SB 815, Migden) and 2011 (AB 418, Ammiano), which lifted the trust use restrictions and authorized the Port to convey the remainder of Seawall Lot 330 to a private entity, respectively. Portions of Seawall Lot 330 were sold in 2003 and the proceeds were used to help finance the

¹ This reflects the project sponsor's revisions to the project design since the Port's initial May 2, 2013 briefing to the Commission, including reducing the height of the multi-purpose venue from 135 to 125 feet, increasing pier level open space, reducing the square footage of retail use and decreasing the number of parking spaces.

²<http://sfgov3.org/modules/showdocument.aspx?documentid=3078>

construction of the Brannan Street Wharf. The Port plans to sell or lease the remainder of Seawall Lot 330 to the Warriors at fair market value, and use the proceeds to help finance repairs to the substructure of Piers 30-32. At Seawall Lot 330, the Warriors plan to construct 33,000 square feet of retail space, 200-300 parking spaces, 100-130 residential units, and a 200-250 room hotel. AB 1273 notes that the City and Port plan to help finance the \$120 million cost of repairing the pier's substructure for the proposed development by using the proceeds of the sale or lease of Seawall Lot 330, using rent credits for leasing the Pier to the developer, and using property tax increment financing from an infrastructure financing district that includes the site. The Port has stated that the appraised fair market value of Piers 30-32 and SWL 330 together is far less than the estimated pier rehabilitation costs, and that the arena itself would be privately financed.

According to the Port, the existing pier structure is nearing the end of its useful life. The findings in AB 1273 state that the Port estimates it would cost approximately \$45 million to remove the Pier, and \$120 million to make it useable for the proposed development. Piers 30-32 were built in 1912 and the piers were joined in 1950. In 1984, the pier sheds were destroyed by fire, and the piers now serve as a parking lot for approximately 1,000 cars and a temporary berth for overflow cruise ships and other deep draft vessels. In 2001, the Legislature authorized the Port to approve a cruise ship terminal and mixed-used development with 325,000 square feet of office space at Piers 30-32 (AB 1389, Shelley, as subsequently amended). AB 1389 required the Port to remove Pier 36 and secure funds to complete construction of the Brannan Street Wharf before a permit for the terminal was approved by BCDC. The Commission supported AB 1389 and approved the terminal in 2005 (Permit No. 5-03). Although the terminal ultimately was constructed at Pier 27, the authorized terminal at Piers 30-32 would have included a two-story, 40-foot high, 100,000-square-foot main terminal structure (a portion of which could have been 85 feet high), 190,000 square feet of trust and non-trust retail space, 300,000 square feet of office space on the second and third levels of the pier buildings, 425 parking spaces, approximately 242,980 square feet of public access on the first and second level of the project, a perimeter public walkway and public plazas.

AB 1273. AB 1273 as currently amended in the Legislature—as opposed to the potential amendments discussed below in the Staff Discussion section—authorizes the Port of San Francisco to approve a mixed-used development on Piers 30-32 that includes a multi-purpose sports arena and entertainment venue for events and public assembly if the Port finds that the development meets the following conditions in Section 5 of the bill:

1. Attracts people to the waterfront, increases public enjoyment of the Bay, encourages public trust activities, and enhances public use of trust assets and resources;
2. Provides multiple significant views of the Bay Bridge and the Bay from a variety of elevations and vantage points, including the interior of the arena, minimizes interference with public views to the extent feasible, provides free public access to exterior portions of the arena, and provides free public views of the interior of the building during events;
3. Achieves maximum feasible public access as determined by BCDC;
4. Includes public plazas on a substantially permanent basis;
5. Provides continuous public access around the perimeter of the piers year-round with limited exceptions for temporary safety, security and maritime purposes;
6. Includes a significant maritime program including, but not limited to, a fire station and berthing facilities, deep water berthing at the east end of the pier, facilities for direct public access to the water by human-powered boats or swimmers on the south side of the pier, and water taxi and transit docking;
7. Limits non-maritime office space to 70,000 square feet by primary tenants of the arena for venue supporting or trust retail uses;
8. Limits retail venues to venue-supporting or trust retail uses;

9. Limits parking to 500 spaces to accommodate visitors and not residential uses, substantially screened from public view, and designed to avoid interference with pedestrian, wheelchair and bicycle traffic along Herb Cain Way;
10. Provides 15 days of public trust events, uses and programs, with at least three at the arena, including free and low-cost visitor-serving events;
11. Makes a public community room available for free or low-cost use;
12. Provides a plan to address sea-level rise through 2050, with enforceable strategies for an adaptive management approach for the duration of the ground lease; and
13. Includes a hotel or visitor-serving uses at Seawall Lot 330 that materially enhances public trust uses on Piers 30-32 and the waterfront.

AB 1273, as currently pending before the State Legislature, also requires the Port to submit a report on the public trust program to SLC five years after the arena opens and every five years thereafter to ensure that the required trust-related activities are effectively implemented. It authorizes SLC to require the City and the Port to develop an implementation plan to ensure the objectives of the bill are met. The bill sunsets if the development is not approved within ten years, and provides for a 60-day statute of limitations for legal challenges to the development.

AB 1273 also currently provides that determinations of consistency of the public trust doctrine required by statute or regulation—including any determinations that otherwise would be made by BCDC or SLC—are satisfied if the Port determines that the development at Piers 30-32 meets all the terms and conditions in Section 5 of the bill. Section 7 of the bill contains a savings clause which provides that, except for the findings of consistency with the public trust doctrine, nothing in the bill is intended to limit BCDC's authority or discretion to approve or deny permits for the development on Piers 30-32 under the McAteer-Petris Act, Bay Plan and Special Area Plan, including the authority and discretion to impose conditions and enforce permits for the project.

San Francisco Waterfront Special Area Plan. The *San Francisco Bay Plan* (Bay Plan) and the *San Francisco Waterfront Special Area Plan* (SAP) are BCDC's regulatory plans that govern development within BCDC's jurisdiction. Development of, and changes to, the SAP are undertaken and approved by BCDC and the Port through a public process. Both plans were amended thirteen years ago to alter BCDC's policies regarding fill removal and permitted use on piers along the San Francisco waterfront. This effort provided the opportunity to comprehensively plan the section of the waterfront from China Basin to Pier 35. The amended language states, in part, that "Within the boundaries of the existing pier footprint, an existing pier may be repaired or wholly reconstructed for a use consistent with the Public Trust Doctrine and the Port's Legislative trust grant without triggering the McAteer-Petris Act Section 66605(a) water-oriented use criterion, and Section 66605(b) no alternative upland location criterion."

The language cited above is important to note because, prior to the 2000 amendment, projects had to be consistent with both of these sections of the McAteer-Petris Act. Therefore, the Commission had to find as part of its project approval process that the project was a water-oriented use and that there was no alternative upland location for the project. The amendment also eliminated the requirement that each project along the San Francisco waterfront that involved substantially rehabilitating a pier had to remove or provide public access on approximately 50 percent of that pier or another pier within the same vicinity. In exchange for removing these requirements in the portion of the waterfront from China Basin to Pier 35, the SAP required the Port to provide an integrated package of public benefits including the removal of deteriorating piers and restoring significant areas of open water. The amendment added policies that require the completion of waterfront-wide, integrated public access and design policies that promote low-scale development and preserve significant Bay views, the development of significant public plazas, the preservation of important and unique historic resources along the waterfront, and the development of new uses to enable the public to better enjoy the waterfront.

The proposed project at Piers 30-32 is located within this section of the waterfront (from China Basin to Pier 35). Therefore, it no longer requires a finding that the project is a water-oriented use or that there is no alternative upland location prior to approval. Additionally, the SAP designates Piers 30-32 as a pier not designated for removal and that can be developed consistent with the policies of the SAP. In connection with a major permit application, the Commission's staff evaluates each project proposal within the jurisdiction of the SAP for consistency with the SAP. If staff believes that a project is inconsistent with the Plan, staff provides the Commission with a "Brief Descriptive Notice" that contains a recommendation whether to undertake an amendment to the SAP. This process was conducted for the Exploratorium project at Pier 15, the James R. Hermann Cruise Ship Terminal at Pier 27, and for the America's Cup proposal. The current proposed legislation preserves the Commission's authority to require that the proposed project at Piers 30-32 be consistent with its laws and policies, including consistency with the SAP or to require an amendment to the SAP if the Commission finds it to be inconsistent with the SAP.

Staff Discussion

Commission Direction. At its May 16, 2013 meeting, the Commission directed staff to continue to discuss AB 1273 with staffs of the Port, City and SLC in an effort to narrow and/or resolve outstanding issues including balancing trust and non-trust uses, public benefits, project size, retail uses, and independent review of trust-related activities, and to report back with a revised recommendation based on these further discussions. Since then, BCDC staff has discussed these issues with project representatives a number of times. The outcomes of the discussions are listed below by issue topic.

1. **Need and Timing of Legislation.** One of the main issues raised by BCDC Commissioners during the May 16, 2013 Commission meeting related to whether AB 1273 should be a two-year bill rather than a one-year bill to give adequate time to resolve outstanding issues.

The project sponsors are seeking an early legislative direction on the public trust's applicability to the proposed project. They contend that the project is public trust consistent because it will restore to a useable condition the deteriorated piers and will include public access and maritime uses that are trust consistent. The existing enacted state legislation for Piers 30-32 that AB 1273 would amend, Chapter 489 of the Statutes of 2001 (AB 1389), provides a trust determination for a cruise ship terminal and mixed use project that was never built. Unlike the cruise ship terminal authorized in AB 1389, but like other waterfront projects such as AT&T Park and the substantial non-trust commercial office component of proposed cruise terminal, the proposed arena is not a traditional public trust use, and is proposed on piers that are subject to the public trust, and for this reason BCDC staff believes the enclosed arena use is not, at its heart, trust consistent. However, the State Legislature, subject to judicial review, is the final arbiter of the public trust in California. Therefore, project proponents are asking the legislature to make a determination regarding the public trust consistency of the proposed project. (The May 10, 2013 Staff Recommendation provided an analysis of the public trust in relation to the project.)

However, one of the thorniest problems faced by BCDC staff is that the project design is in an early stage, is still in flux, and lacks project details. Resolving some of these issues will require a lengthy public process. As a result, the discussions between the staffs often had to address potential processes to resolve issues rather than specific outcomes. The proposed amendments to the bill developed through these staff discussions allow (i) for a public process to determine outstanding issues, including project design, which will be vetted through the Design Review Board, and ultimately the Commission, and (ii) the Commission to approve public benefits for the project, which will be developed by a joint BCDC-Port process, as discussed further below.

A two-year bill would allow staff and the project sponsors to refine the design so that it is more consistent with the Commission's laws and policies and vetted by BCDC in a public process. This is how AB 1389 was handled; the project design was crafted and the appropriate mix of uses and project details worked out between late 1999 and August 2001. Briefings were held in front of BCDC and with SLC staff, and a joint review of the project was conducted by BCDC's Design Review Board and the Port's Waterfront Design and Access Committee. Following substantial revisions to the project based on BCDC, design review, and public comments, the agency staffs subsequently crafted legislative language that addressed public trust issues regarding the project, which was amended into the bill in September 2001 and passed shortly thereafter.

Discussions and Outcome. During negotiations, BCDC staff asked whether AB 1273 could become a two-year bill. City staff responded as follows:

"It is common practice for complex projects proposed on public trust property to seek an early read on trust matters via state legislation. These legislative trust determinations are a critical milestone to determine whether to proceed with detailed project planning at a given site along the Port's waterfront, and incur the significant costs involved with that process.

"AB 1389, the bill that addressed trust consistency for the prior project proposed on Piers 30-32, was a one-year bill that was signed into law in 2001, some 3½ years before BCDC issued its Major Permit for that project. There are numerous other precedents for an early trust determination, including most recently AB 418 (2011), which authorized a swap of trust lands within Pier 70. In that case, AB 418 was a one-year bill that was introduced to the legislature before the Port entered a negotiating agreement with a development partner for the Pier 70 Waterfront site. In 2007, the Port obtained passage of SB 815 to address the public trust use limitations on SWL 337 while the Port was finalizing its community planning process for the site and before the Port selected a developer. Trust legislation was also obtained prior to local approvals for projects at Hunters Point Shipyard-Candlestick Point and Treasure Island.

"In connection with the current Piers 30-32 project, the decision to refer the determination of trust consistency to the Legislature was made in late 2012 in consultation with State Lands staff and BCDC staff. Since that time, members of BCDC staff, State Lands staff, the City of San Francisco, the Port of San Francisco and the Project sponsor have met periodically to discuss issues related to the Project and the text of AB 1273.

"Over the next twelve months, the City and the Project sponsor will be investing considerable resources – including thousands of staff hours and millions of dollars – into the entitlement process. This includes working with BCDC staff and other stakeholders on programmatic and design refinements to the project, drafting an EIR, negotiating a Term Sheet with the Port, and engaging in an extensive community input process. Because trust consistency of the project is a fundamental "gating issue" for the project, it is prudent to resolve this fundamental issue early in the process to avoid unnecessarily wasting significant public and private resources, and to better inform final project design and use for the CEQA process and the BCDC Major Permit application."

BCDC staff believes that the present bill could be amended so that it simply removes the language enacted in AB 1389 regarding the old cruise terminal proposal and be approved by the Legislature while the project is better defined and critical issues are resolved. Alternatively, AB 1273 could become a two-year bill and be moved next year, which would provide adequate time for such a process. The final day for Senate policy committees to approve bills this year is July 6, 2013 and the Commission is not scheduled to meet between June 20 and July 18 (Thursday, July 4 would be the regular meeting date for the Commission). Requiring passage of AB 1273 in its current or negotiated form this year would not allow for adequate time to resolve issues relating to the project.

2. **Balancing Trust and Non-Trust Uses.** *The public trust doctrine is flexible and accommodates changing public needs. The conveyance of public lands and waters for non-trust purposes ancillary to trust uses have been approved in the past by the Legislature, BCDC and SLC (e.g., the cruise ship terminal approved at Piers 30-32, was a trust-consistent use that also included substantial ancillary non-trust uses needed to finance the construction of the terminal). However, AB 1273 does the opposite; it authorizes a primarily non-trust, non-water-dependent use—the indoor arena, non-trust office and retail space, and parking below public open space—with ancillary trust uses (e.g., a maritime program, public access, and other trust uses). Staff believes that further discussions should occur to ensure an adequate balance between trust and non-trust uses. (Text taken from the May 10, 2013 staff recommendation.)*

Discussions and Outcome. Much of the time and energy in the discussions centered on the question of how to balance trust and non-trust uses. Significant agreements were reached regarding the amount of non-trust retail services to be allowed on Piers 30-32 (based on an SLC recommendation) and participants reached an agreement that some undefined type and amount of public trust benefits would be provided based upon a public process. The proposed legislation includes language that explicitly states that BCDC can reduce parking to a minimum level and includes a process through which public access along Herb Caen Way can be maximized and protected.

However, while project proponents believe that the proposed arena “falls in the gray area” of public trust uses, BCDC staff believes the arena is not, at heart, trust consistent. (The May 10, 2013 Staff Recommendation provided an analysis of the public trust in relation to the project.) In addition, at this stage of the project, it is not possible to determine exactly how many non-trust uses can be reduced at the site.

Because the project’s fundamental use is not a trust use and the applicant believes the project requires additional supporting non-trust uses, such as office space and some non-trust retail, the Commission should determine whether BCDC has adequate information to relinquish its authority to make an independent public trust consistency determination prior to understanding the complete project and determining whether it balances trust and non-trust uses.

3. **Public Benefits.** *Section 7 of the bill contains a savings clause that preserves BCDC’s discretion to approve or deny permits for the project under the McAteer-Petris Act, Bay Plan and SAP. However, it also provides that the public trust is deemed satisfied if the Port finds that the development is consistent with the conditions in Section 5. This may create the perception that the legislation provides all the public benefits needed for the project, and could make it difficult for BCDC to determine if the development’s public benefits clearly exceed public detriments as provided in Section 66605 of the McAteer-Petris Act. Until a package of public benefits for the proposed project is offered, or the bill is clarified to ensure that the Port and the City of San Francisco can provide adequate public benefits in the project, it would be premature for BCDC to support AB 1273. (Text taken from the May 10, 2013 staff recommendation.)*

Discussions and Outcome. BCDC requested that the bill include additional public benefits as part of the project. AB 1389, for example, included language that required the Port to accelerate construction of the Brannon Street Wharf as a condition of the Legislature’s determination of public trust consistency should be noted. After discussing the issue, it became apparent that specific public benefits could not be included in the legislation because the number and type of proposals need to be vetted through a public process, such as the current BCDC-Port waterfront planning process and a potential SAP amendment process, and this would extend well beyond the bill’s legislative deadlines.

Participants reached agreement on an amendment to provide for a process that will result in additional public benefits as part of consideration of the project through a public process conducted by the Port and BCDC—subject to review and approval by BCDC and within

BCDC's current law and policies. These additional benefits can be used by BCDC to consider the project's consistency with its law and policies, including the need for a SAP amendment, but do not affect those laws and policies. Therefore, staff believes that while specific additional public benefits were not defined, this issue has been adequately addressed given the time constraints of the legislation.

4. **Project Size.** *AB 1273 lacks specificity with regard to the size, height and bulk of the project. This makes it difficult to determine impacts on public views and other public trust uses, including interference with water-dependent trust uses of the property and the character of the Embarcadero Historic District. Without more details, including the projected mass of the arena and the amount of authorized parking on the piers, staff believes that it is premature to support the bill that waives an important component of BCDC's review of the project. (Text taken from the May 10, 2013 staff recommendation.)*

The project proposal includes 500 parking spaces, which adds to the height and bulk of the proposed project and likely would have adverse impacts to the public's use and enjoyment of Herb Caen Way along the San Francisco waterfront. Ingress and egress of cars across Herb Caen Way during the numerous proposed events likely would seriously disrupt use of Herb Caen Way. BCDC staff is further concerned that the parking would be used for commuter and other non-trust uses when the events are not being held and, therefore, pose a constant impediment to public access along the waterfront. It is likely that a significant signalized intersection would be required to manage this traffic; this would be the first signalized intersection across Herb Caen Way.

Discussions and Outcome. Side meetings were held to review the current project design and details. Some greater specificity was provided by the project sponsors, given the early stages of design, including site plans depicting the uses that are proposed at each of the various levels of the proposed structures. However, this greater detail reinforced concerns that BCDC staff has consistently raised regarding the overall mass of the proposed project and its impact on views and physical public access. BCDC staff requested that the sponsors reduce the height and massing of the project and provided guidance on potential approaches to revise the site layout to achieve that result. The sponsors are presently considering the BCDC staff input as they are working to refine the design. This effort will take more time than is available during the discussion period mandated by the legislative deadlines.

BCDC staff requested that little or no parking should be allowed at the venue on the Bay. Instead, BCDC believes that event patrons should have the opportunity to use the ample amount of public transit adjacent nearby, use parking that could be provided at the sea wall lot that the Warriors are developing directly across the street, and park at other sites on land away from the Bay. This would be consistent with the San Francisco Giants ballpark, which has about 50-75 surface valet-parked spaces. The policies in both the SAP and the Bay Plan discourage parking on the Bay and the waterfront. The SAP policies encourage the use of public transit, minimize parking within BCDC's jurisdiction and require that parking be planned to minimize adverse impacts on public access. The Bay Plan policies on parking state that parking should be located away from the shoreline. The Warriors believe that on-site parking is critical to the project, both because of a yet to be reviewed NBA requirement for parking, and because financing the arena depends, in part, on "premium ticket holders" who expect to be able to park at the venue.

While a variety of potential maximum numbers of parking spaces were discussed, all agreed that any amount of parking will depend in great part on the site design and the ability to create and enforce management measures to lessen impacts to public access along Herb Caen Way and on the piers. Consequently, criteria were discussed to minimize parking as part of SLC and BCDC consideration of the project. Therefore, staff believes that while a specific outcome was not reached, this issue has been adequately addressed given the time constraints of the legislation, but that there is not sufficient time to adequately address issues surrounding the specifics of the design.

5. **Retail Uses.** *The bill currently provides for 70,000 square feet of non-maritime office space for “venue-supporting” uses in the approximately 105,000 square feet of retail floor space proposed in the development. However, the bill does not define the term “venue-supporting,” which could include non-trust uses. (Text taken from the May 10, 2013 staff recommendation.)*

Discussions and Outcome. The Warriors proposed to define “venue supporting retail uses” in the legislation as “retail establishments, other than trust retail uses, where the tenant occupying the retail space is a significant corporate sponsor in the multipurpose venue or is a primary tenant of the multipurpose venue.” BCDC staff requested that all retail establishments be trust consistent and that references to venue-supporting retail be removed (a “Warriors Store” akin to the Giant’s “Dugout Store” is viewed by BCDC as trust consistent). The Warriors stated that including a small amount of venue supporting retail was important for the arena’s business model. SLC staff agreed to limit non-trust retail use to 10,000 square feet per major sponsor with an overall cap of 20,000 square feet. BCDC staff believes that this amount of potentially non-trust retail is small in relation to the proposed 110,000 square feet of retail. Therefore, staff believes that this issue has been adequately addressed.

6. **Independent Review.** *Section 5 of the bill requires the Port to provide a report to the SLC that documents how required trust-related activities are effectively implemented and it authorizes the SLC to require an implementation plan to ensure that the bill’s objectives are met. However, to ensure that the project is trust-consistent initially, the legislation should require that the SLC make findings regarding compliance with the conditions and standards in Section 5 of the legislation. (Text taken from the May 10, 2013 staff recommendation.)*

Discussions and Outcome. Language was agreed to that requires SLC to determine whether the project is in compliance with the conditions and standards for trust consistency in Section 5 of the legislation. Therefore, staff believes that this issue has been adequately addressed.

The staff believes that the discussions as presented above have been intensive and productive and implement the direction provided to staff regarding the legislation.

Registered Support and Opposition to AB 1273

Supporters. City and County of San Francisco [SPONSOR]; A Philip Randolph Institute, San Francisco and Western Region; Asbestos, Lead and Old Laborers, Local Union No. 67; Bay Area Council; Boys and Girls Clubs of San Francisco; Bricklayers and Allied Craftworkers Local 3, California; Brightline Defense Project; Building Owners and Managers Association of San Francisco; California Labor Federation; California State Association of Electrical Workers; California State Council of Laborers; California State Pipe Trades Council; CAL Insurance & Associates, Inc.; Charity Cultural Services Center; Golden State Warriors; Hotel Council of San Francisco; International Brotherhood of Electrical Workers, Local Union 6; International Union of Operating Engineers, Local Union No. 3; Laborers’ International Union of North America, Local Union No. 261; Mission Hiring Hall; San Francisco Chamber of Commerce; San Francisco Citizens Initiative for Technology & Innovation; San Francisco Deputy Sheriff’s Foundation; San Francisco Fire Department; San Francisco Travel Association; Sign Display and Allied Crafts, Local Union No. 510; State Building and Construction Trades Council of California; Sustainable Futures; United Association of Plumbers, Pipefitters, and SprinklerFitters, Local Union No. 483; United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry; United Brotherhood of Carpenters and Joiners of America, Local Union 22; Western States Council of Sheet Metal Workers; Young Community Developers, Inc.; and individual letters (7).

Opposition. Mayors of the Cities of Berkeley, Oakland, Richmond and San Leandro; San Francisco BayKeeper; San Francisco Tomorrow; San Francisco Waterfront Alliance; Save the Bay; and Sierra Club California.

Staff Recommendation

Options Available. The Commission could decide to take a position on AB 1273 or choose to not take a position at this time. Should the Commission decide to adopt a position on AB 1273, it has five options from which to choose:

1. Support;
2. Support If Amended;
3. Neutral;
4. Oppose Unless Amended; and
5. Oppose.

The Staff recommends that:

1. The Commission not adopt a position on AB 1273 (similar to the approach of SLC); and
2. The Commission request that Assembly Member Ting make AB 1273 a two-year bill to allow greater resolution of outstanding issues, and inform the legislature of this request; and
3. The Commission support continued staff-to-staff discussions to narrow and/or resolve outstanding issues, improve the bill, better define the proposed project, and keep the Commission informed regarding the legislation and the proposed project.

Reason for Recommendation. Discussions with the project sponsors and SLC, as directed by the Commission, have been ongoing and intensive, and have resulted in amendments that address some of the issues raised in the previous May 10, 2013 staff recommendation and by Commissioners during the May 16, 2013 Commission meeting. BCDC staff believes that the bill has been significantly improved through these discussions. The improvements include a mandated public benefits package that is subject to the approval of BCDC, a resolution of the percentage of potential non-trust retail, criteria to minimize parking on the piers, and savings clauses that bolster the Commission's ability to enforce its law and policies. SLC will oversee whether the standards and conditions for the legislature's findings of trust consistency are met.

BCDC staff's previous position of "oppose unless amended" is no longer warranted because staff does not believe that it can recommend further amendments to the bill without there being greater specificity in the project than can be provided under the current legislative deadlines. Both parties have negotiated in good faith in trying to address the identified issues and constraints.

SLC also has indicated that it will not take a position on the bill, while continuing to engage with the project sponsors and BCDC staff.

That being said, the amendments do not resolve all the issues raised by the Commission and staff regarding the bill. For example, issues regarding height and bulk remain unresolved. Until the design is refined and specific public benefits are identified and vetted, until a determination on whether parking on the piers can be allowed and in what configuration and amount, and until the specific public benefits that should be included as part of the proposed project can be determined, staff does not recommend taking a position of "support."

In conclusion, staff has devoted extensive time and effort in discussions as directed by the Commission and significant improvements to the bill have been identified that are acceptable to the project sponsors and SLC. While these improvements do not resolve all the concerns raised by Commissioners, staff believes that it has accomplished the direction given to it by the Commission. Staff recommends that the Commission determine whether the agreed-upon amendments are acceptable, and determine whether this legislative package enables BCDC to support the State Legislature making a public trust consistency determination for the proposed project. If that is the case, staff recommends that the Commission adopt staff's recommendation and provide direction to staff going forward.