



Making San Francisco Bay Better

May 22, 2013

The Speaker
California State Assembly
State Capitol, Room 219
Sacramento, California 95814

SUBJECT: AB 1273 (Ting) Piers 30 – 32 Improvement Act

Dear Mr. Speaker:

On May 16, 2013, the San Francisco Bay Conservation and Development Commission (BCDC) voted to notify the State Legislature of its concerns regarding AB 1273 (introduced by Assembly Member Ting). BCDC has not yet taken a position on the legislation, because BCDC agreed to the City of San Francisco and Port of San Francisco (the bill sponsors) requests that BCDC continue discussions among the staffs of BCDC, State Lands Commission (SLC), and San Francisco City and Port to narrow our differences. BCDC will take up this matter at its next regularly scheduled meeting, which will be held on June 20, 2013.

AB 1273 was introduced at the request of the Mayor of San Francisco and the Port of San Francisco. It would amend and update earlier state legislation 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 across the Embarcadero.

As noted above, staffs have worked together productively during the past few months to improve the legislation. However, several important issues remain to be resolved. City and Port staffs have assured BCDC that the legislation will not be considered by any Senate policy committees until after these discussions continue and certainly not until after BCDC meets again on June 20, 2013.

BCDC's concerns about AB 1273 as currently written include the following:

1. **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

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.

2. **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.
3. **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.
4. **Retail Uses:** The bill allows 70,000 square feet of non-maritime office space for "venue-supporting" or trust retail uses and allows "venue-supporting" uses in the 105,000 square feet of visitor-serving retail proposed in the development. However, the bill does not define the term "venue-supporting," which could include non-trust uses. The staff looks forward to working with the Port staff to clarify this proposed use.
5. **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. The Executive Officer of the SLC has proposed adding a provision to the bill that would require SLC to find that the project meets the trust consistency standards set forth in the legislation, and the Port staff has indicated that it is not opposed to including it in the bill.

BCDC looks forward to working with staff of SLC, the City and County of San Francisco, and the Port of San Francisco to improve the bill. BCDC will report back to you after its June 20, 2013 meeting with an appropriate update.

Sincerely,



LAWRENCE GOLDZBAND
Executive Director

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cc: Chair R. Zachary Wasserman
Assemblymember Wesley Chesbro, Chair of the Assembly Natural Resources Committee
Senator Fran Pavley, Chair of the Senate Natural Resources Committee
Assemblymember Phil Ting
San Francisco Mayor Edwin M. Lee
Monique Moyer, Port of San Francisco