

**Port Proposed Amendments to AB 2797**  
(Text Referring to BCDC Plan Changes Is **Bolded**)

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. For the purposes of this act the following terms have the following meanings:

(a) “Assembly Bill 26” means Chapter 5 of the First Extraordinary Session of the Statutes of 2011, in which certain provisions were amended by Chapter 26 of the Statutes of 2012, effective as provided in *California Redevelopment Assn. v. Matosantos* (2011) 53 Cal.4th 231.

(b) “Assembly Bill 2649” means Chapter 757 of the Statutes of 2012.

**(c) “Bay plan” means the San Francisco Bay Plan as adopted and administered by BCDC under the McAteer-Petris Act.**

**(d) “BCDC” means the San Francisco Bay Conservation and Development Commission established under the McAteer-Petris Act.**

(e) “Board of supervisors” means the Board of Supervisors of the City and County of San Francisco.

(f) “Burton Act” means Chapter 1333 of the Statutes of 1968, as amended, which authorized the state to convey to the city, in trust and subject to certain terms, conditions, and reservations, the state’s interest in certain tidelands, including filled lands.

(g) “Burton Act lands” means the tidelands that the state granted to the city under the Burton Act, including the San Francisco waterfront from the Hyde Street pier to India Basin.

(f) “Burton Act transfer agreement” means the agreement dated January 24, 1969, between the state and the city, relating to the transfer of the Burton Act lands from the state to the city, and any amendments to that agreement in accordance with its terms.

(g) “Burton Act trust” means the statutory trust imposed by the Burton Act on Burton Act lands and lands dedicated to or acquired by the city as assets of the trust.

(h) “CFD law” means the Mello-Roos Community Facilities Act of 1982 (Chapter 2.5 (commencing with Section 53311)) of Part 1 of Division 2 of Title 5 of the Government Code) or the San Francisco Special Tax Financing Law (San Francisco Admin. Code Ch. 43, Art. X), as applicable.

(i) “City” means the City and County of San Francisco, a charter city and county, and includes the port.

(j) “Commission” means the State Lands Commission.

(k) “Designated seawall lot” or “designated seawall lots” means any of those parcels of real property situated in the city that are defined as designated seawall lots in Senate Bill 815 or Assembly Bill 2649, as modified by Section 3 of this act.

(l) “Development parcel” means a portion of a designated seawall lot that is subdivided for construction of improvements, or rehabilitation of historic buildings for reuse, and that will be used for nontrust land uses.

(m) “Embarcadero Historic District” means the Embarcadero Historic District covering the Burton Act lands from Pier 45 to Pier 48, which was listed on the National Register of Historic Places in 2006.

(n) “IFD law” means the provisions of the Government Code authorizing the formation of local financing districts authorized to use property tax increment to finance infrastructure.

(o) “Infrastructure costs” or “costs of infrastructure” means the cost of constructing the Seawall Lot 337 infrastructure, including related costs of planning and design work and a return on developer equity, as provided in a plan of finance in a disposition and development agreement.

(p) “Initial occupancy date” means the date on which the port issues the first certificate of occupancy for a building under a nontrust lease of a designated seawall lot or of a development parcel in Seawall Lot 337, as applicable.

**(q) “McAteer-Petris Act” means Title 7.2 (§§ 66000-66694) of the Government Code.**

(r) “Mission Bay developer” means an “owner,” as defined in the Mission Bay South owner participation agreement.

(s) “Mission Bay South owner participation agreement” means the agreement between the redevelopment agency and Catellus Development Corporation, dated November 16, 1998, as amended.

(t) “Mission Bay South redevelopment plan” means the Redevelopment Plan for the Mission Bay South Project adopted by the board of supervisors on October 26, 1998, as amended.

(u) “Mission Bay South redevelopment project area” means the area in the city subject to the Mission Bay South redevelopment plan.

(u) “Nontrust lease revenues” means revenues that the port receives from nontrust leases of designated seawall lots or development parcels in Seawall Lot 337, as applicable.

(w) “Nontrust sources” means sources of consideration other than nontrust lease revenues or moneys in the port’s harbor fund. Nontrust sources include, without limitation, fee credits that may be applied to offset local impact fees or exactions, special taxes, tax increment, proceeds of general obligation bonds, proceeds of community facilities bonds, and proceeds of tax allocation bonds.

(x) “Northeastern waterfront” means the area designated in the special area plan as the land and water areas within port jurisdiction from Pier 35 to China Basin.

(y) “Oversight board” means the body that the board of supervisors created to oversee the fiscal management of the successor agency in accordance with Assembly Bill 26.

(z) “Parcel P20” means a parcel owned by the port within the Mission Bay South redevelopment project area that lies partially within the southern portion of Seawall Lot 337.

(aa) “Port advances” means a loan of nontrust lease revenues to a district or other entity providing project-based public financing to pay directly or to reimburse the Seawall Lot 337 developer for costs of infrastructure in accordance with the terms and conditions of this act. Port advances do not include nontrust lease revenues that the port uses to pay directly for the preservation of historic piers and historic structures or for purposes that are otherwise authorized by this act.

(ab) “Port of San Francisco,” “port commission,” or “port” means the city acting by and through the San Francisco Port Commission.

(ac) “Project-based public financing” means special taxes from development parcels in community facilities district project areas formed under CFD law, property tax increment from development parcels in infrastructure financing district project areas established under the IFD law, bond proceeds secured by special taxes, tax increment, or both, and any other mechanisms available to finance infrastructure and public facilities that rely on revenues produced by the area to be improved.

(ad) “Public trust” means the common law public trust for commerce, navigation, and fisheries.

(ae) “Redevelopment agency” means the San Francisco redevelopment agency, that the board of supervisors formed under the former California Community Redevelopment Law and that was dissolved on February 1, 2012, by operation of Assembly Bill 26.

**(af) “San Francisco Bay” or “bay” means those areas defined by Section 66610 of the Government Code.**

(ag) “San Francisco waterfront” means the portions of San Francisco Bay that the state transferred to the city under the Burton Act.

**(ah) “Seaport plan” means the San Francisco Bay Area Seaport Plan adopted by BCDC and the Metropolitan Transportation Commission, as amended in 2003.**

(ai) “Seawall Lot 337” means that parcel of real property in the city known as Seawall Lot 337, as shown on that certain map entitled “revised map of designed seawall lots,” which is on file with the port, as those boundaries may be modified by Section 3 of this act.

(aj) “Seawall Lot 337 developer” means the person selected by the port to negotiate exclusively with the port for the master development of Seawall Lot 337 and Pier 48, and its successors and authorized assigns.

(ak) “Seawall Lot 337 infrastructure” means infrastructure and other public facilities that serve Seawall Lot 337 and are located on Seawall Lot 337 or on lands immediately adjacent to the seawall lot area, such as water, sewer, stormwater management, and other utility installations, streets, roadways, sidewalks, parks, public access and open space areas, shoreline improvements, and other public facilities.

(al) “Senate Bill 815” means Chapter 660 of the Statutes of 2007, as amended by Chapter 208 of the Statutes of 2009, Assembly Bill 2649, and this act.

(am) “Southern waterfront” means the area designated in the special area plan as the land and water areas within port jurisdiction from China Basin through India Basin.

**(an) “Special area plan” means BCDC’s San Francisco Waterfront Special Area Plan, adopted in 1975 as an amendment to the bay plan, as amended.**

(ao) “State” means the State of California.

(ap) “Waterfront land use plan” means the Port of San Francisco Waterfront Land Use Plan, including its waterfront design and access element, adopted by port commission in 1997 , as amended.

(aq) “Successor agency” means the San Francisco Office of Community Investment and Infrastructure, which the board of supervisors created in accordance with Assembly Bill 26 to serve as the successor to the redevelopment agency.

(ar) “Successor agency commission” means the San Francisco Commission on Community Investment and Infrastructure.

(as) “Tidelands” means the lands lying below the elevation of ordinary high water, whether filled or unfilled, and includes submerged lands.

SEC. 1.5 As used in Senate Bill 815 and Assembly Bill 2649, each term set forth in Section 1 of this act shall have the meaning ascribed to it in Section 1 of this act, and in the event of any conflict between this act and Senate Bill 815 or Assembly Bill 2649, this act shall prevail.

SEC. 2. The Legislature finds and declares all of the following:

(a) San Francisco Bay is a valuable public trust asset of the state that provides special maritime, navigational, recreational, cultural, and historical benefits to the people of the region and the state. Tidelands in California are held in trust for enjoyment and use by the people of the state under the common law public trust doctrine. Public trust lands may be used for water-related purposes, including commerce, navigation, fishing, swimming, recreation, open space, and wildlife habitat.

(b) The San Francisco waterfront consists primarily of sovereign tidelands that the state granted to the city pursuant to the Burton Act. Under the Burton Act and the city's charter, the port holds and manages the granted lands. The Burton Act authorizes the port to use, conduct, operate, maintain, manage, regulate, improve, and control the San Francisco waterfront consistent with the public trust and the Burton Act trust.

(c) The San Francisco waterfront provides special maritime, navigational, recreational, cultural, and historical benefits to the entire San Francisco Bay area and serves as a unique destination for the public from throughout the region.

(d) A unique feature of the San Francisco shoreline is the numerous historic maritime resources present on port property, many of which are in need of major structural repairs and are not currently available for the use and enjoyment of the public. The Legislature has previously found that rectifying the deteriorating conditions along the San Francisco waterfront, the preservation of the numerous historic piers and other historic structures on port land, and the construction of waterfront plazas and open space are matters of statewide importance that will further the purposes of the public trust and the Burton Act trust.

(e) The San Francisco shoreline is a valuable public trust asset, a vibrant and world-renowned tourist destination, and a vital component of the regional, state, and national economies. The success of the port's efforts to revitalize the waterfront depends, in part, on strategies for optimizing uses of and increasing revenues and other public trust benefits from port lands in addition to using funding sources other than the port harbor fund to finance development on port lands.

(f) The seawall lots are tidelands that were filled and cut off from the waterfront by the construction of the great seawall, now occupied by the Embarcadero and other roadways, in the late 19th and early 20th centuries. Over time, some of the seawall lots, including the designated seawall lots, have ceased to be useful in whole or in part for the promotion of the public trust and the Burton Act trust, except for the production of revenue to support the purposes of the Burton Act trust. The designated seawall lots are presently either vacant or leased on an interim basis, primarily for commuter parking.

(g) Seawall Lot 337, the largest of the designated seawall lots, is located just south of China Basin and is presently used as a surface parking lot. Senate Bill 815 depicts Seawall Lot 337 as bounded by Mission Rock Street, Terry A. Francois Boulevard, and Third Street. Following an extensive community process led by a citywide advisory panel and a solicitation process to identify qualified developers, the port commission entered into exclusive negotiations with the Seawall Lot 337 developer for the lease, construction, and operation of the proposed project at Seawall Lot 337, a portion of Terry A. Francois Boulevard, Pier 48, and the marginal wharf between Pier 48 and Pier 50. The proposed project would include a mix of uses, such as commercial retail and office, market-rate and affordable residential, rehabilitation of Pier 48, new parks, expansion of the existing China Basin Park with a portion of Terry A. Francois Boulevard, and new and expanded shoreline access. The Legislature finds that the revitalization of Seawall Lot 337 and Pier 48 through mixed-use development is of particular importance to the state for the reasons stated in Senate Bill 815.

(h) The Mission Bay area surrounding Seawall Lot 337 is the site of a major mixed-use redevelopment project. As a result of Assembly Bill 26, the redevelopment agency was dissolved on February 1, 2012, and the successor agency assumed certain executory obligations of the redevelopment agency. The successor agency commission exercises land use, development, and design approval authority for the remaining projects of the former redevelopment agency, including Mission Bay.

(i) The Mission Bay South redevelopment project area, established in 1998 by the board of supervisors' adoption of the Mission Bay South redevelopment plan, lies to the west and south of Seawall Lot 337. Parcel P20 is a narrow, undeveloped strip of land within the Mission Bay South redevelopment project area that is bounded on the north by the northern line of Mission Rock Street in its former location, and overlaps a portion of Seawall Lot 337, as depicted in Senate Bill 815. In accordance with the Mission Bay South redevelopment plan, the Mission Bay developer has since realigned Mission Rock Street from its northeasterly orientation to an east-west orientation, such that a portion of Parcel P20 and the former Mission Rock Street right of way now lie north of the northerly line of Mission Rock Street. The development proposal for Seawall Lot 337 includes this portion of Parcel P20 and former Mission Rock Street.

(j) Under its development proposal, the Seawall Lot 337 developer would realign Terry A. Francois Boulevard and use part of the northern section of the street to expand China Basin Park. The remaining portion of the realigned Terry A. Francois Boulevard would be a working waterfront street that would support active maritime, industrial, and production uses at the waterfront. Terry A. Francois Boulevard would include areas for social spaces and loading zones serving proposed buildings, a pedestrian throughway, a shared zone, and the Blue Greenway adjacent to the Bay and Piers 48 and 50, contributing to uninterrupted public access along San Francisco's eastern waterfront.

(k) In connection with the project, a substantial investment in new infrastructure and public facilities is necessary for the port to fully realize the public benefits of those portions of Seawall Lot 337 that will be used for public trust purposes, and to maximize the value of development parcels that will be subject to nontrust leases. The infrastructure costs for Seawall Lot 337 are expected to exceed one hundred fifty million dollars (\$150,000,000). The development proposal for Seawall Lot 337 provides for the Seawall Lot 337 developer to construct the needed infrastructure and public facilities, which would be funded by developer equity to the extent that port advances and project-based public financing are not then available. Project-based public financing would be used to pay directly or to reimburse the Seawall Lot 337 developer for its equity advances and the port for port advances for infrastructure costs under the CFD law, IFD law, and other applicable laws.

(l) Because special taxes, property tax increment, and other nontrust funding sources arising from the project may not become available until after the port receives nontrust lease revenues from development parcels in Seawall Lot 337, it is critical that the port be able to loan those revenues to pay Seawall Lot 337 infrastructure costs to minimize the cost of development capital and maximize the land value that the port is able to realize for preservation of its historic piers and historic structures, and for other public trust uses. This act authorizes the port to make port

advances of nontrust lease revenues from Seawall Lot 337 to pay Seawall Lot 337 infrastructure costs, subject to the requirements of this act.

(m) This act clarifies that the boundaries of Seawall Lot 337 extend to the line of Mission Rock Street and to the line of Terry A. Francois Boulevard, as those streets have been or may be realigned, and to the southern boundary of China Basin Park as finally established, such that Seawall Lot 337 includes those portions of Parcel P20 and the former Mission Rock Street right-of-way embraced within those boundaries. This act also allows the successor agency to remove Parcel P20 from the Mission Bay South redevelopment plan and related documents and agreements without Department of Finance or Controller approval.

(n) This act also amends Senate Bill 815 to provide that the 75-year limitation on the term of authorized nontrust leases for designated seawall lots and development parcels at Seawall Lot 337, as applicable, begins to run on the initial occupancy date for each leased site.

**(p) In 1965, the Legislature adopted the McAteer-Petris Act to protect and enhance San Francisco Bay and its natural resources. Among other things, the McAteer-Petris Act grants BCDC regulatory authority over further filling in San Francisco Bay and limits that activity to: (1) water-oriented uses that meet specified criteria; (2) minor fill that improves shoreline appearance or public access; and (3) activities necessary for the health, safety, and welfare of the public in the entire bay area. The McAteer-Petris Act also directs BCDC to require the provision of maximum feasible access to the bay and its shoreline consistent with a project.**

**(q) In 1969, the Legislature received and acted upon BCDC's report and recommendations from a three-year study of San Francisco Bay. The resulting bay plan includes BCDC's policies to guide use and protection of all areas within BCDC's jurisdiction and ensures that proposed projects minimize bay fill and provide maximum feasible public access to the bay.**

**(r) Bay plan policies concerning filling for bay-oriented commercial recreation and bay-oriented public assembly on privately-owned or publicly-owned property, also known as the Replacement Fill Policy, provides, in part, that BCDC may permit fill on publicly-owned land for bay-oriented commercial recreation and bay-oriented public assembly if certain conditions are met, including:**

- (1) the fill is a replacement pier that covers less of the bay than the area that is being uncovered;**
- (2) the amount of bay-oriented commercial recreation or bay-oriented public assembly uses cover no more than 50% of the area of the bay uncovered; and**
- (3) the remainder of the replaced pier (50%) must be used for public recreation, public access, or open space, including open water.**

**(s) The application of the Replacement Fill Policy to the piers along the northeastern San Francisco waterfront created substantial challenges to port and BCDC efforts to improve the waterfront. In part to address this issue, BCDC and the port, together with the Save San Francisco Bay Association and numerous interested community groups and**

individuals, undertook a planning process that resulted in amendments to the port's waterfront land use plan and BCDC's special area plan. Those amendments focused on the northeastern waterfront with the goal of achieving the objectives of: (A) reconnecting San Francisco to its waterfront; (B) increasing open water, public access, and opportunities to enjoy the San Francisco waterfront in a manner that completes the open space and public access network in the northeastern waterfront; (C) providing for new development that attracts people to the bay and increases revenue to the port and the city; and (D) preserving historic resources and waterfront urban form.

(t) The special area plan amendments focused primarily on the northeastern waterfront and prescribed certain actions to implement the plan, including: (A) establishing a joint design review process for projects in the northeastern waterfront, leading to the creation of the Waterfront Design Advisory Committee; (B) requiring the port to prepare a nomination of the northeastern waterfront from Pier 35 to China Basin as a historic district listed in the National Register of Historic Places; and (C) authorizing BCDC, through its permitting authority, to set aside otherwise applicable use limitations on new bay fill, including the Replacement Fill Policy, as a means to provide an integrated package of public benefits that prescribed removal of specified piers, restoration of significant open water areas, completion of the waterfront-wide, integrated public access network, preservation of significant historic resources, and development of new uses in the interests of the health, safety, or welfare of the public throughout the Bay Area.

(u) The special area plan amendments did not affect the application of the Replacement Fill Policy to piers north of Pier 35 or south of China Basin. BCDC, the port, and other participants assumed that then-dominant industrial and maritime activities south of China Basin would continue and grow. The entire southern waterfront, including Pier 48 and about six acres of seawall lot 337 adjacent to the piers remained designated as a port priority use area in the seaport plan to accommodate growth in neo-bulk and break bulk cargo activities.

(v) At the time the special area plan amendments were being drafted, it was not known that Pier 48 would be eligible for listing on the National Register of Historic Places. In the course of preparing the nomination report for the Embarcadero Historic District, the port discovered that Pier 48 is a contributing resource to the district. As a result, the district, which was listed in the National Register of Historic Places in 2006, extends south of China Basin to include Pier 48.

(w) The proposed mixed-use development at Pier 48 would not displace any existing maritime uses at the site and would allow the existing maritime use of the pier to continue by ensuring the long-term viability of the pier facility. The historic use of Pier 48 for break bulk cargo operations is no longer viable for that pier due to a number of factors, including the construction of the present-day Embarcadero roadway and Terry A. Francois Boulevard, elimination of rail service to the piers, and the inability of finger piers to accommodate modern containerized cargo operations. The port operates a break bulk facility at Pier 80, which has unused capacity for break bulk cargo. Accordingly, the proposed mixed-use project would not eliminate any opportunities to develop future maritime cargo facilities on port property.

**(x) Pier 48 is ideally situated to provide public access to and enjoyment of the waterfront and bay. It is within walking distance of the Ferry Building, the San Francisco Giants baseball stadium, and regional transit hubs, including the Transbay Transit Center, which is under construction, and has unmatched views of the bay, the Bay Bridge, and the Brannan Street Wharf. The proposed reuse of Pier 48 includes visitor-serving uses, significant public access, historic rehabilitation of the pier consistent with the Department of the Interior Secretary's Standards for the Rehabilitation of Historic Resources, berthing facilities, and other project elements consistent with the Burton Act and the public trust. This act amends the seaport plan and the special area plan to allow Pier 48 to be treated similarly to the other finger piers in the Embarcadero Historic District and to remove the port priority use area designation from Pier 48.**

SEC. 3. For purposes of Senate Bill 815 and Assembly Bill 2649, the boundaries of Seawall Lot 337 extend to the line of, but do not include, Third Street on the west, Mission Rock Street on the south, and Terry A. Francois Boulevard on the east, and China Basin Park on the north, as those street and park areas are ultimately constructed, realigned, or reconfigured in connection with the Mission Bay South redevelopment plan and the development of Seawall Lot 337. If there is any conflict between this section and the diagram in Section 15 of Senate Bill 815 or Section 9 of Assembly Bill 2649, this section shall control.

SEC. 4. Subdivisions (c), (d), and (f) of Section 34163 of the Health and Safety Code, and subdivisions (a) and (b) of Section 34164 of the Health and Safety Code, shall not apply to, and no action of the Department of Finance or the Controller shall be required for, any action taken by the oversight board, the successor agency commission, the board of supervisors, or any other governmental body required to act to amend the Mission Bay South redevelopment plan to remove Parcel P20 from the Mission Bay South redevelopment project area, or to amend any related documents or agreements to delete regulatory requirements, zoning controls, and the Mission Bay developer's obligations with respect to Parcel P20.

SEC. 5. Section 4 of Chapter 660 of the Statutes of 2007 is amended to read:

Sec. 4. Except for Seawall Lot 337, the port may enter into a lease of all or any portion of the designated seawall lots free from the use requirements established by the public trust, the Burton Act trust, and the Burton Act transfer agreement (nontrust lease) subject to the requirements of this section. For Seawall Lot 337, the port may enter into nontrust leases of development parcels, subject to the requirements of this section, if the commission has approved the matters subject to its approval pursuant to paragraph (3) of subdivision (a) of Section 4.5, and if all of the conditions of this section and Section 6 are met.

(a) Notwithstanding the Burton Act, Section 718 of the Civil Code, Section 37384 of the Government Code, or any other provision of law to the contrary, the term of any individual nontrust lease, including any extension of the term allowed by right of renewal, shall not exceed 75 years from the initial occupancy date for the leased site or development parcel. Each nontrust lease shall terminate no later than the date that is the later of January 1, 2094, or the date that is 75 years after the date that the port first issues a certificate of occupancy for the improvements on the leased site or development parcel. Nothing in this section shall be construed as limiting

the term of any lease, or portion thereof, that is for uses consistent with the public trust and the Burton Act.

(b) (1) (A) Except as provided in this subdivision, all nontrust lease revenues received by the port shall be deposited in a separate account in the harbor fund to be expended for the preservation of historic piers and historic structures, or for the construction and maintenance of waterfront plazas and open space.

(B) The port may use its nontrust lease revenues from development parcels in Seawall Lot 337 to make port advances to fund Seawall Lot 337 infrastructure, if the commission has approved the port advances under paragraph (3) of subdivision (a) of Section 4.5. This section shall not limit the port's ability to use nontrust lease revenues for facilities for which expenditures are authorized under subparagraph (A).

(C) Revenues shall not be expended under this subdivision for historic piers or historic structures on land subject to public trust use restrictions unless the executive officer of the commission has approved the proposed uses of the pier or structure.

(2) The port may annually transfer from the separate account and deposit in the general account of the harbor fund, to be used for any purpose consistent with the public trust and the Burton Act, an amount equal to the sum of the baseline revenue streams for each designated seawall lot subject to one or more nontrust leases (leased seawall lots), less any revenues received by the port, for the year preceding the transfer of funds, from any portion or portions of the leased seawall lots that were not subject to a nontrust lease. For purposes of this subdivision, the baseline revenue stream for a designated seawall lot is the average annual revenue received by the port from that seawall lot over the five years prior to January 1, 2008, adjusted for inflation.

(3) For purposes of this subdivision, the term "revenue" shall exclude any costs incurred by the port to administer the lease and to operate and maintain the leased property and any improvements thereon.

(4) For each nontrust lease of a designated seawall lot, the port shall maintain a separate accounting of all revenues transferred pursuant to paragraph (2), all costs excluded pursuant to paragraph (3), and all revenues deposited into the separate account.

(5) If the funds in the separate account exceed the amount needed for the preservation of historic piers and historic structures and for construction of waterfront plazas and open space, the excess funds shall be deposited in the harbor fund to be used for purposes consistent with the public trust and the Burton Act.

(c) A nontrust lease shall be for fair market value and on terms consistent with prudent land management practices as determined by the port and subject to approval by the commission as provided in paragraph (1), or as provided in Section 4.5 for a nontrust lease proposed in accordance with the disposition and development agreement for Seawall Lot 337.

(1) Prior to executing a nontrust lease, the port shall submit the proposed lease to the commission for its consideration, and the commission shall grant its approval or disapproval in writing within 90 days of receipt of the lease and supporting documentation, including documentation related to value. In approving a nontrust lease, the commission shall find that the lease meets all of the following:

(A) Is for fair market value.

(B) Is consistent with the terms of the public trust and the Burton Act trust, other than their restrictions on uses.

(C) Is otherwise in the best interest of the state.

(2) Whenever a nontrust lease is submitted to the commission for its consideration, the costs of any study or investigation undertaken by or at the request of the commission, including reasonable reimbursement for time incurred by commission staff in processing, investigating, and analyzing such submittal, shall be borne by the port; however, the port may seek payment or reimbursement for these costs from the proposed lessee.

SEC. 6. Section 4.5 is added to Chapter 660 of the Statutes of 2007, to read:

Sec. 4.5. (a) For nontrust leases of Seawall Lot 337 that are entered into in accordance with the terms of a disposition and development agreement for the master development of Seawall Lot 337, the commission shall consider whether the port will receive consideration equal to the fair market value on terms consistent with prudent land management practices based on, and in accordance with, all of the following procedures:

(1) At least 30 days prior to approval by the board of supervisors of the development project for Seawall Lot 337, the port shall submit the proposed disposition and development agreement between the master developer and the port governing the master development of Seawall Lot 337 and the following information, to the extent not contained in the agreement, to the commission for its consideration:

(A) The proposed procedures for the disposition of nontrust development parcels and including the proposed plan of finance for the development project that describes the proposed port advances for Seawall Lot 337 infrastructure costs.

(B) The proposed procedures for establishing the fair market value of each nontrust lease of a development parcel, consistent with the land uses permitted under the disposition and development agreement, including the appraisal instructions.

(C) A description of the nontrust sources that the port expects to receive for the project and how these nontrust sources will be applied to the project.

(D) A description of the manner by which the port will select the developer of each development parcel, including the form of ground lease.

(2) Following approval of the development project for Seawall Lot 337 by the board of supervisors, the port shall submit to the commission the project documents described in paragraph (1) as finally approved by the board of supervisors.

(3) Within 75 days after approval of the project by the board of supervisors and receipt of all required documentation from the port, the commission shall either approve or disapprove the procedures for establishing the fair market value of the development parcels and the port's use of nontrust lease revenues to make port advances to pay for Seawall Lot 337 infrastructure costs. The commission's determination shall be based on the consistency of such procedures with the goals of this act and with prudent land management practices, and shall take into account information required to be submitted by this Section, the benefits of the development to the public and to the public trust, the substantial investment required in Seawall Lot 337 infrastructure, and the contribution of nontrust sources to Seawall Lot 337 infrastructure..

(4) Following the commission's approval in accordance with paragraph (3), and prior to entering into a nontrust lease for Seawall Lot 337, the port shall submit to the Executive Officer of the commission a copy of the proposed nontrust lease. The port may enter into the nontrust lease unless, within 30 days after the submittal, the Executive Officer has provided the port with a written determination that the nontrust lease is inconsistent with the commission's original approval.

(5) The port shall bear the costs of any study or investigation that the commission undertakes or requests, including reasonable reimbursement for commission staff time in processing, investigating, and analyzing the port's submittal. The port's reimbursement obligation does not affect its ability to seek payment or reimbursement for these costs from the master developer.

(b) In addition to any statement of expenditures and revenues that the port is required by law to submit to the commission annually, the port shall provide a separate accounting of (1) all consideration from nontrust sources and other revenues the Port has received in connection with Seawall Lot 337, (2) all nontrust lease revenues and other revenues that the Port has spent on Seawall Lot 337, including any port advances, and (3) any revenues from nontrust sources received by the port to repay port advances.

(c) The port shall provide the commission with copies of the final audit report for each phase of the project and the final audit report for the project within 90 days after the port receives each audit report.

(d) If, within 20 years after the first port advance, the port has not submitted an audit report to the commission indicating that all of the port advances have been repaid, the port shall report to the commission the total amount of revenues from nontrust leases that the port used to fund port advances, the amount that the port has received to repay port advances, the projected sources to repay any balance still owing on account of port advances, and the expected timing of repayment of the balance still owing. Thereafter, the port shall provide supplemental reports containing updates to this information to the commission every five years.

(e) The port shall ensure repayment, with interest, of each port advance within 50 years after the port advance is made. The port may extend the repayment period beyond 50 years subject to commission approval. The commission shall base its approval on whether the port is taking actions to remedy any shortfall in repayment.

SEC. 7. Section 7 of Chapter 660 of the Statutes of 2007 is amended to read:

Sec. 7. Sections 3, 4, 4.5, and 6 of this act shall be inoperative as to a designated seawall lot on the later of (a) the last termination date of any nontrust lease on the site, or (b) on January 1, 2094, after which later date the use of the designated seawall lot shall be consistent with the public trust, the Burton Act trust, and the Burton Act transfer agreement. No later than January 1, 2094, or the last termination date of any nontrust lease on the site, whichever is later, all structures, buildings, and appurtenances on a designated seawall lot not consistent with the purposes of the public trust, the Burton Act trust, and Burton Act transfer agreement, shall be repurposed or modified, including any necessary restoration or remediation of the seawall lot to facilitate public trust uses.

SEC. 8. Notwithstanding anything to the contrary in Assembly Bill 2649, (1) a nontrust lease of seawall lot 322-1 may be for the same duration as permitted for other designated seawall lots as provided in subdivision (a) of Section 4 of Assembly Bill 815, as amended by this act, (2) the operative date of Sections 3 to 5, inclusive, of Assembly Bill 2649 shall be co-terminus with the operative date of Sections 3, 4, 4.5 and 6 of Assembly Bill 815, as provided in Section 7 of Assembly Bill 815, as amended by this act, and (3) the requirements pertaining to structures, buildings and appurtenances on seawall lot 322-1 shall be the same as for other designated seawall lots as provided in Section 7 of Assembly Bill 815, as amended by this act.

**SEC. 9. The Legislature, in the exercise of its retained power as trustee of the public trust, and in view of the unique circumstances existing at seawall lot 337 and Pier 48 on the San Francisco waterfront hereby authorizes the following:**

**(a) Pier 48, the marginal wharf between Pier 48 and Pier 50, and the portion of seawall lot 337 currently designated for port priority use are no longer required for port priority use and shall be deemed free of the port priority use area designation as of the effective date of this act. BCDC and the Metropolitan Transportation Commission shall reprint the seaport plan to reflect the removal of the port priority use designation from these areas, but this subdivision shall apply to the Pier 48 project regardless of whether the conforming changes have been made.**

**(b) As of the effective date of this act, the special area plan is amended to include Pier 48 in the Northeastern Waterfront, which amendments shall be deemed to serve the health, safety and welfare of the entire Bay Area, and BCDC is authorized to issue a major permit for a project at Pier 48 applying the special area plan policies and other criteria applicable to finger piers in the Northeastern Waterfront (including that the Replacement Fill Policy shall not apply to such project), provided the project will rehabilitate Pier 48 consistent with Secretary Standards. BCDC shall reprint the special area plan to reflect**

**the inclusion of Pier 48 in the Northeastern Waterfront, but this subdivision shall apply to the Pier 48 project regardless of whether the conforming changes have been made.**

**(c) Nothing in this act is intended to limit the authority and discretion of BCDC to approve or deny permits for the mixed-use development on Pier 48 and the marginal wharf between Pier 48 and Pier 50 generally described in this act in a manner consistent with the McAteer-Petris Act or the policies of the bay plan and the special area plan, as those policies are modified by subdivisions (a) and (b), including the authority and discretion of BCDC to impose conditions on the permits for the project. This act shall not limit the authority and discretion of BCDC to enforce permits issued for the projects described in this act.**

SEC. 10. If any provision of this act, or its application to any person, property, or circumstance, is held invalid by any court, the invalidity or inapplicability of that provision shall not affect any other provision of this act or the application of that provision to any other person, property, or circumstance, and the remaining portions of this act shall continue in full force and effect, unless enforcement of this act as so modified by and in response to that invalidation would be grossly inequitable under all of the circumstances, or would frustrate the fundamental purposes of this act.

SEC. 11. The Legislature finds and declares that, because of the unique circumstances applicable only to the lands described in this act in the City and County of San Francisco, a statute of general applicability cannot be enacted within the meaning of subdivision (b) of Section 16 of Article IV of the California Constitution.

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