



June 17, 2019

Sen. Henry Stern, Chair
Senate Natural Resources Committee
State Capitol
Sacramento, CA 95814

OPPOSE - AB 1191 (Bonta) Port of Oakland Housing/Office/Stadium Project
(As Amended June 13, 2019)

Dear Chair Stern and Committee Members:

On behalf of the members of the Pacific Merchant Shipping Association (PMSA), we must oppose AB 1191 (Bonta) which would create new, novel and unnecessary ways to avoid the current trust management processes and environmental protections of the Tidelands Trust and other statutory trusts for the Howard Terminal in the Port of Oakland.

We OPPOSE this legislation because it intends to reduce, remove, and reconfigure the application of the public trust to the waterfront property at Howard Terminal. This bill is intended to allow the Oakland A's to build over 3,000 units of housing, a 2+ million square foot commercial office complex, and a hotel, in addition to a 35,000 seat baseball stadium on the working waterfront in the Port. This project poses a significant threat to thousands of good jobs and will impact the ability of our members to conduct international trade at the Port of Oakland.

This bill is unnecessary, because current law is more than adequate to facilitate all of the claimed issues that this bill supposedly addresses.

First, AB 1191 claims that a bill is necessary to address a "bona fide title dispute" on Howard Terminal, but there is no "title dispute" surrounding Howard Terminal. The Port has unified title to the Howard Terminal property. It administers property granted to the City under the tidelands trust under multiple grants and used trust revenues to purchase other non-tidelands and now controls all of those properties as one unified terminal. The Oakland A's have entered into an ENA with the Port of Oakland to lease the entirety of the terminal property. Everyone knows the facts, the title history is clear, and there is NO title dispute.

Second, AB 1191 claims that the boundaries of grants within the property "have not been located with precision." This may very well be the case, given the original disposition of much of this property is over a century and a half ago and even the latest legislative grant is almost 100 years old. And, because the Port has clear and unified title to the property and it is managed as a unified property subject to the terms of the tidelands trust, there is no functional basis or need for grant boundaries to be located with precision.

But, neither a “title dispute” based on unclear grant boundaries or the practical matter of setting boundaries with precision requires AB 1191, since the State Lands Commission has all of the authority necessary under existing law to resolve these questions.

Public Resources Code § 6202 tasks the State Lands Commission with the obligation to survey, file maps, and set boundaries of state granted lands and other properties under its jurisdiction. Public Resources Code § 6307 then specifically gives the State Lands Commission the authority to resolve boundary and title issues through exchanges of tidelands, and further allows a grantee to bring a quiet title action to receive the benefit of this law if necessary. No such action has been brought here, thus there has been no “title dispute” and if there is an issue of boundaries, none has been asked for resolution through this statute.

Instead of “solving” these non-existent problems, AB 1191 creates an unprecedented removal of trust property without putting new property into trust, by treating current trust-restricted properties as if they were not currently trust constrained for purposes of a trust-exchange. The A’s want to take a full terminal under their control which is entirely and completely trust-constrained and then, as a function of their financing or lease agreement, create new individual parts of the terminal as new parcels, and then exchange them internally within the terminal and end up with a certain number non-trust constrained parcels. This is not a swap for value of new property into the trust, ends up with an unmanageable checkerboard of trust and non-trust constrained waterfront properties, and raises numerous questions about the proper way to propose and evaluate such a deal including with respect to Fair Market Value.

Other parts of this bill are just simply inexplicable with respect to the protection of the state’s waterfront assets, including the requirement that BCDC must issue a Seaport Plan determination of the Howard Terminal by February 28, 2020 or 100 days after the City of Oakland has certified a Howard Terminal EIR. BUT, aside from the unnecessarily expedited, unreasonable, and unnecessary constraint on the discretion of BCDC to conduct its own consideration of Seaport Plan amendments on its own calendar, there will likely still not be a Howard Terminal project by February 28, 2020 or even after the EIR is complete – because the project is not with the City of Oakland, it is with the Port of Oakland, and the project is subject to AB 900 CEQA review.

The Port has not completed negotiating the terms of an agreement with the Oakland A’s, and likely will not for many years to come. The EIR which is being conducted now is not for the actual project, it is just for the City’s general plan amendment. This places the proverbial cart before the horse. The state should require the Port and A’s to come to terms on a proposal for what the Howard Terminal project might entail prior to asking for BCDC and SLC to potentially bless a deal. AB 1191’s language itself apologizes for this backwardness by declaring that if the Port and the A’s have not entered into a binding agreement by 2025, that BCDC is required to reinstate the seaport plan designation for Howard Terminal. Ironically, this is also an admission of the Legislature’s intent to eliminate the planning discretion of BCDC.

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The Legislature should not endorse any process for the removal of the tidelands trust from the waterfront property within the Port of Oakland or allow the creation of a Housing/Office/Stadium complex on our working waterfront. PMSA respectfully requests that you Oppose AB 1191

Sincerely,

A handwritten signature in blue ink, appearing to read "Mike Jacob".

Mike Jacob
Vice President & General Counsel

cc: Members, Senate Natural Resources Committee
Assemblymember Rob Bonta

June 6, 2019

Zachary Wasserman, Chair
San Francisco Bay Conservation & Development Commission
455 Golden Gate Ave., Suite 10600
San Francisco, CA 94102-7019
Delivered via E-Mail to steve.goldbeck@bcdc.ca.gov

OPPOSE: AB 1191 (Bonta) Staff Recommendation: Neutral
[Agenda Item #10 – Commission Consideration of Legislation, June 6, 2019]

Dear Chair Wasserman and Commissioners,

On behalf of the members of the Pacific Merchant Shipping Association (PMSA), we respectfully **Oppose** the Staff Recommendation that “the Commission take a Neutral position on AB 1191 (Bonta) Oakland Waterfront Ballpark Act.” BCDC should studiously avoid taking any action on AB 1191 at this time.

First, the action is Premature. BCDC should refrain from taking any position on any legislation based on the possibility of concepts being amended into the bill at an uncertain time in the future. Without actually seeing any language in print, or even making that language available to both Commissioners and to public for review, it is simply inappropriate to ask the Commission to take action at this hearing.

The appropriate time for Commissioners to adopt a position on amendments is after they are completed and presented. As noted in the Staff Report on this item: “the author will soon submit proposed amendments to be considered When those amendments are available, BCDC staff will provide them to the Commission with a staff analysis.” (pg. 3) The Commission should wait until then to consider a position on AB 1191, and should not be taking action on a piece of legislation without the benefit of having the language itself, without a staff analysis, and without the benefit of substantive public comment on the content of the legislation.

Second, the original intent of the Oakland A’s with their sponsorship of AB 1191 (as the Staff Report aptly points out) was to remove BCDC discretion and jurisdiction over the planning and permitting of the Howard Terminal project. While the current language does not reflect this position, adopting a “Neutral” position tells the Legislature that BCDC has thoroughly evaluated what is being proposed and has no objections to the legislation moving forward. In that respect, it is a signal of non-Opposition to the Legislation’s purpose, motives, and goals. This step should only be taken once BCDC has clarity and assurances that no other amendments will be taken with respect to BCDC authority and that the intention of the Oakland A’s are aligned with the bases for the legislation. Politically, this position does not exist in a vacuum, and especially given the specific prior intent of the A’s to remove BCDC jurisdiction and discretion, they should not be given the benefit of the doubt.

Lastly, the Staff Report notes that it anticipates that amendments to AB 1191 will tie the hands of BCDC to “consider and act on the resulting seaport designation within 100 days from certification of the Environmental Impact Report (EIR) for the project. This timing is important because the staff will use information from the EIR to prepare the Environmental Assessment for the proposed Seaport Plan amendment.” Why should BCDC should agree to this timetable and why is it beneficial to the Commission or the public versus current law?

Given the high likelihood that any EIR for this controversial project will be subject to litigation, BCDC should not tie itself to an EIR “certification” date in any event. It should wait until full resolution of any subsequent claims, included the potential for supplemental and addendum environmental review. These reviews may also be significant for the purposes of the Seaport Plan amendment process, independent of litigation, based on the types of entitlements required by the Port of Oakland and whether or not the anticipated maritime reservation language in the most recent non-binding Term Sheet remains in place, is executed, or is renegotiated.

In any event, the Oakland A’s have already submitted an application for the Howard Terminal project to be the potential subject of EIR-review streamlining pursuant to AB 900 Guidelines and AB 734 scrutiny, thereby potentially already securing the potential for expedited review, but even this lasts more than 100 days. In other words, BCDC should anticipate the need to take more than 100 days past the EIR certification date to address the potential need to raise issues with the Seaport Plan.

Because the A’s had previously sought to tie BCDC’s hands substantively with respect to the Seaport Plan amendment process, we would encourage the Commission to raise a skeptical eye at efforts by the A’s with these amendments to tie BCDC’s hands procedurally with respect to the Seaport Plan as well.

If you have any further questions regarding this or any other Port and maritime industry issues, please do not hesitate to contact me or anyone else at PMSA at your earliest convenience.

Sincerely,



Mike Jacob
Vice President & General Counsel

cc: Larry Goldzband, Executive Director
Assemblymember Rob Bonta