

# San Francisco Bay Conservation and Development Commission

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**TO:** Commissioners and Alternates

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**SUBJECT: Staff Report on Port of San Francisco Legislation, Assembly Bill 2797 (Chiu)**  
(For Commission consideration on June 16, 2016)

## Summary

The Port of San Francisco is sponsoring Assembly Bill 2797 (Chiu): *City and County of San Francisco: Mission Bay South Project: redevelopment plan*. The Port is working with Assemblymember David Chiu and the State Lands Commission on the bill, which would allow the Port to loan specified non-trust lease revenues to improve infrastructure for the Mission Rock Project proposal. Under the legislation, those loans would be paid back, with interest, using public finance sources within 50 years. The Port has requested BCDC staff to allow the bill to include provisions to address outdated designations in the *San Francisco Bay Area Seaport Plan* and an inconsistent boundary in the *San Francisco Waterfront Special Area Plan*. Specifically, the portions of the bill relating to BCDC would:

1. Remove the port priority use designations on Pier 48, the marginal wharf between Pier 48 and Pier 50 and the designated portion of Seawall Lot 337;
2. Extend the boundary of the Northeastern Waterfront Geographic Area in the *San Francisco Waterfront Special Area Plan* to include Pier 48; and
3. Preserve the authority and discretion of BCDC to approve, deny or condition permits for the mixed-use development on Pier 48 and the marginal wharf between Pier 48 and Pier 50 and to enforce any permits issued for the projects described in the bill.

## Staff Report

**Background.** After conducting a planning process for Seawall Lot 337, which is adjacent to Pier 48, in 2009, the San Francisco Port Commission selected a development team led by the San Francisco Giants for exclusive negotiations with the Port for the development of Seawall Lot 337. The Giants' proposal, known as the Mission Rock project, would include eight acres of parks; approximately 1,500 rental apartments, 40% of which would be designated affordable units to families earning between 45% - 150% of Area Median Income; approximately 1.3 million square feet of office space; 3,100 parking spaces; and, 250,000 square feet of retail, manufacturing, and restaurants on the ground floors of the buildings.

The Mission Rock project also includes the rehabilitation of Pier 48 consistent with the Secretary of the Interior's Standards for the Treatment of Historic Properties ("Secretary's Standards"). Pier 48 is one of the Port's historic finger piers and is a contributing resource to the Embarcadero Historic District, which is listed on the National Register of Historic Places. Under the proposed project, Pier 48 would be renovated to become the expanded home for Anchor Brewing Company ("Anchor"), San Francisco's oldest and largest manufacturing business. The project will include public tours of its operations, a restaurant and a new public boardwalk with dramatic water and bridge views around the pier. The Pier 48 project would entail seismic improvements to the seawall along the northern and eastern sides of Seawall Lot 337, including in front of the pier to minimize the risk of lateral ground spreading toward San Francisco Bay, which could seriously damage the piles supporting the pier. As with all of the Port's finger pier projects, the project's design and mix of uses are required to be consistent with the Burton Act and the public trust.

The Port of San Francisco began to discuss potential legislation related to Seawall Lot 337, Pier 48, Pier 50, and the marginal wharf between them, with the State Lands Commission (SLC) and Assemblymember David Chiu last fall. The initial purpose of the proposed legislation was to address challenges in financing the infrastructure and public facilities required for the project. This initial proposal would allow the Port to loan non-trust lease revenues to pay for the needed infrastructure and public facilities and the loans would be paid back, with interest, within 50 years. Assemblymember Chiu has introduced this language in Assembly Bill 2797, which passed the Assembly and has been referred to both the Senate Natural Resources and Water, and the Governance and Finance Committees. (The link to the bill language is <http://www.bcdc.ca.gov/cm/2016/AB-2797-PORT-proposed-amendments.pdf> and copies are available from BCDC staff.)

The Port has contacted BCDC staff to inquire whether BCDC would consent to broadening the legislation to modify certain BCDC policies applicable to Pier 48, to bring those policies in line with the policies applicable to historic finger piers north of China Basin, and to remove an outdated port priority use designation for Pier 48. The Port has indicated that it is only interested in including this language in the bill if the Commission is not opposed to it, and that any subsequent amendments (if needed) would have to be agreed upon by both BCDC and the Port. The basic provisions of the proposed legislation and rationale for each are summarized below.

#### **Modifications to BCDC Policies Affecting Pier 48:**

**Port Priority Use Designation.** The *San Francisco Bay Area Seaport Plan* (Seaport Plan) is prepared jointly by BCDC and the Metropolitan Transportation Commission and is adopted as part of the *San Francisco Bay Plan* (Bay Plan), in which it stands as the basis of the Bay Plan port policies. It provides an overview of Bay Area port capacity and future needs and includes enforceable port priority use designations. Pier 48, the marginal wharf between Pier 48 and Pier 50, and a portion of Seawall Lot 337, are designated for neo-bulk cargo in the Seaport Plan, although the Seaport Plan notes that Pier 48 and Seawall Lot 337 are "inactive." Neo-bulk is a

class of break bulk cargo. While the Seaport Plan was last amended in 2012, the designated port priority use areas in San Francisco are based on 1994 information. Pier 48 has not been used for cargo purposes since the late 1980s, and Seawall Lot 337 was last used by a maritime tenant (H&H Ship Service) in 1992. The use of Pier 48 for break bulk cargo operations is no longer viable due to a number of factors, including the elimination of rail service to the piers north of Pier 80 and the inability of historic finger piers to accommodate the loading and unloading of modern, oversized break bulk cargoes such as wind mills, steel coils and other unitized cargo that require ship-to-shore transfer by crane. The legislation addresses the port priority use designation in this way:

(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.

***San Francisco Waterfront Special Area Plan.*** The *San Francisco Waterfront Special Area Plan* (Special Area Plan) is prepared by BCDC and has been adopted as part of the Bay Plan. It is comprised of three geographic-specific areas – Fisherman’s Wharf (Hyde Street Pier through Pier 39 and East Wharf Park), the Northeastern Waterfront (Pier 35 to China Basin), and the Southern Waterfront (China Basin through India Basin) (See Figure 1, Pg. 6). Each of these areas has geographic-specific policies that apply differently to each area. The most noteworthy difference is between the Northeastern Waterfront and the other two geographic areas. Within the Northeastern Waterfront, in 2000 the Commission removed its policies on replacement fill and use restrictions based on water-oriented uses and upland alternatives analysis, in exchange for an integrated package of public benefits that include: (1) removal of deteriorated piers; (2) restoration of open water; (3) completion of a waterfront-wide public access network and several large public spaces; (4) preservation of unique historic resources; and, (5) development of new uses that would enable the public to enjoy the waterfront.

In Fisherman’s Wharf and the Southern Waterfront, the replacement fill policy and the water-oriented land use test still apply. The result of these policies is that when a pier undergoes a seismic upgrade it is considered “replacement fill,” meaning that BCDC can allow fill on publicly-owned land for Bay-oriented recreation and Bay-oriented public assembly if the amount of Bay-oriented commercial recreation cover no more than 50% of the uncovered area of the Bay, and the remainder (50%) of the replaced pier must be used for public recreation, public access or open space, including open water. The replacement fill policy makes it difficult to rehabilitate the historic piers because it requires that each project proposal remove half of each pier or place half of the pier in public access use and the remaining pier be restricted to only Bay-oriented commercial recreation uses. The Northeastern Waterfront geographic-specific policies were adopted in 2000 to strike a balance between open water, public access,

increased development opportunities and historic rehabilitation of the remaining piers, and required that the Port seek a historic designation for the piers designated to remain. The Embarcadero Historic District was the result of this effort and was completed in 2005. While the 2000 amendment to the Special Area Plan attempted to include all of the potentially historic piers in the Northeastern Waterfront, Pier 48 was not included in the amendments. But when the Port prepared its nomination materials, expert analysis indicated that Pier 48 should be included in the historic district — a fact not understood when the Special Area Plan was adopted. Pier 48 is one of only two piers in the Embarcadero Historic District that remains subject to the replacement fill policy and water-oriented use requirements. AB 2797 proposes to address this inconsistency in this way:

(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.

***Permitting and Enforcement Authority.*** Additionally, to ensure that AB 2797 will not alter the Commission’s permitting and enforcement authority in any way, the proposed legislation also states:

(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.

### **Staff Recommendation**

The Commission could undertake amendments to the Seaport Plan and the Special Area Plan to institute these changes. However, this process would require considerable staff resources and time despite staff’s belief that the proposed changes do not require further detailed policy analysis. Undertaking legislation to amend Commission policies inevitably entails some risk. However, Assemblymember Chiu is a recent BCDC Commissioner and knows the Commission well, while the bill sponsor, the Port, has agreed that BCDC would need to concur with any legislative changes.

Staff recommends that the Commission take a neutral position on Assembly Bill 2797 (Chiu): *City and County of San Francisco: Mission Bay South Project: redevelopment plan*. If passed as currently proposed, AB 2797 would address an outdated designation in the Seaport Plan and move the boundary for the Northeastern Waterfront geographic area within the Special Area Plan that would recognize Pier 48 as a contributing resource to the Embarcadero Historic District and allow for its rehabilitation in a way that is consistent with the Special Area Plan and remove the requirements that would make this rehabilitation impossible. The proposed legislation also preserves BCDC permitting and enforcement authority, while ensuring that the benefits that have been realized along the San Francisco Waterfront since the 2000 amendments to the Special Area Plan can continue to be realized on this portion of the waterfront.



**Figure 1:**  
Geographic Vicinities

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