

San Francisco Bay Conservation and Development Commission

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May 31, 2019

TO: Commissioners and Alternates
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SUBJECT: Staff Report on Pending Legislation
(For Commission consideration on June 6, 2019)

Summary and Recommendations

The staff recommends that the Commission **support:** Assembly Bill 825 (Mullin), *San Mateo County Flood and Sea Level Rise Resiliency District*.

The staff recommends that the Commission **take a neutral position on:** Assembly Bill 1191 (Bonta), *Oakland Waterfront Ballpark Act*.

All other bills are discussed for information only purposes.

Report

There are several bills of interest to the Commission in the current session:

Assembly Bill 1191, *Oakland Waterfront Ballpark Act*. Introduced by Assemblymember Rob Bonta, this bill has passed the Assembly and now will be considered by the Senate.

AB 1191 addresses the Oakland Athletics' (Athletics) proposed development at the Howard Terminal in the Port of Oakland. The proposed project includes a new ballpark for the Oakland Athletics, a mixed-use residential and commercial development, and public plazas along the waterfront. The Howard Terminal is designated as a marine terminal in the Seaport Plan, but it is currently used for ancillary port uses, consistent with its designation for port use. At the Athletics' request, the Commission is considering whether the port priority use designation may be deleted from the Howard Terminal or whether the site is still needed for port use. Approximately 14 acres of the 55-acre site were filled pursuant to BCDC permits for port use, and so remain subject to BCDC's Bay jurisdiction although they have been filled for over two decades.

SB 1191 currently provides for a trust exchange by the State Lands Commission (SLC) regarding lands within the proposed project site. The bill also preserves BCDC's authority to consider: (1) whether BCDC's current Seaport Plan designation on the site is still needed; and (2) approval of a permit for the proposed development. However, the Athletics are proposing amendments that further address the proposed trust lands exchange and project approval by SLC, and BCDC's consideration of a permit for the proposed project. BCDC and SLC staff have been meeting with the Athletics, City of Oakland, and the Port of Oakland regarding proposed amendments to the bill.

The Athletics are seeking amendments to change BCDC's authority to address their concerns regarding permitting the change-of-use on the previously-filled Howard Terminal Baylands. Under current law, any uses placed on those filled lands must be water-oriented. BCDC staff have consistently stated that any proposed amendments must be constrained and limited. Four issues have come to the foreground regarding this legislation:

1. The Athletics originally proposed a legislative determination that the project is necessary to the health, safety, or welfare of the entire Bay Area. However, BCDC staff opposed that determination because it has been used for only a handful of projects, such as water pollution control facilities.
2. After discussions with BCDC staff, the Athletics removed their proposal to place residential and non-trust commercial uses on the Bay-filled land. The remaining uses proposed are public trust uses including water-oriented public assembly, recreation, and public access. However, the Athletics are pursuing amendments that would provide greater specificity on how the ballpark and other public assembly would need to be designed to qualify as Bay-oriented public assembly and recreation.
3. The Athletics are seeking amendments regarding BCDC fill policies because the site was filled over two decades ago, and the placement of that fill was mitigated by removing other Bay fill (the project does not propose to further fill Bay waters). Therefore, the Athletics are proposing amendments to provide that certain fill tests in the McAteer-Petris Act—specifically those regarding “no alternative upland location” and “minimum fill necessary”—would not apply to the already-filled lands on which the project is proposed. Several sections of the *San Francisco Bay Plan* (Bay Plan) policies address placement of fill, including Fill for Bay-Oriented Commercial Recreation and Bay-Oriented Public Assembly on Privately-Owned Property, and Filling for Public Trust Uses on Publicly-Owned Property Granted in Trust to a Public Agency. The Athletics propose that these policies also not be applied to the project on the filled Baylands. In general, staff supports this analysis.
4. Lastly, the amendments would provide that the Commission 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.

Staff and the Athletics are currently discussing amendments requiring that the project include benefits that are substantially greater than would otherwise be required in a Commission permit, due to the Athletics' decision to use the legislative process. As the project's design is further defined, staff believes that these should be further reflected in the legislation. The Athletics have agreed to further discuss such amendments. The amended bill would continue to explicitly state that it does not affect BCDC's authority to: (1) consider the need for the Howard Terminal site for port use and to approve or deny the proposed amendment; and (2) consider and issue, with appropriate conditions, or deny a permit for the project (other than those resulting from the amendments discussed above). The legislation would also find that the bill addresses a unique situation and provide that the bill would not set a precedent for any other projects.

To meet legislative deadlines for the amendments to be considered in the Senate policy committee—likely the Senate Natural Resources and Water Committee—the author will soon submit proposed amendments to be considered by the Committee. When those amendments are available, BCDC staff will provide them to the Commission with a staff analysis. Staff discussions have been productive, the Athletics have endeavored to work with the Commission to address staff concerns, and the team's representatives have stated that they intend to continue doing so. Staff believes that the amendments are limited and preserve the Commission's underlying authority.

Staff recommends that the Commission take a neutral position on AB 1191 at this time.

http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200AB1191

Assembly Bill 825, *San Mateo County Flood and Sea Level Rise Resiliency District*.

Introduced by Assemblymember Kevin Mullin, the bill has been approved by the Senate and awaits Assembly action.

Assembly Bill 825 revamps the San Mateo County Flood Control district by: (1) adding “protecting against the impacts of rising sea level” to its powers; and (2) establishing a new governing Board of Directors.

This would establish the first flood control agency in the Bay Area with an explicit mandate to address rising sea level. Staff recommends that the Commission support AB 825.

http://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200AB825

Senate Bill 45 *Wildfire, Drought, and Flood Protection Bond Act of 2020*. Introduced by Senator Ben Allen, the bill did not meet the deadline to pass the Senate Appropriations Committee and is now a two-year bill.

SB 45 would authorize the issuance of bonds to finance projects to restore fire-damaged areas, reduce wildfire risk, create healthy forests and watersheds, reduce climate impacts on urban areas and vulnerable populations, protect water supply and water quality, protect rivers, lakes, and streams, reduce flood risk, protect fish and wildlife from climate impacts, improve climate resilience of agricultural lands, and protect coastal lands and resources. The bill would provide \$300 million for coastal areas and \$150 million for regional climate resilience.

While the bond would provide needed funds for climate adaptation, BCDC typically does not take positions on state bond acts, and the bill is now a two-year bill and therefore won't be heard until the second year of the session in 2020. Staff recommends the Commission follow AB 45.

http://leginfo.legislature.ca.gov/faces/billStatusClient.xhtml?bill_id=201920200SB45

Senate Bill 69, *Ocean Resilience*. Introduced by Senator Scott Wiener, the bill has been approved by the Senate and awaits Assembly action.

Among many other things, this bill would require the State Coastal Conservancy (SCC) to: (1) submit a report to the Legislature on \$6 million previously appropriated to the SCC to implement a beneficial reuse pilot program for dredged sediment in the Redwood City Harbor; and (2) develop, in partnership with the U.S. Army Corps of Engineers, a beneficial reuse program to place and reuse dredged sediment for coastal wetland restoration projects.

While SB 69 addresses beneficial reuse of dredged material, it does not provide additional funds or resources. BCDC has worked constructively with the SCC on this pilot program and staff believes the Commission should defer to SCC on the bill. Staff recommends that the Commission follow SB 69.

http://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200SB69

Senate Bill 168, *Chief Climate Resilience Officer*. Introduced by Senator Bill Wieckowski, the bill has been approved by the Senate and awaits Assembly action.

This bill would establish a Chief Climate Resilience Officer, appointed by the Governor and subject to Senate confirmation, in the Governor's Office of Planning and Research (OPR) to serve as the statewide lead for planning and coordination of climate adaptation policies and implementation in California. The bill would also establish a new OPR Advisory Council on Climate Adaptation to facilitate coordination among state, regional, and local agency efforts to adapt to the impacts of climate change, and the chief officer, or the chief officer's designee, would chair the Advisory Council. The bill lists the types of expertise members of the Advisory Council would have. The bill would specify that members of the Advisory Council serve staggered 4-year terms, except as provided.

Staff believes the Commission should defer to the Administration and OPR on the bill. Staff recommends that the Commission follow SB 168.

http://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200SB168

Senate Bill 293, *Infrastructure Financing Districts: Oakland Waterfront Revitalization and Environmental Justice Infrastructure Financing District*. Introduced by Senator Nancy Skinner, the bill is in the Assembly Local Government Committee.

SB 293 would provide for the establishment and operation of an infrastructure financing district for the area of West Oakland that includes the Howard Terminal proposed for the Oakland Athletics' ballpark and mixed-use development.

SB 293 has no provisions applicable to the Commission. Staff recommends that the Commission follow SB 293.

http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200SB293

Assembly Bill 552, Coastal Resources: *Coastal Adaptation, Access, and Resilience Program*.

Introduced by Assemblymember Mark Stone, the bill has been approved by the Senate and awaits Assembly action.

AB 552 would fund specified activities to help the state prepare, plan, and implement actions to adapt to rising sea level and coastal climate change by establishing the Coastal Adaptation, Access, and Resilience Fund in the State Treasury. An amount not less than 30 percent of revenue received by the State Lands Commission from certain state lands would be placed in the fund. It would authorize the California Natural Resources Agency (CNRA), the Ocean Protection Council, the California Coastal Commission, the California Coastal Conservancy, and the State Lands Commission to use the funds to address rising sea level and coastal climate change. The bill also requires that the CNRA annually make information available on activities funded under the program on a publicly accessible website. BCDC staff contacted the author who declined to include BCDC in the bill.

AB 552 would provide funding for coastal adaptation efforts, but would also make requirements of the CNRA and OPR. Staff recommends that the Commission follow AB 552.

http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200AB552

Assembly Bill 839, *Climate adaptation strategy: strategic resiliency framework: Adaptation through Resiliency, Economic Vitality, and Equity Account*. Introduced by Assemblymember Kevin Mullin, the bill has been approved by the Senate and awaits Assembly action.

AB 839 requires the Secretary of the California Natural Resources Agency (CNRA) to review the *Safeguarding California Plan* and use it to prepare a “strategic resiliency framework” by July 2021 to address climate adaptation with recommendations and actions for the state to become resilient to climate change. It requires each state agency identified in the framework to report to the Secretary on progress completing the recommendations and actions. It would also establish the Adaptation through Resiliency, Economic Vitality, and Equity Account to provide grants and financing for climate adaptation projects that achieve the recommendations and actions called for in the framework.

AB 839 would make requirements of CNRA and other state agencies. Staff believes the Commission should defer to the Administration and CNRA on the bill. Staff recommends that the Commission follow AB 839.

http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200AB839