

MEMORANDUM

April 21, 2016

TO: MEMBERS, PORT COMMISSION
Hon. Willie Adams, President
Hon. Kimberly Brandon, Vice President
Hon. Leslie Katz
Hon. Eleni Kounalakis
Hon. Doreen Woo Ho

FROM: Elaine Forbes
Interim Executive Director

SUBJECT: Informational presentation regarding AB 2797 (Assemblymember Chiu)
related to Seawall Lot 337 Mixed Use Development

DIRECTOR'S RECOMMENDATION: Information Only; No Action Requested

EXECUTIVE SUMMARY

In 2007, after discussions between the Port and the California State Lands Commission ("SLC"), the Legislature enacted Senate Bill 815 (Chapter 660 of the Statutes of 2007). That statute recognized that several of the Port's seawall lots south of Market Street granted under the Burton Act, including Seawall Lot 337, were cut off from the Bay by streets, were being used mainly as parking lots, and were in whole or in part no longer needed for public trust purposes other than the generation of revenues for the trust. Accordingly, the statute lifted the use restrictions the public trust and the Burton Act imposed on the designated seawall lots, subject to the requirement that the Port use the revenues for certain purposes and other specified conditions. SB 815 imposed specific requirements related to Seawall Lot 337 – the largest of these lots – including a requirement that the State Lands Commission approve a Port study of the portion of Seawall Lot 337 and adjoining areas that will still be needed for public trust purposes.

As a result of SB 815, the Port initiated a planning process for Seawall Lot 337 and in 2009, the Port Commission selected a development team led by an affiliate of the San Francisco Giants for exclusive negotiations with the Port for the development of Seawall Lot 337, rehabilitation and reuse of Pier 48, and expansion of China Basin Park. The Giants' proposal, known as the Mission Rock project, includes 8 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

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of retail, manufacturing, and restaurants on the ground floors of the buildings. The Planning Department is currently leading environmental review for the project under the California Environmental Quality Act (“CEQA”). Seventy four percent of San Francisco voters approved Proposition D in November 2015, approving a height increase for this proposed project and endorsing the policy objectives of the proposed project.

This staff report describes proposed state legislation, authored by Assemblymember David Chiu (13th Assembly District), to make certain amendments to SB 815 to enable development of the Mission Rock project as envisioned under the financial terms that the Port Commission endorsed in Resolution 13-10.

STRATEGIC PLAN

Cooperation between the Port and the Giants to develop the Mission Rock project meets multiple Port Commission Strategic Plan strategies and objectives as follows:

Renewal:

- #1 Seismic and sea level rise resiliency;
- #3 Vibrant new neighborhoods at Seawall Lot 337 and Pier 70;
- #4 Historic preservation; and
- #6 Public open space and recreation.

Engagement:

- #1 Public participation and feedback; and
- #4 Strategic partnerships with citizen advisory committees and government agencies.

Livability:

- #1 Living wage jobs, local business enterprises (LBEs) and micro-LBEs and local hire;
- #2 Diversity in lease opportunities;
- #3 Integrated transportation; and
- #4 Light manufacturing and industrial job opportunities.

Resiliency:

- #1 Seawall repairs;
- #2 Sea level rise adaptation;

Sustainability:

- #2 Development policies that support the City’s climate goals and protect the Bay’s ecology;
- #3 Green building; and
- #4 Minimize carbon emissions.

Stability:

- #1 Traditional and innovative solutions to the Port’s capital plan funding gap;
- #2 Capital reinvestment in Port assets; and
- #3 Diversified tenant base.

OVERVIEW OF SB 815

Port staff conducted a public process in 2007¹, and a companion negotiation with SLC, to develop SB 815 and to carry it through the legislative process. Senator Carole Migden carried the legislation on the Port's behalf. Port staff conducted broad outreach about the proposed legislation to neighborhood groups, including the Telegraph Hill Dwellers and the Barbary Coast Neighborhood Association and environmental groups including San Francisco Tomorrow and the San Francisco League of Conservation Voters.

The primary purpose of SB 815 was to lift the trust use restrictions over the Port's seawall lots (former tidelands that were filled after the construction of the seawall) to enable residential or commercial development to generate revenue for Port historic rehabilitation, open space, and public plazas. The Legislature's termination of these trust use restrictions required findings that the seawall lots were cut off from the water, represented a relatively small part of Port land and were no longer needed for trust purposes except to generate funding for the important trust purposes of rehabilitation of historic piers and structures and construction of waterfront plazas and open space. It was possible to make these findings because the Embarcadero Roadway and Terry Francois Boulevard separate the seawall lots from the water and the Port had a long history of leasing the seawall lots primarily for surface parking serving commuters.

The bill as originally proposed contemplated removing trust use restrictions from all of the Port's undeveloped seawall lots from Seawall Lot 314 (across from Pier 35) to Seawall Lot 337 (the Giant's parking lot in Mission Bay). Due to neighborhood controversy about Port development and height limits, the Port ultimately requested that Senator Migden limit the bill terminating trust use restrictions for the Port's seawall lots south of Market Street (Seawall Lots 328, 330 and 337).

Under SB 815, net new revenues from the leasing and development of the seawall lots must be spent on historic rehabilitation of the Port's historic piers and historic structures and development of waterfront plazas and open space required under the Bay Conservation and Development Commission's Special Area Plan for the San Francisco waterfront.

Other key provisions of SB 815 included:

- Authorization to lease for periods of up to 75 years (because this was the minimum term deemed necessary to attract investment in new buildings);
- An outside date for nontrust leasing of 2094;

¹ SB 815 Port Commission staff reports:

<http://sfport.com/ftp/meetingarchive/commission/38.106.4.220/ftp/uploadedfiles/Item7dProposedSeawallLotLegislation.pdf>

<http://sfport.com/ftp/meetingarchive/commission/38.106.4.220/ftp/uploadedfiles/Item7bSeawallLotsLegislation.pdf>

- A requirement that nontrust buildings be demolished or modified to facilitate public trust uses by 2094;
- A requirement to prepare a public trust study of Seawall Lot 337 to determine which portions of this lot and surrounding areas can be used for public trust purposes;
- A requirement that SLC must approve each nontrust lease and that each nontrust leases generates fair market value for the Port; and
- A requirement that SLC find that historic rehabilitation projects funded by SB 815 are consistent with the public trust.

MISSION ROCK PROJECT

After SB 815 was adopted, the Port initiated a public planning process to develop land use, urban form and related guidelines for the proposed development of Seawall Lot 337 and Pier 48 and issued a competitive solicitation for this development opportunity, consistent with the procedures set forth in the Waterfront Land Use Plan.

In 2009, by Resolution 09-26, the Port Commission awarded exclusive negotiating rights to Seawall Lot 337 Associates, LLC, an affiliate of the San Francisco Giants. After years of public planning and preliminary negotiations, the Port Commission and the Board of Supervisors unanimously endorsed a Term Sheet in 2013 for the proposed project (Port Commission Resolution 13-10 and Board of Supervisors Resolution 142-13)².

AB 2797

SB 815 was adopted before Port staff understood the complexity of developing Seawall Lot 337, including the need to finance new infrastructure to support development.

In December 2015, the City's State Legislation Committee endorsed a proposal to amend SB 815 to conform with the Seawall Lot 337 land use plan and endorsed Term Sheet. Assemblymember Chiu carried the proposed legislation on behalf of the City. Consistent with past practice, Port staff worked closely with SLC staff to develop proposed amendments to SB 815 that will enable development of the Mission Rock project and preserve the original legislative intent of SB 815. Port staff appreciates the thoughtful engagement of SLC staff in this effort.

² Seawall Lot 337 and Pier 48 Term Sheet and staff report:

<http://sfport.com/seawall-lot-337-swl-337-pier-48>

The following is a summary of proposed amendments:

1. Use of Revenue from Nontrust Leases to Support Development of Infrastructure

One of the primary goals of SB 815 is to generate significant increased revenues for the trust by increasing the land value of Seawall Lot 337. To meet that goal, an extraordinary investment in public infrastructure – including new streets, sidewalks, bicycle paths, utility infrastructure, and 8 acres of parks – is needed. In addition, to address the effects of climate change, the project sponsor proposes to raise the elevation of portions of Seawall Lot 337 and new streets within the Mission Rock project site to be resilient to future sea level rise between 55-66 inches and 100 Year Storm events.

For the majority of these public infrastructure costs, the developer will provide equity financing, which requires a rate of return significantly higher than traditional municipal financing. The City will acquire the public infrastructure from the developer over time primarily through revenue generated from the project site from Mello-Roos special taxes and tax increment. However, the tax increment will not be immediately available for early infrastructure costs.

To address this timing problem, the proposed financing plan calls for the Port to advance a portion of the ground rent from Port nontrust leases to acquire the infrastructure on behalf of the City. Mello-Roos special taxes and IFD will repay these Port advances. These Port advances of ground rent will allow the Port to repay developer's equity and return more quickly, substantially reducing financing costs.

Many of the proposed public infrastructure improvements will further trust purposes. The majority of planned open space will enjoy direct views of San Francisco Bay. Improvements to the seawall in front of Pier 48 will help preserve this important historic trust asset. The project sponsor will construct new streets that will provide direct access to the Bay. New stormwater management features will protect San Francisco Bay from untreated stormwater runoff. Consistent with State Lands Commission and BCDC policies related to sea level rise, portions of the project site will be raised to be resilient to sea level rise, and the project will include adaptive management financing tools that can help the City fund future shoreline improvements. In addition, most parcels subject to nontrust leases at Seawall Lot 337 will include ground floor retail, including trust-consistent retail, which will be served by the project infrastructure.

SB 815 did not address the issue of financing infrastructure required to serve the development of Seawall Lot 337. The statute currently limits the use of the Port's nontrust lease revenues from the seawall lots to preservation of historic structures and construction and maintenance of public plazas and open space.³ The proposed legislation would

³ Since the passage of SB 815 in 2007, the Port has constructed the open spaces required by the BCDC Special Area Plan (the Brannan Street Wharf and Cruise Terminal Plaza) using other funds. The proposed legislation would allow the nontrust lease revenues to be used for other public plazas and open space not specifically identified in the Special Area Plan.

authorize the Port to make Port advances as described above, subject to a requirement that the Port is repaid. This financing structure is projected to increase the Port's underlying land value.

2. Changing the Outside Date for Leases on Seawall Lot 337 & Legal Requirements After that Date

SB 815 establishes January 1, 2094 as the outside date for nontrust leasing on Seawall Lot 337. Section 7 further requires that “[n]o later than January 1, 2094, all structures, buildings, and appurtenances on the designated seawall lots not consistent with the purposes of the public trust, the Burton Act trust, and Burton Act transfer agreement shall be removed or modified, including any necessary restoration or remediation of the seawall lots, to facilitate public trust uses.”

The proposed project on Seawall Lot 337 would be a phased project; the Port and the project sponsor anticipate construction over 10-15 years from project approval in 2017. Some vertical construction could occur in the mid-2030s. For this reason, the proposed legislation eliminates the existing 2094 outside date to allow full 75-year lease terms.

The proposed legislation also changes the requirement to demolish nontrust buildings, and replaces this requirement with a requirement to repurpose buildings for trust uses.

3. Clarification of Seawall Lot 337 Boundaries

SB 815 identifies Seawall Lot 337 by reference to a diagram.⁴ The diagram shows Seawall Lot 337 bounded on the west by Third Street, on the south by the proposed realignment of Mission Rock Street, and on the east and north by Terry Francois Boulevard.

The Mission Rock project would realign and narrow Terry Francois Boulevard, incorporating portions of the former street into the project along the eastern edge of the Seawall Lot 337, and using the northern portion of the street to enlarge China Basin Park (see Attachment A). In addition, the realignment of Mission Rock Street is now complete. The proposed legislation would clarify that the boundaries of Seawall Lot 337 extend to the line of those streets as they have been or will be finally configured, and that, in the absence of Terry Francois Boulevard to the north, China Basin Park will serve as its northern boundary.

The legislation would also clarify the status of a narrow strip of land along the northern line of the realigned Mission Rock Street known as Parcel P20. Under the land transfer agreements for Mission Bay, the public trust and Burton Act trust restrictions were removed from proposed development parcels and impressed on certain proposed open space and street segments, including Parcel P20. Under a related land transfer agreement, the Port agreed to lease the trust property to the redevelopment agency when

⁴ The Legislature inadvertently omitted the diagram from the original version of SB 815, but corrected the error by a later amendment of SB 815 (Chapter 2008 of the Statutes of 2009).

required for development. The Port continues to hold Parcel P20, which has been used for parking under the current Seawall Lot 337 lease. The legislation would authorize the successor agency to the San Francisco Redevelopment Agency to remove Parcel P20 from the Mission Bay South Redevelopment Plan and related plans and agreements, which would not otherwise be authorized under the redevelopment dissolution law.

CALIFORNIA ASSEMBLY

AB 2797⁵ was considered by the Assembly Natural Resources Committee on April 11, 2016 and was recommended “Do Pass” by a 9-0 vote. The bill was considered by the Assembly Local Government Committee on April 20, 2016 and was recommended “Do Pass” by a 8-0 vote. The bill is sponsored by the Port and supported by Mayor Edwin Lee, the San Francisco Giants, the Housing Action Coalition and SPUR. The bill has no recorded opposition.

The bill now moves to the Assembly Appropriations Committee and then to the Assembly floor. Based on continuing discussions with SLC and Assembly Committee consultants, Port staff expects further amendments to the bill when it moves to the California State Senate for consideration in June 2016.

NEXT STEPS

Port staff will schedule a meeting with the Central Waterfront Advisory Group to provide an update about AB 2797 and will return to the Port Commission to provide a status report about the bill.

Prepared by: Brad Benson
Director of Special Projects

Attachment A: Map of Seawall Lot 337 & Pier 48 Proposed Development

⁵ AB 2797 can be tracked at the following URL:
http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160AB2797

**Attachment A:
Map of Seawall Lot 337 & Pier 48 Proposed Development**