



# WATERFRONT PLAN UPDATE REGULATORY AGENCIES SUMMARY

	PORT OF SAN FRANCISCO	CALIFORNIA STATE LANDS COMMISSION (SLC)	SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION (BCDC)	SAN FRANCISCO PLANNING DEPARTMENT
<b>ROLE</b>	<p>The San Francisco Port Commission is a 5-member Commission, appointed by the Mayor and subject to confirmation by the full Board of Supervisors.</p> <p>The Burton Act (1968) authorized the Governor’s Director of Finance to negotiate a transfer agreement to grant ownership of the Port of San Francisco including piers, seawall lots, and paper streets to the City &amp; County of San Francisco, administered by a Harbor (Port) Commission with trustee rights and obligations. The subsequent agreement – the Burton Act Transfer Agreement – transferred title to the Port to the City and County of San Francisco to be managed by the Port Commission, subject to the City Charter. Certain powers enumerated in the Transfer Agreement were granted exclusively to the Port Commission.</p> <ul style="list-style-type: none"> <li>• Port Commission and staff manage improvements, facility leases, maritime industries, environmental and historic resources and real estate assets extending along 7½ miles, with over 500 tenant leases.</li> <li>• The Port Commission adopted and periodically amends the Port of San Francisco Tariff #5 establishing the rules, regulations, rates, and other provisions applying to the services and for the use of the wharfinger facilities (for vessel berthing at piers and wharves) under the jurisdiction of the Port.</li> <li>• The Port Commission has legislative authority and adopted and periodically amends the Port Building Code (separate from, but mirroring many of the provisions of, the San Francisco Building Code), also maintains a Port Park Code.</li> <li>• The Burton Act requires a separate Harbor Fund and the Port Commission has fiduciary responsibility to maintain revenues generated from granted lands to fund/finance operations, maintenance and capital improvement.</li> <li>• The Burton Act allows leases for limited periods not exceeding 66 years for long-term, trust-consistent uses and development projects.</li> <li>• The Burton Act permits the Port Commission to determine that any portion of the transferred lands not required for trust uses, as the Commission finds to be in the public interest, may be leased for other uses with moneys derived therefrom to be used to further Port trust objectives and benefits (this is the basis for the Port’s interim nontrust leasing practices).</li> </ul>	<p>The California State Lands Commission is primarily a land and resource trust manager. The SLC was established in 1938 as an independent state Commission consisting of two Constitutional Officers – the Lieutenant Governor and the State Controller – and the Governor’s Director of Finance.</p> <ul style="list-style-type: none"> <li>• Manages State-owned sovereign tidelands, submerged lands and lands underlying navigable waters. The Commission’s manages these state-owned lands consistent with the common law Public Trust Doctrine. The Commission employs a variety of management and regulatory tools to ensure a sustainable, balanced, and deliberative approach to protect and enhance the State’s lands and resources while allowing the use of those lands and resources for the benefit of all Californians.</li> <li>• Oversees activities of legislative trust grantees, where the California Legislature has transferred ownership of tidelands to local jurisdictions (such as the Port of San Francisco) in trust to ensure that the use of filled or unfilled tidelands and management of trust funds are consistent with public trust purposes and provisions of the enabling legislation (such as the Burton Act). The SLC and its staff exercise this responsibility and authority through various mechanisms, including through proactive coordination with the Port, Public Trust consistency determinations and informational staff reports discussing the status of a particular trust grant.</li> </ul>	<p>BCDC is a 27-member Commission which was established by the State Legislature in 1965 by the McAteer-Petris Act to minimize unnecessary future filling of the San Francisco Bay, and to promote public access to the Bay, as set forth in the San Francisco Bay Plan.</p> <ul style="list-style-type: none"> <li>• BCDC has permitting authority over projects in the Bay (Bay jurisdiction) and a 100-foot-wide band that lies inland and parallel to the entire Bay shoreline (shoreline band jurisdiction). BCDC also issues permits for work in certain waterways, such as the Napa River, and within the vast Suisun Marsh. BCDC regulates the placement of “fill” in the Bay to support appropriate development and requires that every development project around the Bay provide “maximum feasible public access.” BCDC regulates all filling, dredging, and substantial use changes for projects within its jurisdiction. The definition of fill within the San Francisco Waterfront includes existing piers that are seismically retrofitted to substantially extend the life of that pier.</li> <li>• BCDC’s Bay Plan provides for creation of Special Area Plans to provide site-specific policies over defined areas of its jurisdiction. The San Francisco Waterfront Special Area Plan (Special Area Plan) applies the requirements of the McAteer-Petris Act and the provisions of the Bay Plan to Port of San Francisco properties in greater detail, with specific public benefits requirements within BCDC’s jurisdiction (generally, piers, wharves, Seawall and The Embarcadero). The Special Area Plan was adopted by the Commission using the Commission’s health, safety and welfare authority. Each amendment to the SFSAP requires that the Commission find that the amendment is “necessary to the health, safety and welfare of the public in the entire Bay Area’.</li> <li>• BCDC, together with the Metropolitan Transportation Commission, maintains the San Francisco Bay Seaport Plan, which defines areas within and upland of the Bay for ports and airports.</li> <li>• BCDC has a Design Review Board (DRB) to review and advise staff on the public access associated with development projects around the Bay. BCDC also has an Engineering Review Criteria Board (ECRB) that reviews and advises staff on the seismic criteria used in the structural and geotechnical aspects of project proposals. The ECRB also reviews criteria related to sea level rise and climate change adaptation proposals.</li> <li>• BCDC is a part of the State of California’s Coastal Zone Management Program, administered National Oceanic and Atmospheric Administration (NOAA) and has Coastal Zone Management Authority.</li> </ul>	<p>The San Francisco Planning Commission is a 7-member Commission, with 4 members appointed by the Mayor and 3 members appointed by the President of the Board of Supervisors, all subject to confirmation by the full Board of Supervisors.</p> <ul style="list-style-type: none"> <li>• Under the City’s Charter, the Board of Supervisors and the Planning Commission have authority to approve San Francisco General Plan, zoning ordinances (including height limits and special use districts) applied through the San Francisco Planning Code and City Zoning Map. The Port has constructed improvements consistent with local zoning and procedures in the Planning Code since enactment of the Burton Act.</li> <li>• The Planning Commission is San Francisco’s traditional forum for public review and approval of land use plans and development regulations, and approval of specific proposals requiring zoning amendments, conditional use and other approvals under the Planning Code. Some Planning Code requirements are conducted by Planning Department staff, including the Zoning Administrator.</li> <li>• The Historic Preservation Commission oversees policies, regulations and approvals applicable to City historic resources and historic districts. The Planning Department includes a Preservation Planning staff unit to review design and treatments of projects affecting historic resources.</li> <li>• The Planning Department also is the City’s lead agency for environmental review of public and private projects, under the California Environmental Quality Act (CEQA). Environmental Impact Reports (EIRs), Negative Declarations, and CEQA exemptions are different types of environmental review documents that may be issued.</li> <li>• The Planning Department has a Citywide Policy Planning division that maintains the San Francisco General Plan, and a variety of policy plans for specific neighborhoods, and land use/design issues (e.g. public realm and street design, transit-oriented development, resilience).</li> </ul>

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<b>COORDINATION WITH OTHER AGENCIES</b>	<p>The Port coordinates with multiple City and County agencies and the Board of Supervisors, as well as multiple permitting agencies with jurisdiction over the use of, and construction activities in or over, tidelands and San Francisco Bay.</p> <ul style="list-style-type: none"> <li>The Port Commission has a duty to improve and operate the harbor, promote and accommodate commerce and navigation, including associated establishment, improvement and conduct of railroad facilities and industrial uses; public buildings, parks, playgrounds, public educational and recreational facilities; and preservation or restoration of marine resources.</li> <li>Port leases for non-maritime uses of 10 years or more or annual revenues of \$1 million or more require Board of Supervisors approval. Certain other Port contracts also require Board of Supervisors approval.</li> <li>The Port's two year annual budget and five year financial plan are subject to approval by the Port Commission, the Mayor and the Board of Supervisors. The Port Commission's adopted 10-Year Capital Plan is subject to review by the City's Capital Planning Committee and approval by the Mayor and the Board of Supervisors.</li> <li>Port Commission land use policies are defined in the Waterfront Land Use Plan and are aligned with the San Francisco General Plan, Planning Code and Zoning Map, to establish consistent rules of general applicability as used to regulate non-Port properties.</li> <li>The Port of San Francisco is generally subject to the City's police powers, and most City code provisions that do not conflict with the Port's public trust mission, the Burton Act or the Burton Act Transfer Agreement.</li> <li>The Port of San Francisco coordinates with the California State Lands Commission, BCDC, the U.S. Army Corps of Engineers and the San Francisco Bay Regional Water Quality Control Board as further described in this table.</li> </ul>	<ul style="list-style-type: none"> <li>Ongoing staff communications, advice and coordination on Port and SLC plans (Waterfront Plan, State Lands Strategic Plan, pre-RFP project site planning (Seawall Lot 337 &amp; Pier 48), Pier 70 Preferred Master Plan), and sea level rise planning.</li> <li>At the Port's request, performs a detailed review of long-term development projects to confirm Port determinations that uses are consistent with the Public Trust Doctrine and Burton Act, prior to project approvals (Ferry Building, Piers 1.5-3-5, AT&amp;T Ballpark, Watermark Condominiums, Exploratorium).</li> <li>Collaborates with Port and City staff on state legislative proposals that affect trust property. Examples:  SB 815: Authorizes leasing of certain seawall lots that are no longer useful for trust purposes for nontrust purposes for up to 75 years, subject to conditions.  SB 1085 (AB 1199, AB 2259): Authorizes formation of infrastructure financing districts on Port property to use property tax increment to fund public improvements.  AB 418: Authorizes a land exchange involving the public trust lands within the Pier 70 planning area, subject to Board of Supervisors and State Lands Commission approval, and permits the Port Commission to lease or sell nontrust lands within Pier 70 to generate revenue for the trust.</li> <li>As a significant landowner in the San Francisco Bay, State Lands is a voting member on the BCDC Commission to offer public trust expertise in the Commission's deliberations regarding projects within BCDC jurisdiction.</li> </ul>	<ul style="list-style-type: none"> <li>BCDC worked with the Port to align land use policies of the Waterfront Land Use Plan and Special Area Plan, adopted in 2000. The key amendments apply to Port piers and wharves between Pier 35 and China Basin Channel to allow seismic retrofit and major repairs, create the Embarcadero Historic District, and permit a broader range of trust-consistent uses than previously permitted by BCDC. Other Special Area Plan policies require Port financing and timetable to remove specific piers and construct major new parks and public access (including Brannan Street Wharf and Cruise Terminal Plaza). These fill removal and public access benefits extinguished the "50 Percent Rule" that previously applied to the Pier 35 to China Basin area.</li> <li>The Port and BCDC coordinated on subsequent Special Area Plan amendments for the 34th America's Cup, Exploratorium, and Pier 27 James R. Herman Cruise Terminal projects.</li> <li>Port and BCDC staff assembled a BCDC-Port Working Group to identify desirable public access and public benefit ideas to consider in future planning, to satisfy an outstanding condition for Pier 27 Cruise Terminal, and possible alternatives to allow the 50 Percent Rule to be extinguished in Fisherman's Wharf.</li> <li>Port of San Francisco projects in BCDC jurisdiction are usually reviewed jointly by the DRB and the City's Waterfront Design Advisory Committee.</li> <li>The BCDC Commission includes representatives from the State Lands Commission, the San Francisco Bay Regional Water Quality Control Board and the U.S. Army Corps of Engineers.</li> </ul>	<ul style="list-style-type: none"> <li>Ongoing staff coordination to inform and integrate Port and City policy plans affecting Port uses and development, waterfront parks, open space and public realm, including planning for the Eastern Neighborhoods, Rincon Hill areas.</li> <li>Port and Planning Department staff work collaboratively in a City team approach to develop master plans for large development of areas including Port lands, such as for Pier 70, Seawall Lot 337 and the Blue Greenway Design Guidelines.</li> <li>Coordinate City historic preservation reviews with Port and State Historic Preservation Office (SHPO) to meet Secretary of Interior Standards for Historic Rehabilitation for Port historic buildings.</li> <li>Planning Department participates in the City's Waterfront Design Review process for Port development projects, and appoints 2 members of the Waterfront Design Advisory Committee (WDAC), whose focus is to review projects to carry out Waterfront Plan design standards and ensure projects integrate positively with the rest of the City.</li> </ul>

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<b>OTHER INFORMATION</b>	<ul style="list-style-type: none"> <li>The San Francisco Charter, as amended, sets for the powers and duties of the Port Commission in Appendix B.</li> <li>Proposition H, adopted in 1990, required development of the Waterfront Land Use Plan and prohibited certain non-maritime uses, such as hotels, within the BCDC shoreline band.</li> <li>Voters have approved General Obligation bonds to fund improvements to Port property on three occasions: after adoption of the Burton Act, to comply with the investment requirements of the Transfer Agreement, and again in 2008 and 2012, to fund waterfront parks.</li> <li>Proposition B, adopted in 2014, prevents any City agency or officer from permitting development on Port property to exceed the height limits in effect as of January 1, 2014, unless the City's voters have approved a height limit increase. Voters approved Proposition F in 2014, authorizing height increases up to 90' for portions of Pier 70 subject to certain conditions. Voters approved Proposition D in 2015, authorizing height increases from 120' to 240' on Seawall Lot 337, subject to certain conditions.</li> </ul>	<p>As general background, the State of California acquired sovereign ownership of all tidelands, submerged lands and beds of navigable lakes and waterways upon its admission to the United States in 1850. The State holds these lands for the benefit of all people of the State for statewide Public Trust purposes that include, but are not limited to, waterborne commerce, navigation, fisheries, water-related recreation, visitor-serving facilities, habitat preservation, and open space. The Public Trust Doctrine is a sovereign public property right held by the State or its delegated grantee for the benefit of all the people of the State. All uses of trust lands and revenues, including those specifically authorized by the Legislature, must take into account the overarching principle of the Public Trust Doctrine that the lands and resources belong to the public and are to be used to serve a statewide purpose.</p> <p>The common law Public Trust Doctrine ensures the public's right to enjoy access to and use of California's tidelands, submerged lands and navigable waterways, whether granted to a local agency or managed by the State Lands Commission directly, for commercial and recreational navigation, fishing, swimming and other water-related recreation. The Public Trust also promotes responsible development and protection of ports, harbors, marinas and other water-related facilities for the support of commerce, navigation and fisheries. Public Trust lands and resources may also be preserved and enhanced for open space, wildlife habitat, environmental protection and for visitor-serving facilities and other uses consistent with the common law trust. The Public Trust Doctrine is also sufficiently flexible to encompass changing public needs.</p> <p>Generally, uses that do not accommodate, promote, foster or enhance maritime and other water-related services and facilities, water-related recreation or the public's enjoyment of the state's waterways are not appropriate uses for Public Trust lands. This includes strictly local or neighborhood-serving uses and residential uses that confer no significant benefit to all Californians. Examples include public hospitals, public libraries, public schools, supermarkets, local government buildings and office buildings that serve general rather than specifically trust-related functions.</p> <p>The State Lands Commission has opined that under limited circumstances certain uses may be appropriate based on what is in the state's best interest. Specific examples include the mixed use historic pier rehabilitation projects along the San Francisco waterfront that were pursued as part of an overall trust-consistent program of uses. Additionally, under certain conditions beneficial to the trust, the SLC may exchange the state's interests in certain public trust lands for other lands more suitable for the promotion of public trust principles and needs. Such a trust exchange was approved to allow development of the Watermark condominiums on a portion of the SWL 330 site, as part of the Port's efforts to coordinate development within the larger neighborhood fabric and the City's Rincon Hill Plan.</p>	<ul style="list-style-type: none"> <li>The McAteer-Petris Act (1965) established BCDC and the Bay Plan, which regulates filling, dredging, and substantial use changes. As part of its regulatory permitting process, BCDC also includes public trust use consistency findings.</li> <li>Under BCDC rules, fill means placement of any material in or over the water surface, bayward of mean high tide line. Fill includes not only placement of new piles or pile-supported structures, but any "major" improvement or repair to existing piles or pile-supported structures that extend the useful life of the structure, including seismic retrofits.</li> <li>BCDC applies strict standards of what are appropriate uses for placement of fill including: 1) it is necessary for public health, safety or welfare of the public in the entire Bay Area; 2) it will support water-oriented uses; or 3) it will improve shoreline appearance and public access.</li> </ul> <p>Prior to 2000, the Special Area Plan contained the "Replacement Fill Rule" policy, also known as the "50 Percent Rule" which was originally intended to allow Port development projects on piers for "water-oriented commercial recreation" uses (including hotels and restaurants) and relief from BCDC's more restrictive "water-oriented" use requirements. However, the 50 Percent Rule limited such development to 50% of the pier, requiring the rest for either fill removal or conversion to public access. The policy generally has not proven to be financially viable; Pier 39 is the only development project to be implemented with the 50 Percent Rule. This policy still applies north of Pier 35 (Fisherman's Wharf) and south of China Basin (Mission Bay, Southern Waterfront). The Special Area Plan amendments approved in 2000 for the Pier 35 to China Basin area included an alternate fill removal/public access plan responsive to BCDC's mission, to allow BCDC to extinguish the 50 Percent Rule within this area. The Port and BCDC seek a similar type of strategy for the Fisherman's Wharf waterfront and other areas of the City's waterfront.</p>	

	SAN FRANCISCO BAY REGIONAL WATER QUALITY CONTROL BOARD (RWQCB)	US ARMY CORPS OF ENGINEERS, SAN FRANCISCO DISTRICT (USACE)
<b>ROLE</b>	<p>The RWQCB a 7-member board appointed by the Governor. The RWQCB is a division of the State Water Resources Control Board charged with protection of water quality to maintain specific beneficial uses for water.</p> <p>The federal government has delegated to the State of California the authority to implement the Clean Water Act. The RWQCB regulates discharges to surface water (rivers, ocean, etc.) and groundwater (via land). The RWQCB also regulates storm water discharges from construction, industrial, and municipal activities; landfills; discharges from irrigated agriculture; dredge and fill activities; the alteration of any federal water body under the 401 certification program; and other activities that could degrade water quality.</p> <ul style="list-style-type: none"> <li>• The RWQCB regulates discharges of pollutants to surface water through its National Pollutant Discharge Elimination System (NPDES) program.</li> <li>• The RWQCB also regulates construction in/over water, waste disposal, and discharges of fill and dredged material under Clean Water Act Section 401 and the Porter-Cologne Water Quality Control Act. This program protects all waters in its regulatory scope, but has special responsibility for wetlands, riparian areas, and headwaters because these water bodies have high resource value, are vulnerable to filling, and are not systematically protected by other programs.</li> </ul>	<p>The U.S. Army Corps of Engineers (USACE) is an agency under the Department of Defense, which provides engineering services to strengthen national security, energize the economy, and reduce risks from disasters. USACE regulates coastal development in navigable waters of the United States via its permitting processes.</p> <p>The USACE San Francisco District office regulates Port of San Francisco construction activities in Bay waters under USACE jurisdiction.</p> <ul style="list-style-type: none"> <li>• Except where explicitly exempted by Congress, USACE authorization is required whenever a proposed project impacts navigable waters or wetlands of the United States.</li> <li>• USACE oversees regulatory compliance for Clean Water Act (CWA) Section 404, which regulates placement of fill in navigable waters of the U.S., and Section 10 of the Rivers and Harbors Act of 1899, which regulates placement of piles in navigable waters of the U.S.</li> <li>• USACE supports levee accreditation decisions for the National Flood Insurance Program administered by the Federal Emergency Management Agency (FEMA).</li> <li>• USACE consults with the U.S. Fish and Wildlife Service (USFWS) and National Marine and Fisheries Service (NMFS) to ensure that any project permitted by USACE meets the requirements of the Endangered Species Act and other federal regulatory programs under USFWS and NMFS, or other federal agency jurisdiction.</li> <li>• USACE individual permits are subject to environmental assessments pursuant the National Environmental Policy Act. Permits for projects that modify historic resources that are listed on the National Register of Historic Places also require review by the National Park Service (NPS).</li> </ul>

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<b>COORDINATION WITH OTHER AGENCIES</b>	<p>The State has issued a municipal stormwater (MS4) permit to the Port for areas of Port property that are not served by the City’s combined sewer system. The Port’s MS4 Permit was revised and re-issued by the State in 2013. The new permit requires the Port to adopt and administer a Construction Site Runoff Control Program that protects water quality.</p> <ul style="list-style-type: none"> <li>The Port of San Francisco and the San Francisco Public Utilities Commission (SFPUC) have developed the San Francisco Stormwater Design Guidelines (“Design Guidelines”) in response to a Clean Water Act permit requirement. The Design Guidelines are designed to improve San Francisco’s environment by reducing pollution in stormwater runoff in areas of new development and redevelopment in areas of the Port served by separate storm sewers that discharge directly to local lakes or San Francisco Bay.</li> <li>Under the Design Guidelines, the Port and SFPUC require submittal of a Stormwater Control Plan (SCP) with every development application for discretionary planning approval in San Francisco for all projects disturbing 2,500 square feet or more of the ground plane.</li> </ul> <p>The RWQCB holds a seat on BCDC to offer expertise on water quality issues.</p> <p>BCDC permit authorization typically follows RWQCB’s Section 401 water quality certifications or waiver.</p>	<ul style="list-style-type: none"> <li>Congress established the harbor lines for the Port of San Francisco, as recommended by the Chief of the Army Corps of Engineers, defining the areas of the Port where the City and the State of California are permitted to construct improvements, shown on maps of the Port as the “bulkhead” line (which defines the man-made shoreline edge) and the “pierhead” line (which defines the outer reaches of the Port’s piers).</li> <li>In 1969, Congress declared the area of the Port’s waterfront comprised of the existing seawall, marginal wharf and finger piers between Hyde Street Harbor and just south of the Bay Bridge “non-navigable”, meaning that Port improvements within the footprint of existing structures in this area of the waterfront are not subject to permitting by USACE.</li> <li>In 2007, Congress adopted similar legislation declaring the area between the Bay Bridge and south of Pier 40 non-navigable, subject to certain conditions and compliance with the National Environmental Policy Act and other federal laws, including the Endangered Species Act.</li> <li>The San Francisco District of the USACE holds a seat on BCDC to provide federal input on BCDC matters.</li> <li>USACE permit authorization typically follows BCDC permit authorization.</li> </ul>

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<b>OTHER INFORMATION</b>	<p>RWQC permitting is required for in-water construction along the Port; as noted below, Army Corps of Engineers permitting is not always required for Port projects. Permitting under these regulatory regimes is generally more focused on evaluating environmental impacts of placement of fill or piles, and on mitigating these impacts, and is less focused on regulating types of land use.</p> <p>The RWQCB and Army Corps of Engineers implement Environmental Protection Agency regulations dictated by the Clean Water Act that require alternatives analysis of projects that place fill in water bodies under federal jurisdiction and have potential to adversely affect the environment. The alternatives analysis under Clean Water Act Section 404(b)(1) is required to ensure that the least environmentally damaging practicable alternative is selected. The definition of “practicable” alternative includes consideration of whether the project is water dependent; an alternative would not be considered practicable if it does not meet the fundamental project purpose.</p>	<p>The Clean Water Act regulates fill in San Francisco Bay in much the same way as BCDC’s regulatory regime regulates fill throughout the rest of San Francisco Bay: fill is permitted in support of “water-dependent uses” where there is no “practicable” upland location (USACE does not regulate fill in areas that have been declared non-navigable).</p> <p>The Port’s historic finger piers are pile-supported. USACE typically regulates installation of piles and pile repairs under the Rivers and Harbors Act, except in areas that have been declared non-navigable. Rivers and Harbors Act permitting, like the Clean Water Act, triggers review by multiple federal agencies, including USFW, NMFS and NPS, but Rivers and Harbors Act permitting does not require a “water-dependent” use test.</p>