

AMENDED IN SENATE AUGUST 19, 2016  
AMENDED IN SENATE JUNE 22, 2016  
AMENDED IN ASSEMBLY APRIL 13, 2016  
AMENDED IN ASSEMBLY APRIL 5, 2016  
AMENDED IN ASSEMBLY MARCH 29, 2016  
CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2797**

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**Introduced by Assembly Member Chiu**

February 19, 2016

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An act to amend Sections 4 and 7 of, and to add Section 4.5 to, Chapter 660 of the Statutes of 2007, relating to tidelands and submerged lands.

LEGISLATIVE COUNSEL'S DIGEST

AB 2797, as amended, Chiu. City and County of San Francisco: Mission Bay South Project: redevelopment plan.

Existing law grants to the City and County of San Francisco the right, title, and interest of the state in and to certain tidelands and submerged lands in trust for certain purposes. Under existing law, the Burton Act, and the Burton Act transfer agreement, the interest of the state in and to the Harbor of San Francisco was transferred in trust to the City and County of San Francisco. The State Lands Commission has jurisdiction over tidelands and submerged lands of the state.

Existing law declares that, until January 1, 2094, certain parcels of real property denominated as the designated seawall lots are free from the use requirements of the public trust, the Burton Act trust, and the

Burton Act transfer agreement, and authorizes the San Francisco Port Commission to lease all or a portion of the designated seawall lots for nontrust uses if specified conditions are met, including that the lease shall terminate no later than January 1, 2094.

This bill would revise those conditions to specify that the term of a nontrust lease shall not exceed 75 years from the initial occupancy ~~date~~ *date, as defined*, of the improvements developed on the leased site or development parcel, and in no event shall the term of a nontrust lease extend beyond December 31, ~~2120~~ 2105. The bill would also prescribe the boundaries of a specified seawall lot for purposes of the Mission Bay South redevelopment plan. The bill would authorize the port to use its nontrust lease revenues from specified development parcels in a specified seawall lot to make port advances, as defined, to fund specified infrastructure if the commission has approved the port advances and complies with certain procedures for the disposition of those parcels, as prescribed.

This bill would make legislative findings and declarations as to the necessity of a special statute for the waterfront property at the Mission Bay South redevelopment area in the City and County of San Francisco.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
 State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. For the purposes of this act the following terms
- 2 have the following meanings:
- 3 (a) “Assembly Bill 26” means Chapter 5 of the First
- 4 Extraordinary Session of the Statutes of 2011, in which certain
- 5 provisions were amended by Chapter 26 of the Statutes of 2012,
- 6 effective as provided in California Redevelopment Assn. v.
- 7 Matosantos (2011) 53 Cal.4th 231.
- 8 (b) “Assembly Bill 2649” means Chapter 757 of the Statutes of
- 9 2012.
- 10 (c) “Bay Plan” means the San Francisco Bay Plan as adopted
- 11 and administered by the San Francisco Bay Conservation and
- 12 Development Commission pursuant to the McAteer-Petris Act.
- 13 (d) “BCDC” means the San Francisco Bay Conservation and
- 14 Development Commission established pursuant to Section 66620
- 15 of the Government Code.

- 1 (e) “Board of supervisors” means the Board of Supervisors of  
2 the City and County of San Francisco.
- 3 (f) “Burton Act” means Chapter 1333 of the Statutes of 1968,  
4 as amended, which authorized the state to convey to the city, in  
5 trust and subject to certain terms, conditions, and reservations, the  
6 state’s interest in certain tidelands, including filled lands.
- 7 (g) “Burton Act lands” means the tidelands that the state granted  
8 to the city under the Burton Act, including the San Francisco  
9 waterfront from the Hyde Street pier to India Basin.
- 10 (h) “Burton Act transfer agreement” means the agreement dated  
11 January 24, 1969, between the state and the city, relating to the  
12 transfer of the Burton Act lands from the state to the city, and any  
13 amendments to that agreement in accordance with its terms.
- 14 (i) “Burton Act trust” means the statutory trust imposed by the  
15 Burton Act on Burton Act lands and lands dedicated to or acquired  
16 by the city as assets of the trust.
- 17 (j) “CFD law” means the Mello-Roos Community Facilities  
18 Act of 1982 (Chapter 2.5 (commencing with Section 53311)) of  
19 Part 1 of Division 2 of Title 5 of the Government Code) or the San  
20 Francisco Special Tax Financing Law (San Francisco Admin. Code  
21 Ch. 43, Art. X), as applicable.
- 22 (k) “City” means the City and County of San Francisco, a charter  
23 city and county, and includes the port.
- 24 (l) “Commission” means the State Lands Commission.
- 25 (m) “Designated seawall lot” or “designated seawall lots” means  
26 any of those parcels of real property situated in the city that are  
27 defined as designated seawall lots in Senate Bill 815 or Assembly  
28 Bill 2649, modified by Section 3 of this act.
- 29 (n) “Development parcel” means a portion of a designated  
30 seawall lot that is subdivided for construction of improvements,  
31 or rehabilitation of historic buildings for reuse, and that will be  
32 used for nontrust land uses.
- 33 (o) “Embarcadero Historic District” means the portion of the  
34 Burton Act lands from Pier 45 to Pier 48, which was listed on the  
35 National Register of Historic Places in 2006.
- 36 (p) “IFD law” means the provisions of the Government Code  
37 authorizing the formation of local financing districts authorized  
38 to use property tax increment to finance infrastructure.
- 39 (q) “Infrastructure costs” or “costs of infrastructure” means the  
40 cost of constructing the Seawall Lot 337 infrastructure, including

- 1 related costs of planning and design work and a return on developer  
 2 equity, as provided in a plan of finance in a disposition and  
 3 development agreement.
- 4 (r) “Initial occupancy date” ~~means~~ *means, for each designated*  
 5 *seawall lot other Seawall Lot 337, and for each development parcel*  
 6 *in Seawall Lot 337, the date on which the port issues the first*  
 7 *certificate of occupancy for a building under a the first nontrust*  
 8 *lease of a the designated seawall lot or of a the development parcel*  
 9 *in Seawall Lot 337, as applicable.*
- 10 (s) “McAteer-Petris Act” means Title 7.2 (commencing with  
 11 Section 66600) of the Government Code.
- 12 (t) “Mission Bay developer” means an “owner,” as defined in  
 13 the Mission Bay South owner participation agreement.
- 14 (u) “Mission Bay South owner participation agreement” means  
 15 the agreement between the redevelopment agency and Catellus  
 16 Development Corporation, dated November 16, 1998, as amended.
- 17 (v) “Mission Bay South redevelopment plan” means the  
 18 Redevelopment Plan for the Mission Bay South Project adopted  
 19 by the board of supervisors on October 26, 1998, as amended.
- 20 (w) “Mission Bay South redevelopment project area” means  
 21 the area in the city subject to the Mission Bay South redevelopment  
 22 plan.
- 23 (x) “Nontrust lease revenues” means revenues that the port  
 24 receives from leases of designated seawall lots or development  
 25 parcels in Seawall Lot 337, as applicable, where the trust use  
 26 restrictions have been lifted by a prior legislative act for a  
 27 designated period of time.
- 28 (y) “Nontrust sources” means sources of consideration other  
 29 than nontrust lease revenues or moneys in the port’s harbor fund.  
 30 Nontrust sources include, without limitation, fee credits that may  
 31 be applied to offset local impact fees or exactions, special taxes,  
 32 tax increment, proceeds of general obligation bonds, proceeds of  
 33 community facilities bonds, and proceeds of tax allocation bonds.
- 34 (z) “Northeastern waterfront” means the area designated in the  
 35 special area plan as the land and water areas within port jurisdiction  
 36 from Pier 35 to China Basin.
- 37 (aa) “Oversight board” means the body that the board of  
 38 supervisors created to oversee the fiscal management of the  
 39 successor agency in accordance with Assembly Bill 26.

1 (ab) “Parcel P20” means a parcel owned by the port within the  
2 Mission Bay South redevelopment project area that lies partially  
3 within the southern portion of Seawall Lot 337.

4 (ac) “Port advances” means a loan of nontrust lease revenues  
5 from Seawall Lot 337 to a district or other entity providing  
6 project-based public financing to pay directly or to reimburse the  
7 Seawall Lot 337 developer for costs of infrastructure in accordance  
8 with the terms and conditions of this act. Port advances do not  
9 include nontrust lease revenues that the port uses to pay directly  
10 for the preservation of historic piers and historic structures or for  
11 purposes that are otherwise authorized by this act.

12 (ad) “Port of San Francisco,” “port commission,” or “port”  
13 means the city acting by and through the San Francisco Port  
14 Commission.

15 (ae) “Project-based public financing” means special taxes from  
16 development parcels in community facilities district project areas  
17 formed under CFD law, property tax increment from development  
18 parcels in infrastructure financing district project areas established  
19 under IFD law, bond proceeds secured by special taxes, tax  
20 increment, or both, and any other mechanisms available to finance  
21 infrastructure and public facilities that rely on revenues produced  
22 by the area to be improved.

23 (af) “Public trust” means the common law public trust for  
24 commerce, navigation, and fisheries.

25 (ag) “Redevelopment agency” means the San Francisco  
26 redevelopment agency, that the board of supervisors formed under  
27 the former California Community Redevelopment Law and that  
28 was dissolved on February 1, 2012, by operation of Assembly Bill  
29 26.

30 (ah) “San Francisco Bay” or “bay” means those areas defined  
31 by Section 66610 of the Government Code.

32 (ai) “San Francisco waterfront” means the portions of San  
33 Francisco Bay that the state transferred to the city under the Burton  
34 Act.

35 (aj) “Seaport plan” means the San Francisco Bay Area Seaport  
36 Plan adopted by BCDC and the Metropolitan Transportation  
37 Commission, as amended in 2003.

38 (ak) “Seawall Lot 337” means that parcel of real property in the  
39 city designated as Seawall Lot 337, as shown on that certain map  
40 entitled “revised map of designated seawall lots,” which is on file

1 with the port, as those boundaries may be modified by Section 3  
2 of this act.

3 (al) “Seawall Lot 337 developer” means the person selected by  
4 the port to negotiate exclusively with the port for the master  
5 development of Seawall Lot 337 and Pier 48, and its successors  
6 and authorized assigns.

7 (am) “Seawall Lot 337 infrastructure” means infrastructure and  
8 other public facilities that serve Seawall Lot 337 and are located  
9 on Seawall Lot 337 or on lands immediately adjacent to the seawall  
10 lot area, such as water, sewer, stormwater management, and other  
11 utility installations, streets, roadways, sidewalks, parks, public  
12 access and open space areas, shoreline improvements, and other  
13 public facilities.

14 (an) “Senate Bill 815” means Chapter 660 of the Statutes of  
15 2007, as amended by Chapter 208 of the Statutes of 2009.

16 (ao) “Southern waterfront” means the area designated in the  
17 special area plan as the land and water areas within port jurisdiction  
18 from China Basin to and including India Basin.

19 (ap) “Special area plan” means BCDC’s San Francisco  
20 Waterfront Special Area Plan, adopted in 1975 as an amendment  
21 to the Bay Plan, as amended.

22 (aq) “State” means the State of California.

23 (ar) “Successor agency” means the San Francisco Office of  
24 Community Investment and Infrastructure, which the board of  
25 supervisors created in accordance with Assembly Bill 26 to serve  
26 as the successor to the redevelopment agency.

27 (as) “Successor agency commission” means the San Francisco  
28 Commission on Community Investment and Infrastructure.

29 (at) “Tidelands” means the lands lying below the elevation of  
30 ordinary high water, whether filled or unfilled, and includes  
31 submerged lands.

32 (au) “Waterfront land use plan” means the Port of San Francisco  
33 Waterfront Land Use Plan, including its waterfront design and  
34 access element, adopted by the port commission in 1997, as  
35 amended.

36 SEC. 1.5. As used in Senate Bill 815 and Assembly Bill 2649,  
37 each term set forth in Section 1 of this act shall have the meaning  
38 ascribed to it in that section and, in the event of any conflict  
39 between this act and Senate Bill 815 or Assembly Bill 2649, this  
40 act shall prevail.

1 SEC. 2. The Legislature finds and declares all of the following:

2 (a) The seawall lots are tidelands that were filled and cut off  
3 from the waterfront by the construction of the great seawall in the  
4 late 19th and early 20th centuries, and by the construction of the  
5 Embarcadero roadway which lies, in part, over a portion of the  
6 great seawall. Over time, some seawall lots, including the  
7 designated seawall lots, have ceased to be useful in whole or in  
8 part for the promotion of the public trust and the Burton Act trust,  
9 except for the production of revenue to support the Burton Act  
10 trust. The designated seawall lots are either vacant or leased on an  
11 interim basis, primarily for parking.

12 (b) Seawall Lot 337, the largest of the designated seawall lots,  
13 is located just south of China Basin and used as a surface parking  
14 lot. Senate Bill 815 depicts Seawall Lot 337 as bounded by Mission  
15 Rock Street, Terry A. Francois Boulevard, and Third Street. The  
16 port commission entered into exclusive negotiations with the  
17 Seawall Lot 337 developer for the lease, construction, and  
18 operation of a proposed project at Seawall Lot 337, a portion of  
19 Terry A. Francois Boulevard, Pier 48, and the marginal wharf  
20 between Pier 48 and Pier 50. The Legislature finds that the  
21 revitalization of Seawall Lot 337 and Pier 48 is of particular  
22 importance to the state.

23 (c) The Mission Bay South redevelopment project area lies to  
24 the west and south of Seawall Lot 337. Parcel P20, based on the  
25 Mission Bay South redevelopment plan, is a narrow, undeveloped  
26 strip of land within the Mission Bay South redevelopment project  
27 area that is bounded on the north by the northern line of Mission  
28 Rock Street in its former location, and overlaps a portion of Seawall  
29 Lot 337. In accordance with the Mission Bay South redevelopment  
30 plan, the Mission Bay developer has since realigned Mission Rock  
31 Street from its northeasterly orientation to an east-west orientation,  
32 such that a portion of Parcel P20 and the former Mission Rock  
33 Street right of way now lie north of the northerly line of Mission  
34 Rock Street. The development proposal for Seawall Lot 337  
35 includes this portion of Parcel P20 and the former Mission Rock  
36 Street.

37 (d) Under the development proposal, the Seawall Lot 337  
38 developer would realign Terry A. Francois Boulevard and use part  
39 of the northern section of the street to expand China Basin Park.  
40 The remaining portion of the realigned Terry A. Francois

1 Boulevard would be a working waterfront street that would support  
2 active maritime, industrial, and production uses at the waterfront.  
3 Terry A. Francois Boulevard would include areas for social spaces  
4 and loading zones serving buildings, a pedestrian throughway, a  
5 shared zone, and the Blue Greenway adjacent to the bay and Piers  
6 48 and 50, facilitating uninterrupted public access along San  
7 Francisco's eastern waterfront.

8 (e) A substantial investment in new infrastructure and public  
9 facilities is necessary for the port to fully realize the public benefits  
10 of the portions of Seawall Lot 337 that will be used for public trust  
11 purposes, and to maximize the value of development parcels that  
12 will be subject to nontrust leases. The infrastructure costs for  
13 Seawall Lot 337 are expected to exceed one hundred fifty million  
14 dollars (\$150,000,000) based on estimates presented to the port  
15 commission when it endorsed a term sheet for the project in 2013.  
16 The development proposal provides for the Seawall Lot 337  
17 developer to construct the necessary infrastructure and public  
18 facilities, which would be funded by developer equity to the extent  
19 that port land value is unavailable. Project-based public financing  
20 would be used to pay directly or to reimburse the Seawall Lot 337  
21 developer for its equity advances for infrastructure costs under  
22 CFD law, IFD law, and other applicable laws.

23 (f) Project-based public financing, which includes special taxes,  
24 property tax increment, and other nontrust funding sources arising  
25 from the project may not become available until after the port  
26 receives nontrust lease revenues from development parcels in  
27 Seawall Lot 337. The port may have the opportunity to loan  
28 nontrust lease revenues for Seawall Lot 337 infrastructure costs  
29 for the purpose of reducing financing costs and maximizing the  
30 land value to the port to generate additional revenue that can be  
31 used for preservation of the port's historic piers and structures and  
32 for other public trust uses.

33 (g) In 1965, the Legislature adopted the McAteer-Petris Act to  
34 protect and enhance San Francisco Bay and its natural resources.  
35 Among other things, the McAteer-Petris Act grants BCDC  
36 regulatory authority over further filling in San Francisco Bay and  
37 limits that activity to: (1) water-oriented uses that meet specified  
38 criteria; (2) minor fill that improves shoreline appearance or public  
39 access; and (3) activities necessary for the health, safety, and  
40 welfare of the public in the entire bay area. The McAteer-Petris



1 Act also directs BCDC to require the provision of maximum  
2 feasible public access to the bay and its shoreline consistent with  
3 a project.

4 (h) In 1969, the Legislature received and acted upon BCDC's  
5 report and recommendations from a three-year study of San  
6 Francisco Bay. The resulting Bay Plan includes BCDC's policies  
7 to guide use and protection of all areas within BCDC's jurisdiction  
8 and ensures that proposed projects minimize bay fill and provide  
9 maximum feasible public access to the bay.

10 (i) Bay Plan policy concerning filling for bay-oriented  
11 commercial recreation and bay-oriented public assembly on  
12 privately owned or publicly owned property, also known as the  
13 replacement fill policy, provides in part that BCDC may permit  
14 fill on publicly owned land for bay-oriented commercial recreation  
15 and bay-oriented public assembly if certain conditions are met,  
16 including all of the following:

17 (1) The fill is a replacement pier that covers less of the bay than  
18 the area that is being uncovered.

19 (2) The amount of bay-oriented commercial recreation or  
20 bay-oriented public assembly use covers no more than 50 percent  
21 of the area of the bay uncovered.

22 (3) The remainder of the replaced pier (50 percent) shall be used  
23 for public recreation, public access, or open space, including open  
24 water.

25 (j) The application of the replacement fill policy to the piers  
26 along the northeastern waterfront created substantial challenges  
27 to port and BCDC efforts to improve the waterfront. In part to  
28 address this issue, BCDC and the port, together with the Save San  
29 Francisco Bay Association and numerous community groups and  
30 individuals, undertook a planning process that resulted in  
31 amendments to the port's waterfront land use plan and BCDC's  
32 special area plan. Those amendments focused on the northeastern  
33 waterfront with the goal of achieving the following objectives:

34 (1) Reconnecting the city to its waterfront.

35 (2) Increasing open water, public access, and opportunities to  
36 enjoy the San Francisco waterfront in a manner that completes the  
37 open space and public access network in the northeastern  
38 waterfront.

39 (3) Providing for new development that attracts people to the  
40 bay and increases revenue to the port and the city.

1 (4) Preserving historic resources and waterfront urban form.

2 (k) The special area plan amendments focused primarily on the  
3 northeastern waterfront and prescribed certain actions to implement  
4 the plan, including all of the following:

5 (1) Establishing a joint design review process for projects on  
6 the northeastern waterfront, leading to the creation of the  
7 Waterfront Design Advisory Committee.

8 (2) Requiring the port to prepare a nomination of the  
9 northeastern waterfront from Pier 35 to China Basin as an historic  
10 district listed in the National Register of Historic Places.

11 (3) Authorizing BCDC, through its permitting authority, to set  
12 aside otherwise applicable use limitations on new bay fill, including  
13 the replacement fill policy, as a means to provide an integrated  
14 package of public benefits that prescribed removal of specified  
15 piers, restoration of significant open water areas, completion of  
16 the waterfront-wide, integrated public access network, preservation  
17 of significant historic resources, and development of new uses in  
18 the interests of the health, safety, or welfare of the public  
19 throughout the bay area.

20 (l) The special area plan amendments did not affect the  
21 application of the replacement fill policy to piers north of Pier 35  
22 or south of China Basin. BCDC, the port, and other participants  
23 assumed that then-dominant industrial and maritime activities  
24 south of China Basin would continue and grow. The entire southern  
25 waterfront, including Pier 48 and about six acres of Seawall Lot  
26 337 adjacent to the piers, remained designated as a port priority  
27 use area in the seaport plan to accommodate growth in neo-bulk  
28 and break bulk cargo activities.

29 (m) At the time the special area plan amendments were being  
30 drafted, it was not known that Pier 48 would be eligible for listing  
31 on the National Register of Historic Places. In the course of  
32 preparing the nomination report for the Embarcadero Historic  
33 District, the port discovered that Pier 48 is a contributing resource  
34 to the district. As a result, the district, which was listed in the  
35 National Register of Historic Places in 2006, extends south of  
36 China Basin to include Pier 48.

37 (n) The historic use of Pier 48 for break bulk cargo operations  
38 is no longer viable due to a number of factors, including the  
39 construction of the Embarcadero roadway and Terry A. Francois  
40 Boulevard, elimination of rail service to the piers, and the inability

1 of finger piers to accommodate modern containerized cargo  
2 operations. The port operates a break bulk facility at Pier 80, which  
3 has unused capacity for break bulk cargo. Pier 48 maritime berths  
4 are currently used for maritime industrial purposes.

5 (o) Pier 48 is ideally situated to provide public access to and  
6 enjoyment of the waterfront and bay. It is within walking distance  
7 of the Ferry Building, AT&T Park, and regional transit hubs,  
8 including the Transbay Transit Center, which is under construction,  
9 and has views of the bay, the San Francisco-Oakland Bay Bridge,  
10 and the Brannan Street Wharf. The proposed reuse of Pier 48  
11 includes visitor-serving uses, public access, historic rehabilitation  
12 of the pier consistent with the United States Interior Secretary's  
13 Standards for Rehabilitation, berthing facilities, and other uses.  
14 This act amends the seaport plan and the special area plan to allow  
15 Pier 48 to be treated similarly to the other finger piers in the  
16 Embarcadero Historic District and to remove the port priority use  
17 area designation from Pier 48.

18 SEC. 3. If the adjacent streets and park areas are realigned or  
19 reconfigured in connection with the development of Seawall Lot  
20 337, the boundaries of Seawall Lot 337 shall be revised to conform  
21 to the realigned or reconfigured park or street boundaries, if the  
22 new boundaries are approved by the executive officer of the  
23 commission. The executive officer of the commission may require  
24 that a legal description and record of survey be approved by the  
25 ~~commission in conjunction with the approvals required in~~  
26 ~~paragraph (3) of subdivision (a) of Section 4.5 of Senate Bill 815,~~  
27 ~~as added by this act.~~ *commission.*

28 SEC. 4. Subdivisions (c), (d), and (f) of Section 34163 of the  
29 Health and Safety Code, and subdivisions (a) and (b) of Section  
30 34164 of the Health and Safety Code, shall not apply to, and no  
31 action of the Department of Finance or the Controller shall be  
32 required for, any action taken by the oversight board, the successor  
33 agency commission, the board of supervisors, or any other  
34 governmental body required to act to amend the Mission Bay South  
35 redevelopment plan to remove Parcel P20 from the Mission Bay  
36 South redevelopment project area, or to amend any related  
37 documents or agreements to delete regulatory requirements, zoning  
38 controls, and the Mission Bay developer's obligations with respect  
39 to Parcel P20.

1 SEC. 5. Notwithstanding anything to the contrary in Assembly  
2 Bill 2649, (a) a nontrust lease of Seawall Lot 322-1 may be entered  
3 into for the same duration as permitted for other designated seawall  
4 lots, as provided in subdivision ~~(a)~~ (c) of Section 4 of Senate Bill  
5 815, as amended by this act, (b) the operative date of Sections 3  
6 to 5, inclusive, of Assembly Bill 2649 shall be coterminous with  
7 the operative date of Sections 3, 4, 4.5, and 6 of Senate Bill 815,  
8 as provided in Section 7 of Senate Bill 815, as amended by this  
9 act, and (c) the requirements pertaining to structures, buildings,  
10 and appurtenances on Seawall Lot 322-1 shall be the same as for  
11 other designated seawall lots as provided in Section 7 of Senate  
12 Bill 815, as amended by this act.

13 SEC. 6. The Legislature, in the exercise of its retained power  
14 as trustee of the public trust, and in view of the unique  
15 circumstances existing at Seawall Lot 337 and Pier 48 on the San  
16 Francisco waterfront, hereby authorizes the following:

17 (a) Pier 48, the wharf between Pier 48 and Pier 50, and the  
18 portion of Seawall Lot 337 currently designated for port priority  
19 use are no longer required for port priority use and shall be deemed  
20 free of the port priority use area designation as of January 1, 2017.  
21 BCDC and the Metropolitan Transportation Commission shall  
22 reprint the seaport plan to reflect the removal of the port priority  
23 use designation from these areas, but this subdivision shall apply  
24 regardless of whether the conforming changes have been made.

25 (b) As of January 1, 2017, the special area plan is amended to  
26 include Pier 48 in the northeastern waterfront, which shall be  
27 deemed to serve the health, safety, and welfare of the entire bay  
28 area, and BCDC is authorized to issue a major permit for a project  
29 at Pier 48 applying the special area plan policies and other criteria  
30 applicable to finger piers in the northeastern waterfront, including  
31 that the replacement fill policy shall not apply to that project, if  
32 the project will rehabilitate Pier 48 consistent with the United  
33 States Interior Secretary's Standards for Rehabilitation. BCDC  
34 shall reprint the special area plan to reflect the inclusion of Pier  
35 48 in the northeastern waterfront, but this subdivision shall apply  
36 to the Pier 48 project regardless of whether the conforming changes  
37 have been made.

38 (c) Nothing in this act is intended to limit the authority and  
39 discretion of BCDC to approve or deny permits for the mixed-use  
40 development on Pier 48 and the marginal wharf between Pier 48

1 and Pier 50 generally described in this act in a manner consistent  
2 with the McAteer-Petris Act or the policies of the Bay Plan and  
3 the special area plan, as those policies are modified by subdivisions  
4 (a) and (b), including the authority and discretion of BCDC to  
5 impose conditions on the permits for the project. This act shall not  
6 limit the authority and discretion of BCDC to enforce permits  
7 issued for the projects described in this act.

8 SEC. 7. Section 4 of Chapter 660 of the Statutes of 2007 is  
9 amended to read:

10 Sec. 4. (a) As used in this act, “nontrust lease” means a lease  
11 of all or any portion of the designated seawall lots free from the  
12 use requirements established by the public trust, the Burton Act  
13 trust, and the Burton Act transfer agreement.

14 (b) Except for Seawall Lot 337, the port may enter into a  
15 nontrust lease subject to the requirements of this section. For  
16 Seawall Lot 337, the port may enter into a nontrust lease subject  
17 to the requirements of this section, if the commission has made all  
18 approvals required in paragraph (3) of subdivision (a) of Section  
19 4.5, and all of the conditions in Section 6 are met.

20 (c) Notwithstanding the Burton Act, Section 718 of the Civil  
21 Code, Section 37384 of the Government Code, or any other  
22 provision of law to the contrary, the term of any individual nontrust  
23 lease, including any extension of the term allowed by right of  
24 renewal, shall not exceed 75 years from the initial occupancy date  
25 of the improvements developed on the leased site or development  
26 parcel, and in no event shall the term of a nontrust lease extend  
27 beyond December 31, ~~2120~~ 2105. The port shall provide the  
28 commission notice of the initial occupancy date of the  
29 improvements developed on any leased site or development parcel.  
30 Nothing in this section shall be construed as limiting the term of  
31 any lease, or portion thereof, that is for uses consistent with the  
32 public trust and the Burton Act.

33 (d) (1) (A) Except as provided in this subdivision, all nontrust  
34 lease revenues received by the port shall be deposited in a separate  
35 account in the harbor fund to be expended for the preservation of  
36 historic piers and historic structures, or for the construction and  
37 maintenance of waterfront plazas and open space.

38 (B) The port may use its nontrust lease revenues from  
39 development parcels in Seawall Lot 337 to make port advances to  
40 fund Seawall Lot 337 infrastructure if the commission has approved

1 the port advances under paragraph (3) of subdivision (a) of Section  
2 4.5. This subparagraph shall not limit the port’s authority to use  
3 nontrust lease revenues for facilities for which expenditures are  
4 authorized under subparagraph (A).

5 (C) Revenues shall not be expended under this subdivision for  
6 historic piers or historic structures on land subject to public trust  
7 use restrictions unless the executive officer of the commission has  
8 approved the proposed uses of the pier or structure.

9 (2) The port may annually transfer from the separate account  
10 and deposit in the general account of the harbor fund, to be used  
11 for any purpose consistent with the public trust and the Burton  
12 Act, an amount equal to the sum of the baseline revenue streams  
13 for each designated seawall lot subject to one or more nontrust  
14 leases (leased seawall lots), less any revenues received by the port,  
15 for the year preceding the transfer of funds, from any portion or  
16 portions of the leased seawall lots that were not subject to a  
17 nontrust lease. For purposes of this subdivision, the baseline  
18 revenue stream for a designated seawall lot is the average annual  
19 revenue received by the port from that seawall lot over the five  
20 years prior to January 1, 2008, adjusted for inflation.

21 (3) For purposes of this subdivision, the term “revenue” shall  
22 exclude any costs incurred by the port to administer the lease and  
23 to operate and maintain the leased property and any improvements  
24 thereon.

25 (4) For each nontrust lease of a designated seawall lot, the port  
26 shall maintain a separate accounting of all revenues transferred  
27 pursuant to paragraph (2), all costs excluded pursuant to paragraph  
28 (3), and all revenues deposited into the separate account. Upon  
29 request, the port shall submit to the commission a copy of the  
30 accountings described in this paragraph.

31 (5) If the funds in the separate account exceed the amount  
32 needed for the preservation of historic piers and historic structures  
33 and for construction of waterfront plazas and open space, the excess  
34 funds shall be deposited in the harbor fund to be used for purposes  
35 consistent with the public trust and the Burton Act.

36 (e) A nontrust lease shall be for fair market value and on terms  
37 consistent with prudent land management practices as determined  
38 by the port and subject to approval by the commission as provided  
39 in paragraph (1) or as provided in Section 4.5 for a nontrust lease  
40 for Seawall Lot 337.

1 (1) Prior to executing a nontrust lease, the port shall submit the  
2 proposed lease to the commission for its consideration, and the  
3 commission shall grant its approval or disapproval in writing within  
4 90 days of receipt of the lease and supporting documentation,  
5 including documentation related to value. In approving a nontrust  
6 lease, the commission shall find that the lease meets all of the  
7 following:

8 (A) Is for fair market value.

9 (B) Is consistent with the terms of the public trust and the Burton  
10 Act trust, other than their restrictions on uses.

11 (C) Is otherwise in the best interest of the state.

12 (2) Whenever a nontrust lease is submitted to the commission  
13 for its consideration, the costs of any study or investigation  
14 undertaken by or at the request of the commission, including  
15 reasonable reimbursement for time incurred by commission staff  
16 in processing, investigating, and analyzing such submittal, shall  
17 be borne by the port; however, the port may seek payment or  
18 reimbursement for these costs from the proposed lessee.

19 SEC. 8. Section 4.5 is added to Chapter 660 of the Statutes of  
20 2007, to read:

21 Sec. 4.5. (a) For nontrust leases of Seawall Lot 337, the  
22 commission shall consider whether the port will receive  
23 consideration equal to the fair market value based on, and in  
24 accordance with, all of the following procedures:

25 (1) At least 30 days prior to approval by the board of supervisors  
26 of the development project for Seawall Lot 337, the port shall  
27 submit the proposed disposition and development agreement  
28 between the master developer and the port governing the master  
29 development of Seawall Lot 337 and the following information,  
30 to the extent not contained in the agreement, to the commission  
31 for its consideration:

32 (A) The proposed procedures for the disposition of nontrust  
33 development parcels and including the proposed plan of finance  
34 for the development project that describes the proposed port  
35 advances for Seawall Lot 337 infrastructure costs.

36 (B) The proposed procedures for establishing the fair market  
37 value of each nontrust lease of a development parcel, including  
38 the appraisal instructions.

1 (C) A description of the nontrust sources that the port expects  
 2 to receive for the project and how these nontrust sources will be  
 3 applied to the project.

4 (D) A description of the manner by which the port will select  
 5 the developer of each development parcel, including the form of  
 6 ground lease, subject to minor modifications for each development  
 7 parcel lease permitted by the transaction documents.

8 (2) Following approval of the development project for Seawall  
 9 Lot 337 by the board of supervisors, the port shall submit to the  
 10 commission the project documents described in paragraph (1) as  
 11 finally approved by the board of supervisors.

12 (3) Within 75 days after approval of the project by the board of  
 13 supervisors and receipt of all required documentation from the  
 14 port, the commission shall either approve or disapprove the  
 15 procedures for establishing the fair market value of the  
 16 development parcels, the form of ground lease, and the port's use  
 17 of port advances to pay for Seawall Lot 337 infrastructure costs.  
 18 The commission ~~may~~ *shall* request additional information or  
 19 documentation from the ~~port~~ *port, including evidence of financial*  
 20 *assurances acceptable to the commission that the trust will be*  
 21 *made whole*. The commission shall not approve the port's use of  
 22 port advances for the duration of the project unless the commission  
 23 determines that such use of port advances as described in the  
 24 documentation submitted by the port is in the best interests of the  
 25 state, will benefit the public trust, and is on terms and conditions  
 26 consistent with the port's fiduciary duties as trustee. *The*  
 27 *commission may only approve the port's use of port advances if*  
 28 *it finds that there are sufficient assurances that the trust will be*  
 29 *made whole*. The commission may take into account information  
 30 required to be submitted pursuant to this section, the benefits of  
 31 the development to the state and to the public trust, the substantial  
 32 ~~infrastructure~~ investment required in Seawall Lot ~~337~~  
 33 ~~infrastructure~~, 337, and the contribution of nontrust sources to  
 34 Seawall Lot 337 ~~infrastructure~~. *infrastructure that the commission*  
 35 *determines benefits the trust*.

36 (4) ~~Following the commission's approval in accordance~~  
 37 ~~with paragraph (3), and~~ *If the commission makes an approval*  
 38 *pursuant to paragraph (3), the port*, prior to entering into a nontrust  
 39 lease for Seawall Lot 337, ~~the port~~ shall submit to the executive  
 40 officer of the commission a copy of the proposed nontrust lease.



1 The port may enter into the nontrust lease unless, within 30 days  
2 after the submittal, the executive officer has provided the port with  
3 a written determination that the nontrust lease is inconsistent with  
4 the commission's original approval.

5 (5) The port shall bear the costs of any study or investigation  
6 that the commission undertakes or requests, including reasonable  
7 reimbursement for commission staff time in processing,  
8 investigating, and analyzing the port's submittal. The port's  
9 reimbursement obligation does not affect its ability to seek payment  
10 or reimbursement for these costs from the master developer.

11 (b) In addition to any statement of expenditures and revenues  
12 that the port is required by law to submit to the commission  
13 annually, the port shall provide a separate accounting of all of the  
14 following:

15 (1) All consideration from nontrust sources and other revenues  
16 the port has received in connection with Seawall Lot 337.

17 (2) All other revenues that the port has spent on Seawall Lot  
18 337, including any port advances.

19 (3) Any revenues from nontrust sources received by the port to  
20 repay port advances.

21 (c) The port shall provide the commission with copies of the  
22 final audit report for each phase of the project and the final audit  
23 report for the project within 90 days after the port receives each  
24 audit report.

25 (d) The port shall periodically, and upon request of the  
26 commission, submit to the commission a report detailing the  
27 issuance and repayment of any port advances, ~~or~~ and notify the  
28 commission where the reports, including staff reports, may be  
29 accessed electronically. If, within 20 years after the first port  
30 advance, the port has not submitted an audit report to the  
31 commission indicating that all of the port advances have been  
32 repaid, the port shall report to the commission the total amount of  
33 revenues from nontrust leases that the port used to fund port  
34 advances, the amount that the port has received to repay port  
35 advances, the projected sources to repay any balance still owing  
36 on account of port advances, and the expected timing of repayment  
37 of the balance still owing. Thereafter, the port shall provide  
38 supplemental reports containing updates to this information to the  
39 commission every five years.

1 (e) The port shall ensure repayment, with interest, of each port  
 2 advance within ~~50~~ 25 years after the port advance is made. The  
 3 port may extend the repayment period beyond ~~50~~ 25 years subject  
 4 to commission approval. The commission shall base its approval,  
 5 in part, on whether the port is taking actions that ensure the trust  
 6 is made whole, consistent with its fiduciary duties as a trustee of  
 7 the public trust.

8 SEC. 9. Section 7 of Chapter 660 of the Statutes of 2007 is  
 9 amended to read:

10 Sec. 7. ~~Upon the termination of the 75-year term~~ *No later than*  
 11 *75 years from the initial occupancy date* for a *designated seawall*  
 12 *lot or development parcel, parcel in Seawall Lot 337, and in no*  
 13 *event later than December 31, 2105*, the use of the *designated*  
 14 *seawall lot or development parcel* shall be consistent with the  
 15 public trust, the Burton Act trust, and the Burton Act transfer  
 16 agreement and all structures, buildings, and appurtenances on the  
 17 *designated seawall lot or development parcel* not consistent with  
 18 the public trust, the Burton Act trust, and Burton Act transfer  
 19 agreement, shall be ~~repurposed or~~ *repurposed*, modified, or  
 20 *removed*, including any necessary restoration or remediation of  
 21 the seawall lot to facilitate public trust uses. ~~No subsequent nontrust~~  
 22 ~~lease shall be granted for any development parcel.~~

23 SEC. 10. If any provision of this act, or its application to any  
 24 person, property, or circumstance, is held invalid by any court, the  
 25 invalidity or inapplicability of that provision shall not affect any  
 26 other provision of this act or the application of that provision to  
 27 any other person, property, or circumstance, and the remaining  
 28 portions of this act shall continue in full force and effect, unless  
 29 enforcement of this act as so modified by and in response to that  
 30 invalidation would be grossly inequitable under all of the  
 31 circumstances, or would frustrate the fundamental purposes of this  
 32 act.

33 SEC. 11. (a) The Legislature finds and declares that, because  
 34 of the unique circumstances applicable only to the lands described  
 35 in this act in the City and County of San Francisco, a statute of  
 36 general applicability cannot be enacted within the meaning of  
 37 subdivision (b) of Section 16 of Article IV of the California  
 38 Constitution.

39 (b) The Legislature also finds and declares that the exemption  
 40 under Section 4 of this act from the laws governing the dissolution

1 of former redevelopment agencies is necessary to address the  
2 unique circumstances relating to the development of Parcel P20,  
3 including the fact that the parcel was never owned by a former  
4 redevelopment agency and the fact that the transfer and use of  
5 Parcel P20 for the Mission Bay South redevelopment project will  
6 benefit the state by generating revenues from the various nontrust  
7 leases of land within the parcel.

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