

Date of Hearing: April 24, 2019

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

Cecilia Aguiar-Curry, Chair

AB 1191 (Bonta) – As Amended April 11, 2019

SUBJECT: State Lands Commission: exchange of trust lands: City of Oakland: Howard Terminal property: Oakland Waterfront Ballpark Act.

SUMMARY: Allows the State Lands Commission to enter into an exchange with the City of Oakland of certain public trust lands, under specified conditions, for the future site of the Oakland Athletics Ballpark project. Specifically, **this bill:**

- 1) Creates the Oakland Waterfront Ballpark Act (Act), and defines the following terms:
 - a) “1852 grant” to mean Chapter 107 of the Statutes of 1852;
 - b) “1923” grant” to mean Chapter 174 of the Statutes of 1923, as amended;
 - c) “Ballpark project” to mean a proposed baseball park that will become the new home of the Oakland Athletics, which will include visitor-serving or water-oriented recreation, cultural, and entertainment uses, public access, and other public amenities to be developed at the Howard Terminal property in the City of Oakland, consistent with public trust purposes;
 - d) “Charter” to mean the Charter of the City of Oakland, as amended;
 - e) “City” to mean the City of Oakland, or the Town of Oakland, as applicable;
 - f) “Commission” to mean the State Lands Commission;
 - g) “Howard Terminal property” or “property” to mean lands located in the city, within the port area commonly known as the Howard Terminal, consisting of specified assessor parcel numbers;
 - h) “Legislative grants” means those grants of tidelands or submerged lands made by the Legislature to the City for public trust purposes, including the 1852 grant and the 1923 grant, which include lands in the Howard Terminal property that are under the jurisdiction of, and controlled by, the Port;
 - i) “Port” to mean the Port of Oakland acting under the direction of the Board of Port Commissioners for the Port of Oakland pursuant to the charter as the trustee for granted public trust lands and any improvements or related assets and any other lands owned by the City that are located in the port area, including the Rancho uplands acquired by the City, and any improvements or related assets;
 - j) “Port area” to mean any lands that are under the jurisdiction of the Board of Port Commissioners for the Port of Oakland;
 - k) “Public trust” or “trust” to mean the common law doctrine applicable to the state’s authority over the navigable waters of the state, including tidelands and submerged lands,

for purposes relating to maritime or water-dependent commerce, navigation, and fisheries for the benefit of the people of the state;

- l) “Rancho uplands” to mean land within the Howard Terminal property that were never owned by the state, are not tidelands or submerged lands, and are located landward of the ordinary high water mark of 1850; and,
 - m) “State” to mean the State of California.
- 2) Allows the Commission to enter into an exchange with the City of filled or reclaimed tidelands and submerged lands or beds of navigable waterways, or interests in these lands, located in the Howard Terminal property, that are subject to the public trust for commerce, navigation, and fisheries, for other lands or interests in lands under the jurisdiction and control of the City, if the Commission finds all of the following conditions exist:
 - a) The exchange meets the requirements of existing law for exchanges, as specified;
 - b) The exchange ensures that the use of any lands or interests in lands exchanged is consistent with and furthers public trust purposes relating to maritime or water-dependent commerce, navigation, and fisheries; and,
 - c) The exchange is in the best interests of the state.
 - 3) Allows the Commission to impose additional conditions on the exchange of land if the Commission determines that the conditions are necessary to protect the public trust.
 - 4) Allows the Commission to establish the ordinary high water mark or the ordinary low water mark of any tidelands or submerged lands within the boundaries of the Howard Terminal property that are exchanged pursuant to an agreement with the city, as authorized by the bill’s provisions.
 - 5) States that this Act does not limit the authority of the San Francisco Bay Conservation and Development Commission (BCDC) to consider seaport plan and bay plan amendments and retain or remove seaport plan and bay plan port priority use designations from the Howard Terminal property and adjacent areas currently designated for port priority use. States that the Act does not limit the authority of BCDC to approve or deny permits for those aspects of the Oakland Sports and Mixed-Use Project that are within the Commission’s jurisdiction in a manner consistent with the McAteer-Petris Act and the bay plan, including the authority and discretion of the Commission to impose terms and conditions on the permits for the project.
 - 6) Provides that the Act does not limit the authority or discretion of the Commission to enforce any of its permits issued for the project.
 - 7) Finds and declares that a special statute is necessary because of the unique circumstances regarding the development of the Howard Terminal property in the City of Oakland.

EXISTING LAW:

- 1) Protects, pursuant to the common law doctrine of the public trust (Public Trust Doctrine), the public's right to use California's waterways for commerce, navigation, fishing, boating, natural habitat protection, and other water oriented activities. The Public Trust Doctrine

provides that filled and unfilled tide and submerged lands and the beds of lakes, streams, and other navigable waterways (public trust lands) are to be held in trust by the state for the benefit of the people of California.

- 2) Requires the Commission to be the steward and manager of the state's public trust lands. The Commission has direct administrative control over the state's public trust lands and oversight authority over public trust lands granted by the Legislature to local governments.
- 3) Grants, in trust, public trust lands to over 70 local public agencies (local trustees) to be managed for the benefit of all the people of the state and pursuant to the Public Trust Doctrine and terms of the applicable granting statutes.
- 4) Authorizes lands owned by the state and under the jurisdiction of the Commission to be leased by the Commission for grazing, commercial, industrial, and recreational purposes.
- 5) Authorizes the Commission to enter into exchanges, with any person or any private or public entity, of the state's public trust lands if specified conditions are met.
- 6) Requires the Commission to survey any public trust lands that are proposed to be granted within two years if there has been no prior survey and the granting statute does not contain the description of the lands using the metes and bounds land description method. Specifies that the grant shall not be effective until the completion of the survey.
- 7) Grants certain lands, tidelands and submerged lands to the City to be used only for the establishment, improvement and conduct of a harbor, wharves, docks, piers, slips, or other uses for navigation and commerce.
- 8) Establishes special procedures for California Environmental Quality Act review, additional conditions for certification, and expedited (270 day) judicial review for a proposed baseball park and mixed-use development to be located at the Howard Terminal in the City.

FISCAL EFFECT: This bill is keyed fiscal.

COMMENTS:

- 1) **Background on Public Trust Lands and Granted Lands.** The foundational principle of the common law Public Trust Doctrine is that it is an affirmative duty of the state to protect the people's common heritage in navigable waters for their common use. The traditional uses allowed under the Public Trust Doctrine were described as water-related commerce, navigation, and fisheries. As a common law doctrine, the courts have significantly shaped the Public Trust Doctrine in a number of important ways. Courts have found that the public uses to which sovereign lands are subject are sufficiently flexible to encompass changing public needs. The courts have also found that preservation of these lands in their natural state, so that they may serve as ecological units for scientific study, as open space, and as environments that provide food and habitat for birds and marine life, are appropriate uses under the common law Public Trust Doctrine. Courts have also made clear that sovereign lands subject to the Public Trust Doctrine cannot be sold into private ownership.

For over 100 years, the Legislature has granted public trust lands to local governments so the lands can be managed locally for the benefit of the people of California. There are over 70 local trustees in the state, including the ports of Los Angeles, Long Beach, San Diego, San Francisco, Oakland, Richmond, Benicia, and Eureka. While these trust lands are managed locally, the Commission has oversight authority to ensure those local trustees are complying with the Public Trust Doctrine and the applicable granting statutes.

- 2) **City of Oakland.** Beginning in 1852 and through a series of legislative grants from the state, the City was granted, in trust, sovereign tide and submerged lands located within its boundaries. Through the City's Charter, portions of these public trust lands are within the Port of Oakland (Port) and are managed by the City acting by and through its Board of Port Commissioners. The state granted portions of Howard Terminal property to the City to hold and manage for public trust uses. The Howard Terminal Property is approximately 50 acres and includes two deep-water berths adjacent to the Inner Harbor Channel. It is between Schnitzer Steel and Jack London Square. Marine terminal operations at the Howard Terminal property ended in 2014.

The Howard Terminal Property retains its capacity to function as a Marine terminal and is currently identified in BCDC Seaport plan for Port priority use. Currently, Howard Terminal is being used for ancillary maritime operations. The City has identified the Howard Terminal Property as a potential site for a new baseball park, and the Oakland Athletics have identified this site as their preferred location to develop a new baseball park. Last year's AB 734 (Bonta), Chapter 959, Statutes of 2018, establishes special CEQA procedures for a proposed baseball park and mixed-use development at Howard Terminal.

- 3) **BCDC.** BCDC is a state planning and regulatory agency with regional authority over the San Francisco Bay, the Bay's shoreline band, and the Suisun Marsh. BCDC was created in 1965 and is the nation's oldest coastal zone agency. Its mission is to protect and enhance San Francisco Bay and to encourage the Bay's responsible and productive use for this and future generations. State law requires sponsors of projects that propose to fill or extract materials from the Bay to apply for a BCDC permit. In addition to minimizing any fill required for an appropriate project and ensuring that the project is compatible with the conservation of Bay resources, BCDC is tasked with requiring maximum feasible public access within the Bay's 100-foot shoreline band. Throughout its existence, BCDC has approved projects worth billions of dollars, and works closely with all applicants – private and public – from a project's initial stages to ensure that they comply with state law. BCDC also leads the Bay Area's ongoing multi-agency regional effort to address the impacts of rising sea level on shoreline communities and assets. Its authority is found in the McAteer-Petris Act, the San Francisco Bay Plan, and other special area plans and laws and policies. This bill declares it does not limit the authority of the BCDC to review any project at the Howard Terminal Property or decide whether Howard Terminal still is a Port priority use.
- 4) **Bill Summary and Author's Statement.** This bill allows the Commission to enter into an exchange with the City of Oakland of filled or reclaimed tidelands and submerged lands or beds of navigable waterways, or interests in these lands, located in the Howard Terminal property, that are subject to public trust, for other lands under the jurisdiction and control of the City of Oakland. In order to do so, the Commission must find that all of the following conditions exist:

- a) The exchange meets the requirements of existing law for exchanges, as specified;
- b) The exchange ensures that the use of any lands or interests in lands exchanged is consistent with and furthers public trust purposes relating to maritime or water-dependent commerce, navigation, and fisheries; and,
- c) The exchange is in the best interests of the state.

This bill also allows the Commission to impose additional conditions on the exchange of land if the Commission determines that the conditions are necessary to protect the public trust, and clarifies BCDC's authority to consider seaport plan and bay area plan amendments to retain or remove seaport plan and bay plan port priority use designations, and BCDC's authority to approve or deny permits for those aspects of the Ballpark project that are within the Commission's jurisdiction.

This bill is sponsored by the City of Oakland.

According to the author, "The Oakland A's have called the City of Oakland its home for the last fifty years. With the impending loss of the Raiders to Las Vegas and the Golden State Warriors to San Francisco, it's critically important to the city and the entire East Bay region to retain a professional sports team.

"The team has determined Howard Terminal as the proposed site to build a new, privately financed, state of the art ballpark that will bring thousands of jobs while providing a significant economic boost to the region. A study by the Bay Area Council Economic Institute in June 2017 estimated that a new ballpark would generate \$3.05 billion of economic impact for the residents and businesses of the City of Oakland over the first ten years of operation.

"This specific site consists of a patchwork of historic uplands and filled former tidelands and submerged lands that are subject to oversight by the Port of Oakland, the State Lands Commission and BCDC. AB 1191 provides legislative direction and authority to these agencies that will allow them to consider the project for approval, conditioned upon findings that the project will achieve a wide range of public access, sustainability and environmental justice goals."

- 3) **Arguments in Support.** The City of Oakland writes that "The proposed project will open a previously inaccessible waterfront area for public use and enjoyment. With the Bay Area in the midst of a tremendous period of growth, and Oakland's rise as a nationally recognized city for tourism, quality of life, and urban vibrancy, now is the time to capitalize on this development opportunity to maximize the positive economic benefit for Oakland's residents and the region.

"Once implemented, we anticipate that the trust exchange will allow the development of trust-consistent uses, including public open space, waterfront access, and the baseball park, on trust lands, and the development of non-trust consistent uses, including general office and residential, on non-trust lands. This bill does not remove the Commission's authority to review and approve the proposed exchange and the trust-consistency of proposed uses on

trust lands, nor BCDC's authority to evaluate and approve the project through its major permitting process.

"It is anticipated that construction of the ballpark project will generate approximately 2,000 construction jobs. In addition, we expect substantial job generation from the operation of the ballpark and its surrounding uses, including hospital, office, restaurant, and retail jobs in Oakland and throughout the East Bay."

- 4) **Arguments in Opposition.** The opposition letter from the American Waterways Operators, California Trucking Association, Harbor Trucking Association, Pacific Merchant Shipping Association, and Schnitzer Steel, states, that "AB 1191 poses a significant threat to thousands of good jobs, will impact the ability of our businesses to provide international trade services to our customers, and may become a vehicle for efforts to avoid the basic state regulatory protections for seaport operations afforded by BCDC and the Commission.

"Existing law is simple: it currently protects all of the waterfront of the public marine terminals on the Oakland deep-water channel by reserving them exclusively for waterfront purposes, including for seaport operations and preservation of seaport-related jobs. AB 1191 is part of an effort to remove these restrictions from the waterfront of the Howard Terminal, and transfer those restrictions to uplands not on the waterfront that do not need the additional protections of the Tidelands Trust. This would be in order to allow the Oakland A's to transform industrial property in the heart of our Port, directly fronting our turning basin, and which currently supports over 325,000 intermodal truck transactions a year, into luxury housing units and a high-rise office complex next to a baseball stadium and hotel.

"We know exactly what this development means for international trade: we are no longer viewed as the primary or priority use at the Port of Oakland. The proposal's aggressive introduction of 4,000 housing units into our current industrial buffer zone, of which Howard Terminal is the lynchpin, and on the turning basin and in our working waterfront, with the City further encouraging rapid encroachment of dense housing up the estuary will have deleterious and unavoidable impacts on our industry that should be strenuously avoided."

- 5) **Double-Referral.** This bill was heard in the Natural Resources Committee on April 22, 2019, and passed with a 7-0 vote.

REGISTERED SUPPORT / OPPOSITION:

Support

City of Oakland [SPONSOR]
Oakland Athletics
Sheet Metal Workers' Local Union No. 104 (Smart)

Opposition

Acts Full Gospel Church Of God In Christ
American Waterways Operators
California Trucking Association
Harbor Trucking Association
Kingdom Builders Christian Fellowship
Northern California District Council - Ilwu
Pacific Merchant Shipping Association
Save the Bay
Schnitzer Steel Industries
Ship Clerks Association Ilwu Local #34

Analysis Prepared by: Debbie Michel / L. GOV. / (916) 319-3958