Assembly Bill No. 2649

Passed the Assembly August 29, 2012

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Chief Clerk of the Assembly

Passed the Senate August 27, 2012

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Secretary of the Senate

This bill was received by the Governor this _____ day of _____, 2012, at _____ o'clock ____M.

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Private Secretary of the Governor

CHAPTER _____

An act to add Section 3.3 to the Burton Act (Chapter 1333 of the Statutes of 1968), relating to local government.

LEGISLATIVE COUNSEL'S DIGEST

AB 2649, Ammiano. Tidelands and submerged lands: City and County of San Francisco: seawall lots.

Existing law grants to the City and County of San Francisco the right, title, and interest of the State of California 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, until January 1, 2094, that 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. With respect to those lands, the San Francisco Port Commission is authorized to lease all or a portion of the designated seawall lots if specified conditions are met.

This bill would, similarly, declare that, upon the State Lands Commission making specified findings, certain seawall lots are free from the use requirements of the public trust, the Burton Act trust, and the Burton Act transfer agreement, and would authorize the port to lease these lots, subject to certain requirements and conditions. The bill would authorize the port to provide a rent credit or other waiver or deferral of rent in connection with either a nontrust lease of these seawall lots that result in an effective rent to the port for below fair market value, if the State Lands Commission finds that certain conditions are met.

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

SECTION 1. For the purposes of this act the following terms have the following meanings:

(a) "Affordable housing" means housing for very low, low-, or moderate-income households as defined in paragraph (3) of subdivision (h) of Section 65589.5 of the Government Code.

(b) "Burton Act" means Chapter 1333 of the Statutes of 1968, as amended.

(c) "Burton Act transfer agreement" means that certain agreement dated January 24, 1969, between the state and the city, relating to the transfer of the Port of San Francisco from the state to the city, and any amendments to that agreement in accordance with its terms.

(d) "Burton Act trust" means the statutory trust imposed by the Burton Act, by which the state conveyed to the city, in trust and subject to certain terms, conditions, and reservations, the state's interest in certain tidelands, including filled lands, and lands dedicated or acquired by the city as assets of the trust.

(e) "Chapter 660" means Chapter 660 of Statutes of 2007, as amended.

(f) "City" means the City and County of San Francisco, a charter city and county, and includes the port.

(g) "Commission" means the State Lands Commission.

(h) "Designated seawall lot" or "designated seawall lots" means any or all of the parcels of real property situated in the city and commonly known as seawall lots 328, 330, 337, 347S, and 322-1, including a portion of Mission Rock Street, as shown on that certain map entitled "revised map of designated seawall lots," which is reproduced in Section 9 of this act and is on file with the commission and the port.

(i) "Historic pier" means any pier, marginal wharf, pier shed, bulkhead building, and any other building or structure in the San Francisco waterfront between and including Pier 48 and Pier 45 that has been included in the Port of San Francisco Embarcadero Historic District and that is either individually listed or eligible for listing on the National Register of Historic Places or has been designated as, or meets the standards for, resources contributing to the historic significance of the Port of San Francisco Embarcadero Historic District under federal law.

(j) "Historic structure" means any building, structure, or other facility, including a historic pier, that is located on port property and either is individually listed or eligible for listing on the National Register of Historic Places, or has been designated as, or

meets the standards for, a resource contributing to the historic significance of a nationally registered historic district, the proposed Pier 70 Historic District, or a district eligible for listing as a historic district under federal law.

(k) "Lease" means a ground lease or space lease of real property, license agreement for use of real property, temporary easement, right-of-way agreement, development agreement, or any other agreement granting to any person any right to use, occupy, or improve real property under the jurisdiction of the port.

(*l*) "Nontrust lease" means a lease of all or any portion of the designated seawall lots free from the use requirements established by the public trust, the Burton Act trust, and the Burton Act transfer agreement.

(m) "Person" means an individual, corporation, limited liability company, partnership, joint venture, business entity, business trust, association or other private organization or private entity, or any governmental entity or agency.

(n) "Pier 70 area" means the Pier 70 area as defined in subdivision (s) of Section 1 of Chapter 477 of the Statutes of 2011.

(o) "Port of San Francisco" or "port" means the city acting by and through the San Francisco Port Commission.

(p) "Preservation" means the rehabilitation, restoration, or preservation of historic piers or other historic structures in accordance with the Secretary of Interior's Standards for the Treatment of Historic Properties. Preservation includes seismic retrofitting, substructure repair, and other structural and life-safety improvements, provided that the improvement is necessary for, and in furtherance of, the preservation of historic piers or other historic structures.

(q) "Public trust" or "trust" means the common law public trust for commerce, navigation, and fisheries.

(r) "Seawall lot 322-1" means that parcel of real property situated in the city commonly known as seawall lot 322-1, as shown on that certain map entitled "revised map of designated seawall lots," which is reproduced in Section 9 and is on file with the commission and the port.

(s) "Seawall lot 337" means that parcel of real property situated in the city commonly known as seawall lot 337, as shown on that certain map entitled "revised map of designated seawall lots,"

which is reproduced in Section 9 of this act and is on file with the commission and the port.

(t) "Tidelands" means the lands lying below the elevation of ordinary high water, whether filled or unfilled, and includes submerged lands.

(u) "Transferable development rights" means transferable development rights as that term is defined in the city's planning code, as may be amended from time to time.

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

(a) The San Francisco waterfront is a valuable public trust asset of the state that provides special maritime, navigational, recreational, cultural, and historical benefits to the people of the region and the state.

(b) The lands comprising the San Francisco waterfront consist primarily of sovereign tidelands granted to the city by the state pursuant to the Burton Act. Under the city's charter, the granted lands are held and managed by the port. The Burton Act authorizes the port to use, conduct, operate, maintain, manage, regulate, improve, and control the San Francisco waterfront consistent with the public trust and the Burton Act trust.

(c) A unique attribute of the port is the numerous historic maritime resources present on port property, many of which are in need of major structural repairs and are not currently available for the use and enjoyment of the public. The Legislature has previously found that rectifying the deteriorating conditions along the San Francisco waterfront, the preservation of the numerous historic piers and other historic structures on port land, and the construction of waterfront plazas and open space, are matters of statewide importance that will further the purposes of the public trust and the Burton Act trust. The Legislature has also found that revitalization of the Pier 70 area and the restoration of its unique collection of historic maritime industrial buildings is of particular importance. As the port strives to make productive use of the Pier 70 area and other lands under its jurisdiction, it faces numerous obstacles related to the high costs of waterfront development, including costs associated with seismic safety improvements, historic rehabilitation, hazardous materials remediation, and providing public access to the waterfront. The success of the port's efforts to revitalize the waterfront depends in part on strategies for

increasing revenues from port lands and for reducing the costs of beneficial development projects.

(d) The seawall lots are tidelands that were filled and cut off from the waterfront by the construction of the great seawall (now occupied by the Embarcadero roadway) in the late 19th and early 20th centuries. Over time, certain of the seawall lots or portions thereof, including the designated seawall lots, have ceased to be useful for the promotion of the public trust and the Burton Act trust, except for the production of revenue to support the purposes of the Burton Act trust. The designated seawall lots are presently either vacant or leased on an interim basis, primarily for commuter parking.

(e) The Legislature, in Chapter 660, found that most of the designated seawall lots are no longer necessary for the purposes of the public trust or Burton Act trust. The Legislature also found that future revenues from the development and leasing of the designated seawall lots are an essential source of funds to preserve the port's numerous historic piers and historic structures, construct and maintain waterfront plazas and open space, and improve public access to the waterfront. Chapter 660 lifted the use restrictions of the public trust and Burton Act trust from those designated seawall lots and authorized the port to enter into nontrust leases of the lands, subject to certain conditions, and subject to the requirement that the lease revenues be used for specified trust purposes.

(f) Seawall lot 322-1 is presently used for surface parking primarily serving commuters. The lot was not included in Chapter 660, but like the other designated seawall lots, seawall lot 322-1 was filled and reclaimed as part of a highly beneficial plan of harbor development, has ceased to be tidelands, is cut off from the water, constitutes a relatively small portion of the tidelands granted to the city, is not currently being used, and is not anticipated in the foreseeable future to be used, for public trust or Burton Act trust purposes. It is the intent of the Legislature that, conditioned on the approval by the commission, seawall lot 322-1 be freed of the use requirements of the public trust, the Burton Act trust, and the Burton Act transfer agreement in the same manner and subject to the same requirements as the designated seawall lots under Chapter 660, subject to the additional provisions of this act.

(g) The lack of affordable housing is a critical problem that threatens the economic, environmental, and social quality of life

in California, and is a matter of statewide concern. The Legislature has previously found that attainment of the state's housing goals requires the cooperative participation of government and the private sector in an effort to expand housing opportunities and accommodate the housing needs of Californians of all economic levels. The Legislature has also found that the provision of housing affordable to low- and moderate-income households requires the cooperation of all levels of government, and that local and state governments have a responsibility to use the powers vested in them to facilitate the improvement and development of housing to make adequate provisions for the housing needs of all economic segments of the community. The Legislature has also recognized that local jurisdictions should encourage, to the maximum extent practicable, infilling existing urban areas.

(h) Some of the port's designated seawall lots, including seawall lot 322-1 and portions of seawall lot 337, are well-suited to support infill affordable housing development. Development of affordable housing typically requires a ground lease at rents that are below market. However, Chapter 660 requires the port to receive fair market value for nontrust leases of designated seawall lots.

(i) The city has implemented a number of local programs designed to encourage the development of affordable housing, including programs that impose fees, exactions or other obligations on new development. For example, the city's jobs-housing linkage program imposes fees on most types of commercial development to offset the demand for affordable housing generated by new employment.

(j) Private commercial development on port property is subject to the city's jobs-housing linkage program fees. These fees increase the already high costs associated with development and revitalization of port property. The project development costs for port property would be reduced if the jobs-housing linkage fees that would otherwise be imposed on development projects on port property could be reduced or waived in exchange for an equivalent amount of rent credits or similar incentives provided by the port to encourage affordable housing development on other port property.

(k) A purpose of this act is to reduce the costs associated with development that will revitalize the waterfront, facilitate the preservation of historic piers and structures, and benefit the public

trust, while also encouraging affordable housing development on port lands no longer needed for trust purposes, by authorizing the port, subject to commission approval, to grant rent credits or similar incentives for affordable housing development on seawall lot 322-1, and portions of seawall lot 337, or other port property where housing is permitted, provided the port can apply those credits to reduce the affordable housing fees or other obligations imposed on development within the Pier 70 area, seawall lot 337, or on other port lands and subject to the conditions set forth in this act.

(*l*) Seawall lot 322-1 is located in the city's Northeast Waterfront Historic District. This act includes conditions to ensure that any development of seawall lot 322-1 for nontrust use is compatible with the historic and architectural maritime character of the district.

(m) The preservation of the port's historic piers and other historic structures is critical for the preservation of the city's rich maritime history, furthers trust purposes, and is of statewide benefit. The city has adopted programs to encourage the preservation of historic resources, including a transferable development rights program. This act amends the Burton Act to clarify that the port may transfer transferable development rights to preserve historic piers and structures on port property, to the extent authorized under local law and subject to certain limitations.

SEC. 3. (a) Seawall lot 322-1 shall remain subject to the use requirements of the public trust, the Burton Act trust, and the Burton Act transfer agreement until the commission finds both of the following:

(1) Seawall lot 322-1 is no longer necessary for public trust or Burton Act trust purposes.

(2) Lifting the use requirement of the public trust, the Burton Act trust, and the Burton Act transfer agreement until January 1, 2094, is in the best interest of the state.

(b) If the commission makes the findings identified in subdivision (a), seawall lot 322-1 shall be free from the use requirements of the public trust, the Burton Act trust, and the Burton Act transfer agreement for the period between the effective date of this act and January 1, 2094, and shall be treated as a designated seawall lot for purposes of the authority granted to the port under Chapter 660. The port may enter into a nontrust lease for all or any portion of seawall lot 322-1, subject to the

requirements of Section 4 of Chapter 660 and this act. Section 6 of Chapter 660 shall not apply to seawall lot 322-1.

(c) As a condition for commencing vertical construction on seawall lot 322-1 for a nontrust use pursuant to subdivision (b), the port shall obtain a certificate of appropriateness or a comparable determination of compatibility of the development with the historic character of the surrounding area, as may be provided under the city's planning code. For purposes of effectuating this section, the port is authorized to submit to the procedures set forth in the city's planning code for obtaining a certificate of appropriateness or comparable determination.

SEC. 4. (a) Notwithstanding subdivision (c) of Section 4 of Chapter 660, the port may, conditioned on the approval of the commission, provide a rent credit or other waiver or deferral of rent in connection with a nontrust lease of seawall lot 322-1 that results in an effective rent to the port below fair market value, if the commission finds that both of the following conditions are met:

(1) The nontrust lease is for affordable housing. The lease may allow other uses, including, but not limited to, commercial uses and market rate housing, provided that no portion of the rent credit, waiver, or deferral is applied to the rent for those other uses.

(2) The port is entitled to apply the value of the rent credit, waiver, or deferral of rents in connection with a nontrust lease of seawall lot 322-1 as an offset against fees or other exactions or obligations that would otherwise be levied or imposed by the city on development projects located on Pier 70.

(b) Notwithstanding subdivision (c) of Section 4 and Section 6 of Chapter 660, the port may, conditioned on the approval of the commission, provide a rent credit or other waiver or deferral of rent in connection with a nontrust lease of seawall lot 337 that results in an effective rent to the port below fair market value, if the commission finds that both of the following conditions are met:

(1) The nontrust lease is for affordable housing. The lease may allow other uses, including, but not limited to, commercial uses and market rate housing, provided that no portion of the rent credit, waiver, or deferral is applied to the rent for those other uses.

(2) The port is entitled to apply the value of the rent credit, waiver, or deferral of rent in connection with a nontrust lease of

seawall lot 337 as an offset against fees or other exactions or obligations that would otherwise be levied or imposed by the city on any other development project located on seawall lot 337, if approved by the commission in accordance with this subdivision, relating to the other project's impact on, or demand for, affordable housing, including, but not limited to, fees imposed pursuant to the city's jobs-housing linkage program.

(c) The port shall provide the commission with documentation necessary to support the findings required by Section 3 of this act and subdivision (a) or (b) of this section at or prior to the time the port submits the proposed nontrust lease and other documentation required under subdivision (c) of Section 4 of Chapter 660.

(d) Nothing in this section shall be construed as limiting the port's authority to provide rent credits, waivers, or deferrals under a nontrust lease in exchange for other valuable consideration provided by the lessee that meets the fair market value requirement of Chapter 660.

(e) Nothing in this section shall be construed as limiting the port's authority under the Burton Act to use or lease the designated seawall lots for uses permitted by the Burton Act, subject to any applicable limitations of state law.

SEC. 5. If the port constructs structures other than affordable housing on seawall lot 322-1, the port shall acquire, subject to the approval of the commission and in consultation with the California Coastal Conservancy, land of equal monetary value to seawall lot 322-1 that is adjacent to the water and promotes the public trust in exchange for permanently lifting the trust use restrictions at seawall lot 322-1. If the port is unable to find available and suitable land to acquire, the port shall make a deposit of an amount that is equal to the value of seawall lot 322-1 to the Kapiloff Land Bank Fund pursuant to the Kapiloff Land Bank Act (Division 7 (commencing with Section 8600) of the Public Resources Code).

SEC. 6. Sections 3 to 5, inclusive, of this act shall be inoperative on January 1, 2094, after which date the use of the designated seawall lots shall be consistent with the public trust, the Burton Act trust, and the Burton Act transfer agreement. No later than January 1, 2094, all structures, buildings, and appurtenances on the designated seawall lots not consistent with the purposes of the public trust, the Burton Act trust, and the Burton Act transfer agreement shall be removed or modified, including

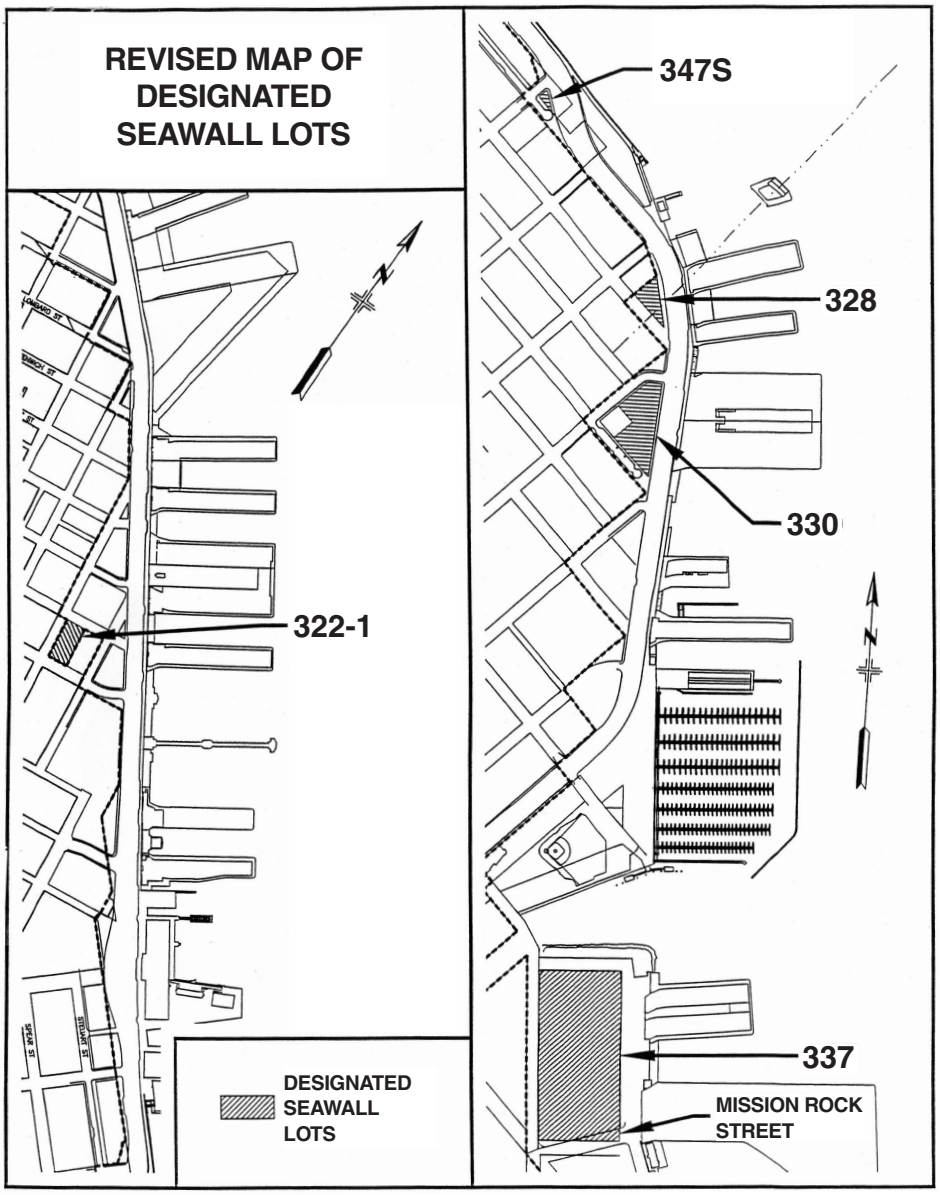
any necessary restoration or remediation of the seawall lots, to facilitate public trust uses.

SEC. 7. Section 3.3 is added to the Burton Act (Chapter 1333 of the Statutes of 1968), to read:

Sec. 3.3. For purposes of subdivision (e) of Section 3, the preservation or restoration of marine resources consistent with the primary mission of the San Francisco Harbor may include the transfer by the City and County of San Francisco, acting by and through its Port Commission (port), of the port's transferable development rights, as defined in the city's planning code, as may be amended from time to time, in connection with the preservation of a historic pier or historic structure under port jurisdiction. To the extent authorized by the planning code and upon a determination by the port commission that there are no foreseeable public trust needs for the development rights, the port may transfer development rights associated with a historic pier or historic structure on port property, provided that if the affected port property is subject to the public trust and the Burton Act trust, the restriction on the port's development rights following transfer shall be for a period not exceeding 66 years. The port shall use the proceeds from a transfer of development rights solely for the furtherance of the purposes specified by this act, which include the preservation of a historic pier or historic structure. For purposes of effectuating this section, the port is authorized to submit to the procedures for transfer of development rights set forth in the city's planning code.

SEC. 8. The Legislature finds and declares that unique circumstances exist at the San Francisco waterfront as described in Section 2 of this act, and that therefore this act sets no precedent for any other location or project in the state.

SEC. 9. The following map is a part of this act:


REVISED MAP OF
DESIGNATED
SEAWALL LOTS
322-1
DESIGNATED
SEAWALL
LOTS
347S
328
330
337
MISSION ROCK
STREET

SEC. 10. Notwithstanding any other law, for purposes of Chapter 660 and the Burton Act, the terms "historic pier," "historic structure," and "preservation" shall have the same meaning as those terms are defined in Section 1 of the act adding this section.

SEC. 11. The Legislature finds and declares that, because of the unique circumstances applicable only to the lands described in this act, a statute of general applicability cannot be enacted within the meaning of subdivision (b) of Section 16 of Article IV of the California Constitution. Therefore, this special statute is necessary.

SEC. 12. If any provision of this act, or its application to any person, property, or circumstance, is held invalid by any court, the invalidity or inapplicability of such provision shall not affect any other provision of this act or the application of that provision to any other person, property, or circumstance, and the remaining portions of this act shall continue in full force and effect, unless enforcement of this act as so modified by and in response to that invalidation would be grossly inequitable under all of the circumstances, or would frustrate the fundamental purposes of this act.

Approved _____, 2012

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Governor