

# Staff Report 73

## **PARTY:**

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California State Lands Commission

## **PROPOSED ACTION:**

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Authorize the Executive Officer or her designee to solicit proposals, obtain quotes, negotiate a fair and reasonable price, and award and execute an agreement for assistance with the preparation of Public Trust Guiding Principles for a Resilient San Francisco Bay, a project by the Commission and the San Francisco Bay Conservation and Development Commission (BCDC).

## **BACKGROUND:**

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Sea level rise and other climate change-related impacts, such as more frequent and intense storms, stronger and higher waves, and rising groundwater tables, threaten the Public Trust tidelands and resources of San Francisco Bay<sup>1</sup>. The response to sea level rise, especially along the Bay's highly urbanized and developed shorelines, will require substantial expenditures, adaptation projects, and redesigned waterfronts. The combined effects of sea level rise and the implementation of shoreline adaptation projects could significantly alter Public Trust lands and how the public can access and use those lands and resources. This presents a challenge and an opportunity to ensure that the plans for adaptation and redesign of the San Francisco Bay's waterfront meet the public's needs for, and uses of Public Trust lands. In some cases, redevelopment of urban waterfronts

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<sup>1</sup> In the context of this report, the San Francisco Bay refers to the submerged waters of San Francisco Bay and the surrounding shoreline and tidelands that fall within the overlapping jurisdiction of the Commission and BCDC, which is generally bounded by the ambulatory mean high tide line unless fixed through a court decision or an agreement with the Commission.

will be concurrent with sea level rise adaptation, providing opportunities for multiple improvements and public benefits, including sea level rise resilience, shoreline restoration, and increasing public access and recreational opportunities.

Conversely, adaptation or redevelopment projects could impair Public Trust resources and uses if they disproportionately focus on private, non-trust assets and uses. For example, some recent proposals for redevelopment of Public Trust land along the San Francisco Bay shoreline have included infrastructure that supports private uses, such as office space, and building designs that limited public access to the waterfront. New projects along the waterfront should benefit the public and be resilient to the higher water levels that are projected for the future.

Widescale adaptation planning is underway throughout the San Francisco Bay and initial shoreline resiliency projects have been implemented. BCDC leads [Bay Adapt](#), a regional strategy for the San Francisco Bay that establishes agreement on the actions necessary to protect people and the natural and built environment from rising seas. The current phase of Bay Adapt is the development of a regional shoreline adaptation plan to guide the creation of coordinated, locally-planned sea level rise adaptation actions that work together to meet regional goals.

Commission and BCDC staff will collaborate to develop guiding principles that address sea level rise adaptation and development on Public Trust lands, assets, and resources in San Francisco Bay, with a focus on Public Trust lands and resources legislatively granted in trust to local governments. The guiding principles will focus on preparing the waterfront to be resilient to the threats posed by rising sea levels, considering the diverse uses and resources of the San Francisco Bay, from ports and harbors, to working waterfronts, to recreation and tourism serving amenities, to wetlands, dunes, and beaches. This effort will complement Bay Adapt by framing specific considerations that must be applied for the protection and adaptation of Public Trust lands, resources, uses, and values. The development of the guiding principles will be informed by meaningful consultation and engagement with California Native American Tribes, environmental justice communities, ports, harbors, local governments, private landowners, and the public to understand how the adaptation and redesign of the San Francisco Bay's waterfront can benefit the diverse uses and resources of San Francisco Bay.

There is precedent for the Commission and a regulatory agency involved in sea level rise planning for Public Trust lands to collaboratively develop Public Trust Guiding Principles. In 2023, the California Coastal Commission adopted [Public Trust Guiding Principles and Action Plan](#) that followed coordination with California Native American Tribes and Commission staff.

## PROJECT DESCRIPTION:

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The agency staffs will collaboratively develop guiding principles for sea level rise adaptation and development on Public Trust lands in San Francisco Bay. These will be informed by an understanding of sea level rise vulnerabilities, public needs and values, and applicable laws and policies. The final deliverable, *Public Trust Guiding Principles for a Resilient San Francisco Bay*, will include four sections:

1. Sea level rise vulnerabilities of Public Trust lands and resources within San Francisco Bay.
2. Understanding the public needs and values for Public Trust lands and resources within San Francisco Bay.
3. A legal and policy overview for sea level rise adaptation and waterfront development on San Francisco Bay's Public Trust lands
4. Guiding principles for the protection of Public Trust lands and resources within San Francisco Bay.

Staff proposes retaining a consultant to assist with Section 2: Understanding the public needs and values for Public Trust lands and resources within San Francisco Bay. The scope of work for the consultant would include, but is not limited to, the following:

- Conduct joint outreach and engagement around the San Francisco Bay's urbanized shorelines and piers to understand public needs and values for Public Trust lands resources within San Francisco Bay. This may include outreach with the private sector, tribal communities, local communities, local governments, ports and harbor districts, and granted land trustees.
- Prepare an analysis of the public needs and values for San Francisco Bay's waterfront and sea level rise adaptation projects.
  - Summarize the findings of the consultant's outreach and BCDC's previous public outreach efforts.
  - Describe how sea level rise adaptation projects and waterfront development projects can benefit Public Trust resources and uses and align with the public needs and values.

- Create accessible informational/educational materials to convey what the Public Trust is, why it matters, and the public's rights to access and use trust resources and lands in San Francisco Bay.
- Lead the visual and graphic design for the final deliverable.

The consultant's analysis and preparation of Section 2 will be combined with Staff's preparation of Sections 1, 3, and 4 to produce the final report.

It is anticipated that the consultant's work will begin in Fall 2024 and conclude in Fall 2025. The final deliverable, *Public Trust Guiding Principles for a Resilient San Francisco Bay*, will be completed by Summer 2026. A grant from the Ocean Protection Council will fund the consultant services, and the Commission and BCDC will provide matching funds by way of staff time. While staff is exploring the possibility of using a pre-qualified Architectural and Engineering firm to assist with Section 2, if no such firm is suitable or available, staff will need to release a Request for Qualifications to obtain the necessary consultant services.

## **STAFF ANALYSIS AND RECOMMENDATION:**

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### **AUTHORITY:**

Public Resources Code sections [6005](#), [6106](#) and [6216](#); Government Code sections [14838.5](#) and [19130](#); Public Contract Code section [10335](#) et seq.; California Code Regulations title 2 § [2980 - Div. 3, Chapter 1, Article 13](#); State Contracting Manual, vol. 1 5.08, 5.15 (rev. 04/22).

### **PUBLIC TRUST AND STATE'S BEST INTERESTS:**

San Francisco Bay's Public Trust lands and resources hold immense importance for the State of California as vital economic hubs, iconic recreational and tourist destinations, diverse ecosystems, and historically significant maritime industries. Sea level rise poses multiple threats to these essential public resources through the erosion and inundation of wetlands and shoreline parks, damage to waterfront structures such as historic piers and visitor-serving facilities, and the loss of public access, tourism, and recreational opportunities. Preparing for these impacts will require a reimagining of the San Francisco Bay's waterfront to equitably adapt to future sea levels and ensure the use of Public Trust lands and resources continues to serve the needs of current and future generations.

Federal, state, and local governments are responding to climate change and sea level rise by actively developing and implementing adaptation policies and plans. The Port of San Francisco recently released draft adaptation plans as part of its [San Francisco Waterfront Coastal Flood Study Draft Integrated Feasibility Report and Environmental Impact Statement](#), which estimates \$13 billion in costs for the proposed solutions. Over the next decade, similar adaptation plans are expected to be developed by local governments in the Bay area in compliance with [SB 272](#) (Laird, 2023), which requires local governments in the coastal zone or within the San Francisco Bay to develop a sea level rise plan as part of either a local coastal program or a shoreline resiliency plan that includes certain information, including sea level rise adaptation strategies and recommended projects, requires local governments to comply by January, 2034, and prioritizes funding for implementation of sea level rise adaptation strategies in approved plans, among other things. BCDC recently estimated that the total cost of adaptation throughout the Bay could be \$110 billion and acknowledged that “From our iconic beaches, urban shorelines, bustling ports, and vast wetlands, no part of our shoreline will remain unchanged” ([BCDC, 2023](#)).

The Commission and local trustees of granted lands have the responsibility to manage California’s Public Trust lands on behalf of the public and protect the public’s rights and needs associated with those lands. As the Commission, BCDC, and local trustees review adaptation and redevelopment plans and proposals, staff believes it is in the State’s best interests to have an up-to-date evaluation of the public’s needs and values regarding the San Francisco Bay’s waterfront in consideration of sea level rise and the impending changes to the shoreline. This evaluation will be critical for developing the guiding principles and informing future uses of Public Trust lands and aligning them with the evolving needs of the public and the purposes of the Public Trust.

### **ENVIRONMENTAL JUSTICE:**

Environmental justice is defined by California law as “the fair treatment and meaningful involvement of people of all races, cultures, and incomes with respect to the development, adoption, implementation, and enforcement of environmental laws, regulations, and policies”.<sup>2</sup> This definition is consistent with the Public Trust Doctrine’s principle that the management of Public Trust lands is for the benefit of all people. Through its [2018 Environmental Justice Policy](#), the Commission

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<sup>2</sup> Gov. Code, § 65040.12.

reaffirmed its commitment to an informed and open process in which all people are treated equitably and with dignity, and in which its decisions are tempered by environmental justice considerations. A key goal of the policy is to minimize additional burdens on and increase benefits to disadvantaged communities resulting from a proposed project or lease. This is also a key goal of the guiding principles, aiming to minimize additional burdens from the impacts of sea level rise and increase benefits to disadvantaged communities from sea level rise adaptation and waterfront development projects. The Commission's partner in this project, BCDC, adopted the [Environmental Justice and Social Equity Amendment](#) to the Bay Plan in 2019, which affirms that policy decisions will strive to incorporate the results of meaningful and robust community involvement to lessen disproportionate impacts. Therefore, staff recommends that the preparation of the guiding principles be supported by consultant services for conducting outreach and engagement with disadvantaged communities, seeking to understand their needs and values for the San Francisco Bay waterfront and sea level rise adaptation projects.

### **CONCLUSION:**

Sea level rise and the actions taken to prepare for it will significantly alter San Francisco Bay's waterfront, potentially affecting how the public can access and use Public Trust lands and resources. The guiding principles to be developed by the staff of the Commission and BCDC will inform plans for waterfront development and adaptation projects on Public Trust lands and highlight opportunities to protect and enhance the diverse uses and resources of San Francisco Bay and are in the best interests of the state. The ability to contract for consulting services to assist with this project will ensure it is thorough and completed on time.

### **OTHER PERTINENT INFORMATION:**

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1. The California State Lands Commission is a voting member of the San Francisco Bay Conservation and Development Commission.
2. This proposed action is consistent with the "Leading Climate Activism," "Meeting Evolving Public Trust Needs," "Prioritizing Social, Economic, and Environmental Justice," and "Committing to Collaborative Leadership" Strategic Focus Areas of the Commission's 2021-2025 Strategic Plan.
3. Authorization to solicit proposals, obtain quotes, negotiate a fair and reasonable price, and award and execute an agreement is not a project as defined by the

California Environmental Quality Act because it is an administrative action that will not result in direct or indirect physical changes in the environment.

Authority: Public Resources Code section 21065 and California Code of Regulations, title 14, section 15378, subdivision (b)(5).

## **RECOMMENDED ACTION:**

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It is recommended that the Commission:

1. Find that the services contracted are not available within civil service, cannot be performed satisfactorily by civil service employees, or are of such a highly specialized or technical nature that the necessary expert knowledge, experience, and ability are not available through the civil service system, as specified in Government Code section 19130, subdivision (b)(4).
2. Find that the selection of consultants under this process does not affect small businesses as defined in Government Code section 11342.610, because they will be afforded equal opportunity to submit statements of qualifications and performance data.
3. Authorize the Executive Officer or her designee to solicit proposals from consultants, negotiate a fair and reasonable price, and award and execute an agreement for assistance with the preparation of the Public Trust Guiding Principles for a Resilient San Francisco Bay in accordance with State policies and procedures.