

# **LIVEABOARD BOATS AND THE MCATEER-PETRIS ACT, PUBLIC TRUST, AND SAN FRANCISCO BAY PLAN**

ERIK BUEHMANN, PLANNING MANAGER

SEPTEMBER 7, 2023

# INTRODUCTION

- **McAteer-Petris Act.** Its origins and requirements
- **Public Trust.** How it is relates to BCDC's laws and policies.
- **Bay Plan.** Review Bay Plan policies.
- **Long-Range Planning Priorities.**

# THE CREATION OF THE McATEER-PETRIS ACT



Source: Save the Bay





# FILL REQUIREMENTS OF THE McATEER-PETRIS ACT

- Public benefits from fill clearly exceed public detriment
  - **Fill is for water-oriented uses\*** (e.g., ports, airports, bridges, wildlife refuges, and recreation)
  - **No alternative upland location exists for the fill**
  - Fill is the minimum amount necessary to achieve the project purpose
  - Fill minimizes harmful effects to the Bay
  - Fill is constructed with sound safety standards (e.g., seismic, flooding hazards)
- (McAteer-Petris Act §66605)



# PUBLIC TRUST DOCTRINE

- Historically, the public trust referred to the basic right of the public to use its waterways to engage in “commerce, navigation, and fisheries.”
- The public trust is continuously evolving to protect the public’s use and needs in California’s waterways, and includes the right to swim, boat, and engage in other forms of water recreation, and to preserve lands in their natural state in order to protect scenic and wildlife habitat values.
- **RESIDENTIAL AND GENERAL OFFICE USES ARE NOT CONSISTENT WITH THE PUBLIC TRUST**

# SAN FRANCISCO BAY PLAN PUBLIC TRUST POLICIES

## Findings:

- Virtually all unfilled tidelands and submerged lands within the Commission’s jurisdiction are subject to the public trust.
- The public trust is a paramount public property right held in trust by the state for the benefit of the public.
- The purpose of the public trust is to assure that the lands to which it pertains are kept for trust uses.
- The McAteer-Petris Act and Bay Plan are an exercise of authority by the Legislature over public trust lands and establish policies for meeting public trust needs.

## Policies:

When the Commission takes any action affecting lands subject to the public trust, it should assure that the action is consistent with public trust needs for the area. In case of lands subject to legislative grants, that the terms of the grant are satisfied and the project is in furtherance of statewide purposes.



# SAN FRANCISCO BAY PLAN RECREATION POLICY 3.C



Live-aboard boats. Live-aboard boats should be allowed only in marinas and only if:

- 1) Number not exceed ten percent of the total authorized boat berths

“UNLESS the applicant can demonstrate clearly that a greater number of live-aboard boats is necessary to provide security or other use incidental to the marina use”

- (2) The boats would promote and further the recreational boating use of the marina (for example, providing a degree of security), and are located within the marina consistent with such purpose

# BCDC STAFF RECOMMENDATION ON LIVE-ABOARD POLICIES

- Review of the live-aboard policies would require review of the entire Recreation Policies in the San Francisco Bay Plan.
- BCDC staff does not currently have the resources for a project of this scope.
- Given McAteer-Petris Act requirements and other Commission priorities, BCDC staff does not recommend entering into a project to review the Live-Aboard Boat policies at this time.



# LIVEBOARD BOATS AND THE MCATEER-PETRIS ACT, PUBLIC TRUST, AND SAN FRANCISCO BAY PLAN



erik.buehmann@bcdc.ca.gov



<https://www.bcdc.ca.gov/planning/>