

To: The Planning Commission
From: Dana Dillworth
RE: 1000 Marina Boulevard
February 23, 2023

Pave Paradise, Put up a Parking Lot

There once were limits, setbacks established for the benefit of the **Public and Environment**. They were required in recognition that the Bay, OUR BAY, was filled for Sierra Point to exist. A Public Trust issue of the violation within that setback still exists with us the stakeholders for the environment of flora and fauna, in the matter before you, in spite of the Public benefit of a bike path and new landscaping.

Set-back regulations require access to the shore and promotion of the education and recreational use of the waterfront. The plan before you exchanges beneficial setbacks for parking. It provides no amenities for rest, no kiosk or definition of the brackish waters below, no recognition of the mountain and faultlines to the west, but wait, a positive gain of parking. If it were 24-hr. dedicated parking for the benefit of the shore-going Public and a trailhead I might still frown because of the loss of daytime Public Access to the North Shore in other projects.

Additionally, are you aware that the City has a Sierra Point Open Space Master Plan in progress? They are still seeking input and the first question I will ask is why haven't we included ALL of Sierra Point's Open Space, the South shore, and the Bay Trail? In these meetings they refer to input from the "stakeholders." We are the stakeholders, but never invited into these meetings. This seems to be within their mission. Please refer this matter to the whole group so that there can be consistency in design and amenities. A true opportunity for Public input.

I wonder if you have been out to Sierra Point and also South San Francisco's Oyster Point. Please do visit the entire shores and compare how South San Francisco's waterfront has rounded paths, little bench insets, water fountains, trash cans, and access to the tides. If you run laboradors, you know what I mean, access to the shore is paramount.

If you pass this soulless bike path as-is, with no additional benefit to the Public, then you have allowed this landowner to block and steal our entire Northwest waterfront. If parking is the only benefit you can make of this area, then I ask that you send it to the committees that our community has established to review environmental, recreational, and parking regulations.

There is more information in my letter to BCDC. I hope, just once, you recognize that something's remiss when we there is no mention of sea-level rise, no mention of potential toxins in the soil being excavated, no mention of Public amenities. I ask that you have the applicant work with the Public more. While I can envision the beauty of New Zealand Christmas Trees in bloom, humming birds fight over mine, I think there could be decisions made more sensitive to Brisbane, California. This should be a mutual project... not just a path and extra parking.

Thank you for your time.

If you are not familiar with the Public Trust, here are some references:

What is the Public Trust and why is this an issue?

Public Trust Rights established in the Magna Carta were strengthened by later laws in England and subsequently became part of the common law of the United States. The United States Supreme Court first accepted the public trust doctrine in *Martin v. Waddell's Lessee* in 1842, confirming it several decades later in *Illinois Central Railroad v. Illinois*, 146 U.S. 387 (1892).

The United States Supreme Court held that common law public trust doctrine prevented the government from alienating the public right to the lands under navigable waters (except in the case of very small portions of land which would have no effect on free access or navigation). They claimed that states have public ownership of all submerged land in navigable waters, (including 1980, when this landfill was created) that states manage these lands in trust for the citizens and that no state legislature can abdicate its authority as the trustee of these resources.

The public trust applies to both waters influenced by the tides and waters that are navigable in fact. The public trust also applies to the natural resources (mineral or animal) contained in the soil and water over those public trust lands. Certain cultural resources were later also added as a public trust.

The doctrine has also been used to provide public access across and provide for continued public interest in those areas where land beneath tidally influenced waters has been filled. In some cases, the uses of that land have been limited (to transportation, for instance) and in others, there has been provision for public access across them. Source: Wikipedia

Please review the following:

State of California, State Lands Commission: <https://www.slc.ca.gov/public-engagement>

Limitations on legislative powers to give away trust lands: *Illinois Central Railroad Co. v. Illinois*, 146 US 387 (1892)

Public Trust rights remain in sold tidelands: *People v. Calif. Fish Co.*, 166 Cal. 576 (1913)

Public Trust uses include environmental protection: *Marks v. Whitney*, 6 C.3d 251 (1971)

Public Trust rights on lands sold in central San Francisco Bay: *Berkeley v. Superior Court*, 26 C.3d 515 (1980)

Public Trust rights on lands between high and low water on non-tidal navigable lakes and streams: *Calif. v. Sup. Court (Lyon)*, 29 C.3d 210 (1981) *Calif. v. Sup. Court (Fogerty)*, 29 C.3d 240 (1981)