

SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION

50 California Street • Suite 2600 • San Francisco, California 94111 • (415) 352-3600 • FAX: (415) 352-3606 • <http://www.bcdc.ca.gov>

October 21, 2011

TO: Commissioners and Alternates

FROM: Will Travis, Executive Director (415/352-3653 travis@bcdc.ca.gov)
Lindy Lowe, Senior Planner (415/352-3642 lindy1@bcdc.ca.gov)

SUBJECT: **Staff Recommendation on Proposed Descriptive Notice for Possible Bay Plan Amendment No. 4-11 to Modify the *San Francisco Waterfront Special Area Plan* regarding the Open Water Basin Policies at the Brannan Street Wharf, Rincon Point, Broadway and Northeast Wharf Open Water Basins.**
(For Commission consideration on November 3, 2011)

Staff Recommendation

The staff recommends that the Commission: (1) adopt the attached Descriptive Notice to initiate the process of considering a possible amendment of the *San Francisco Waterfront Special Area Plan*, an element of the *San Francisco Bay Plan*, concerning the Brannan Street Wharf; Rincon Point; Broadway and Northeast Wharf Open Water Basins; and (2) schedule a public hearing for January 5, 2012 to consider the proposed amendment.

Staff Report

Proposed Amendment. The Port of San Francisco and the America's Cup Event Authority, LLC have applied to the Commission to amend *San Francisco Waterfront Special Area Plan* (SAP), an element of the *San Francisco Bay Plan* (Bay Plan) to: (1) temporarily use the Brannan Street Wharf Open Water Basin to moor team racing yachts and several large, private yachts for the 34th America's Cup (AC34) Events, (2) to temporarily berth large, private yachts in a portion of the Rincon Point Open Water Basin from the northern boundary of Rincon Park to Pier 14, (3) to temporarily berth large, private yachts in the Broadway Open Water Basin and (4) to temporarily berth a variety of vessels in the Northeast Wharf Open Water Basin. The proposed uses are inconsistent with the current open water basin policies in the SAP. The Port of San Francisco and the America's Cup Event Authority amendment request is a proposal that, if allowed, would result in the temporary mooring and berthing of vessels in all four of the designated open water basins. (See Figure 1)

Three of the four open water basins are also contemplated for long-term uses, which are not the subject of this amendment, but are related to actions that are subject to this amendment. These long-term uses include:

- (1) a recreational marina in the Rincon Point Open Water Basin; the rights to negotiate the development rights would be triggered by the dredging necessary for the temporary use that is the subject of this amendment;
- (2) a recreational marina in the Brannan Street Wharf Open Water Basin, the rights to negotiate the development rights are triggered by the dredging necessary for the temporary use that is the subject of this amendment; and

- (3) a cruise ship terminal in the Northeast Wharf Open Water Basin, which is not the subject of this amendment, but is the subject of an amendment (No. 3-11) initiated by the Commission on May 5, 2011, with a public hearing re-scheduled from October 6, 2011 to January 5, 2012.

The Host and Venue Agreement for the 34th America's Cup, which is a legal agreement between the City of San Francisco and the America's Cup Event Authority, LLC, states that the dredging of the Rincon Point Open Water Basin and the Brannan Street Wharf Open Water Basin provides the Event Authority with the rights to negotiate development rights for the long-term use of both designated open water basins as recreational marinas. While the amendment request from the Port and the Event Authority only identifies the temporary use as the subject of the amendment request, it is important to evaluate the request, which includes dredging at both basins, in the context of the right to negotiate long-term development rights that are triggered by dredging for the temporary uses.

Background. The Bay Plan and SAP were amended in 2000 to alter BCDC's policies regarding fill removal and permitted use on piers, and this effort provided the opportunity to comprehensively plan the section of the waterfront from China Basin to Pier 35. The plan amendments were intended to strategically achieve the goals of the replacement fill policy, otherwise known as the 50 percent, rule rather than relying on a project-by-project approach. The amendments also set aside the McAteer-Petris Act requirement that uses on piers must be water-oriented.

Prior to the 2000 amendment, the Bay Plan and SAP required that each project along the San Francisco waterfront that involved substantially rehabilitating a pier had to remove or provide public access on approximately 50 percent of that pier or another pier within the same geographic vicinity. By requiring that each project comply with the policy, both project and fill removal implementation was difficult and led to unreliable results. Fill may have been removed, but not in the most ideal locations. A site that was adequate for a certain project could be required to reduce its size and thereby eliminate the feasibility of the project. The new use requirements broadened the range of possible uses, and increased flexibility for the Commission, the Port and project proponents, increasing the likelihood that the waterfront would be developed with a vibrant mix of uses that served the community and the region.

A key purpose of the 2000 amendment to the SAP was to find the best locations for projects and the best locations for fill removal and, in a comprehensive plan amendment for the northeast waterfront, identify those locations and remove the requirement for each project to comply separately, which would likely have resulted in a haphazard approach to fill removal and to project design. The intent was to ensure that the result was a waterfront with accessible open water, public plazas, public access and viable project sites in a way that provided a rhythm of uses that complimented one another and provided public open spaces and views to provide relief from the more intensely developed areas.

In order to approve an amendment to the SAP, the Commission must make the following finding: "[f]uture amendments of the SAP, as adopted on July 20, 2000, affecting the Northeastern Waterfront Area (Pier 35 to China Basin), may only be approved if the Commission finds that the revised public benefits and revised development entitlement would be in balance and the public benefits would be sufficient to warrant the Commission finding that the revised balance of public and private benefits would be necessary to the health, safety and welfare of the public in the entire Bay Area."

Staff Analysis. The proposal to use all four of the open water basins for the temporary mooring and berthing of vessels results in the loss of public benefits associated with all four of these open water basins for a time period varying from four months to two years. Generally, the SAP states “Open Water Basins should be focal points of public use and enjoyment of the northeast waterfront. Open Water Basins should provide opportunities for physical access between the Bay and piers and should provide new and substantial Bay views from the boundary piers framing the Open Water Basins.” The majority of the open water basins along the northeast waterfront are paired with existing or planned public plazas or public spaces and the relationship between the public plazas and spaces with the open water basins is an important component of the public benefits associated with these basins, as is the location of the basins as related to one another. The basins are located in a way that is intended to provide relief and Bay views between areas of more intense development with fewer opportunities for Bay views.

The policies for each designated Open Water Basin are different, recognizing that there are different benefits and compatible maritime use associated with each one. The benefits and proposed amendment associated with each open water basin are described below.

Brannan Street Wharf Open Water Basin. The request to amend the SAP from the Port and the Event Authority for the Brannan Street Wharf Open Water Basin would amend the SAP to allow for temporary mooring of AC72 catamaran racing yachts, several large, private yachts and any related tender/support vessels. Approximately 1,600 lineal feet of floating docks would be installed, and anchored moorings would be installed within the open water basin for the AC72 catamarans. The open water basin would be dredged to provide sufficient depths for the AC72 catamarans. The moorings would be removed from the basin no later than March 2014. Based on the current proposal, the entire basin would be used for mooring yachts and large, private spectator vessels associated with AC34 events.

In addition to the temporary improvements and uses proposed for the AC34 events, Section 7 of the Host and Venue Agreement provides the America’s Cup Event Authority LLC with the right to negotiate long-term development rights at the Brannan Street Wharf Open Water Basin, subject to separate project-level environmental review under CEQA and NEPA, and all required federal, state and local approvals, including BCDC approvals. The long-term development rights are for a recreational marina and the dredging for the temporary use of the basin that is a part of this amendment, triggers the rights to negotiate this long-term use.

While the SAP amendment application from the Port and the Event Authority addresses only the temporary uses proposed for the AC34 events, and is not intended to provide for any future America’s Cup races or events beyond the AC34 races, it is important to evaluate the amendment in the context of both the long-term and the temporary uses. Since the allowing the dredging for the temporary use would establish the rights to negotiate the long-term use, the amendment to the SAP may include language referring to the preservation of the Brannan Street Wharf Open Water Basin once the AC34 events are complete in 2014.

Rincon Point Open Water Basin. The request by the Port and the Event Authority for the Rincon Point Open Water Basin is to amend the SAP to allow the temporary berthing of large private yachts and any related tender/support vessels associated with the private yachts in a portion of the open water basin. The private yachts would be berthed from the northern boundary of Rincon Park to Pier 14, leaving the open water basin adjacent to the park open. The moorings would be installed for the 2013 events and removed no later than March 2014. In

order to provide sufficient depth for the large, private yachts the dredging of the open water basin would be required.

In addition to the temporary improvements and uses proposed for the AC34 events, Section 7 of the Host and Venue Agreement also provides the America's Cup Event Authority LLC with the rights to negotiate long-term development rights to the Rincon Point Open Water Basin for a recreational marina. Dredging for the temporary use of the basin that is a part of this amendment, triggers the rights to negotiate this long-term use.

While the SAP amendment application from the Port and the Event Authority addresses only the temporary uses proposed for the AC34 events, and is not intended to provide for any future America's Cup races or events beyond the AC34 races, it is important to evaluate the amendment in the context of both the long-term and the short-term uses. Since allowing the dredging for the temporary use would establish the rights to negotiate the long-term use, the amendment to the SAP may include language referring to the preservation of the Rincon Point Open Water Basin once the AC34 events are complete in 2014.

The Rincon Point Open Water Basin policies in the SAP are the most restrictive of the open water basin policies, not allowing any type of berthing or mooring with the exception of the fireboats along 22 ½. This strict policy approach in the SAP acknowledges the special place along the San Francisco waterfront that is created by the relationship between the slight bend in the shoreline, the park, the public access along the promenade, the views of the Bay and the Bay Bridge. The combination of the open water basin and the park provides a significant public space and a place for play, quiet contemplation, viewing the Bay and other activities. It is the only place where these attributes come together along the San Francisco shoreline within the Port's jurisdiction and it is critical space for public access and Bay views. Filling this basin with large private yachts will significantly impact the public's ability to enjoy the Bay.

The Promenade between the Agriculture Building and the Fire Station beneath the Bay Bridge was first constructed in the early 1980's and for nearly 30 years has been a signature open space on the San Francisco waterfront. This promenade is the only place between Pier 35 and China Basin where expansive open water views, unframed by nearby piers are available. It provides opportunities to see herring boats scurrying after their prey, followed by seagulls and harbor seals. Advertising companies purchase use rights for filming advertisements because of the quality of these views and the juxtaposition of the Bay Bridge, fire boats, the park, the nearby islands and of course the Bay, create a tableau unequalled in the world.

While the AC34 events will be wonderful for people to see and enjoy, the proposals for the AC34 events along the shoreline, when taken together, will significantly increase activity and reduce views of the Bay that are currently easy to get to. The AC34 events currently propose to use all four designated open water basins for berthing and mooring private and racing yachts and other boats associated with the event. This area between Pier 14 and Pier 22 ½ would provide a much needed public space and public views, if it is preserved for this purpose. If were filled with large private yachts, as originally proposed by the Port and the Event Authority, it would be overwhelmed with the activity associated with the yachts, including provisioning, trips to and from the yachts, service and waste disposal, lights, security personnel on the shoreline and pier, noise and other activities on and around the yachts. In reviewing the impacts of these types of yachts, also called "megayachts", staff has read accounts where the yachts have been described as large hotels or apartment buildings berthed or moored along the shoreline.

In discussing our concerns over the last several months with the Port, the City and the Event Authority, the space requested for the private yachts in the Rincon Point Open Water Basin has been reduced from the entire basin to an area that begins at the northern boundary of Rincon Park to Pier 14, leaving the area in front of the park unobstructed by vessels. Additionally, the Port and the Event Authority have indicated that there will be no landside provisioning associated with the private yachts and all provisioning will happen from the water.

Broadway Open Water Basin. The request to amend the SAP from the Port and the Event Authority for the Broadway Open Water Basin would amend the SAP to allow for the berthing of a number of private yachts and other boats associated with the AC34 events. In recognition of the boats that already are berthed or moored within the Broadway Open Water Basin, the policies regarding this open water basin are the most flexible. The policies state “[i]n the Broadway Open Water Basin, existing berthing facilities for the historic Ferry Boat Santa Rosa and Bar Pilots should continue to be allowed. Limited lay berthing of public transportation and excursion vessels, up to about 300 feet in length, and temporary berthing of ceremonial and visiting ships should be allowed as long as the berthing of moored vessels is balanced with the preservation of views and the need to provide pier frontage for transient berthing.” The proposal to berth yachts temporarily for the AC34 events will have impacts to views, as the yachts will be berthed perpendicular to Pier 9 and will fill the basin from Pier 9 to the Waterfront Restaurant. BCDC staff will work with Port and Event Authority staff to identify public benefits to balance the temporary impacts to views and to determine ways to reduce the impacts to Bay views of the yachts.

Northeast Wharf Open Water Basin. The proposal to amend the SAP includes a request to temporarily berth a variety of vessels in the Northeast Wharf Open Water Basin. The SAP states, that within the Northeast Wharf Open Water Basin, facilities may be permitted for temporary berthing of ceremonial and visiting ships that do not extend landward of the Pier 27 shed. The Port has requested a separate amendment to delete the Northeast Wharf Open Water Basin in order to accommodate a cruise ship terminal at Pier 27 (Bay Plan Amendment No. 3-11). The proposal to temporarily berth vessels in this open water basin for the America’s Cup events would not significantly impact public access or public views, as there is limited public access and limited public views currently at the site.

Public Benefits. As noted above, the Commission must determine that amendments to the SAP retain a balance between the public benefits and private development opportunities. The Port of San Francisco and the America’s Cup Event Authority LLC amendment proposes to: (1) temporarily moor AC72 racing catamarans and some private yachts in the Brannan Street Wharf Open Water Basin; (2) temporarily berth private yachts from the northern boundary of Rincon Park to Pier 14 within the Rincon Point Open Water Basin; (3) temporarily berth private yachts in the Broadway Open Water Basin; and (4) temporarily berth a variety of vessels in the Northeast Wharf Open Water Basin. The benefits described by the Port of San Francisco and the America’s Cup Event Authority, LLC are associated with the America’s Cup 2012 and 2013 Events and consist of the idea that the 34th America’s Cup events are an intrinsic benefit to the public and will draw spectators to the Bay and increase enjoyment of the Bay. Any additional specifics of additional public benefits beyond public enjoyment of the event will be developed by Port of San Francisco and the America’s Cup Event Authority LLC staff, working with stakeholders and BCDC staff and will be the focus of the public hearing on November 3, 2011.

Recommendation. BCDC staff recommends that the Commission initiate the amendment to the SAP related to the proposals for the Brannan Street Wharf, Rincon Point, Broadway and Northeast Wharf Open Water Basins.

Consistent with the Commission's Regulations, the amendment proponents have entered into an agreement with the Commission to pay up to \$49,500 for BCDC's cost of processing the amendment application.

Commission Procedure

Circulating a descriptive notice is the first step in the process of amending the Bay Plan. The McAteer-Petris Act (Government Code Section 66652) and Section 11001 of the Commission's regulations (California Administrative Code, Title 14, Division 5) require a notice of the proposed amendment. If the attached proposed descriptive notice is approved by the Commission, on November 3, 2011, it will be mailed to Commissioners and Alternates, and all agencies organizations and individuals with an interest or jurisdiction over the matter, and a public hearing on proposed Bay Plan Amendment No. 4-11 regarding the SAP's open water basin policies will be held January 5, 2012.

The staff will distribute a report on the proposed amendment with the staff's preliminary recommendation and environmental assessment for the specific changes to the SAP, an element of the Bay Plan to all Commissioners, Alternates and interested parties at least 30 days prior to the public hearing as required by the Commission's regulations (California Administrative Code, Title 14, Division 5, Section 11003). Upon conclusion of the public hearing, and after submission of the Executive Director's final recommendation, the Commission can vote upon the proposed plan change.