

SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION

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Resolution No. 2012-05

Adoption of Bay Plan Amendment No. 4-11 Concerning *San Francisco Waterfront Special Area Plan* Findings, Open Water Basin Policies, Implementation Requirements and Open Water Area Policies

Whereas, Government Code Section 66652 states that “the Commission at any time may amend, repeal and adopt a new form of, all or part of the San Francisco Bay Plan” and that “such changes shall be consistent with findings and declarations of policy” contained in the McAteer-Petris Act; and

Whereas, the *San Francisco Waterfront Special Area Plan* (SAP) was amended by the Commission in 2000 relying on its authority pursuant to Government Code Section 66632(f) of the McAteer-Petris Act to protect the “health, safety and welfare of the entire Bay Area”; and

Whereas, the Legislature in 2001 found and declared in Chapter 489 that the Commission properly exercised its authority to protect the health safety and welfare of the entire Bay Area when it adopted the 2000 amendments to the SAP; and

Whereas, the SAP allows for future amendments stating “future 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”; and

Whereas, the Commission received and filed an application from the Port of San Francisco and the America’s Cup Event Authority to amend the SAP to allow the temporary use of all four open water basins to berth vessels associated with the America’s Cup events; and

Whereas, the San Francisco Bay Conservation and Development Commission: (1) on November 3, 2011, approved a Descriptive Notice of the proposed Bay Plan amendment 4-11 and set a public hearing date for January 5, 2012; (2) on November 4, 2011, distributed the Descriptive Notice and notice of the public hearing to all agencies, organizations, and individuals interested in the proposed amendment; (3) on December 22, 2011, distributed to all agencies, organizations, and individuals interested in the proposed amendment a notice to change the date for the public hearing to February 2, 2012; (4) on January 4, 2012, distributed to all agencies, organizations, and individuals interested in the proposed amendment the staff report, preliminary recommendation and environmental assessment; (5) on February 2, 2012, held a public hearing to receive public comments on the proposed amendment and preliminary recommendation and environmental assessment and closed the hearing at the conclusion of the public’s comments; (6) On March 23, 2012 mailed staff’s recommendation to all agencies, organizations, and individuals who received the staff planning report, and others who expressed interest in the matter, in accordance with Commission Regulation Section 11005; and (7) on April 5, 2012 voted on the staff’s final recommendation that included two changes from



the preliminary recommendation, the delay in removing the Pier 2 shed from March 2013 to March 2015 and elimination of redundant text in Open Water Basin Policy 3-b, all in accord with the requirements and procedures set out in Government Code Section 66632(f), 66652 and the California Code of Regulations, Sections 11000, 11001, 11002, and 11003; and

Whereas, the Commission has considered all written comments received during the 30-day public comment period and oral comments presented at the February 2, 2012 public hearing and the staff has responded to those comments; and

Whereas, the amendment adopted by this resolution conforms to all relevant policies of California Government Code Section 66600 through Section 66661; and

Whereas, the amendment adopted by this resolution is consistent with the findings and declarations of policy contained in the SAP because the revised public benefits and revised development entitlement are in balance and the public benefits are 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; and

Whereas, as noted above, the Commission adopted the 2000 SAP amendment pursuant to its authority as defined in section 66632(f) of the McAteer-Petris Act to protect the “health, safety and welfare of the entire Bay Area...;” and

Whereas, the findings that the Commission relied upon to make this determination included SAP Northeastern Waterfront Finding 14, which found that in order to achieve the objectives of the McAteer-Petris Act, such as Bay protection and public access, an amendment to the SAP would be required to relax restrictions on uses while providing a variety of public benefits. These benefits would be sufficient to warrant BCDC to exercise its authority to set aside these use limitations on new Bay fill across a portion of the northeastern waterfront in the interests of the health, safety and welfare of the public in the Bay Area; and

Whereas, SAP Northeastern Waterfront Finding 15 identified these public benefits to include the removal of deteriorating piers, the restoration of significant areas of open water, a public access network, Bay views, public plazas, historic preservation and the development of new uses to enable public enjoyment of the waterfront, including life safety and seismic improvements and repairs of existing piers; and

Whereas, SAP Northeastern Waterfront Finding 16 stated that “[t]he public benefits described above could not be attained through application of BCDC’s existing regulatory regime. Restrictions limiting the repair, reconstruction or redevelopment of piers would prevent these benefits from being achieved since there is limited demand for exclusively water-oriented uses;” and

Whereas, SAP Northeastern Waterfront Finding 20 states that the Commission finds that the amendments to the SAP are necessary to the health, safety and welfare of the Bay Area. The SAP also identifies the standard for adopting future amendments to the plan, stating, that “future 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”; and

Whereas, the requirements included in Bay Plan Amendment 4-11, that allow the use of all four open water basins for the temporary berthing of vessels associated with the 34th America's Cup events, include: (1) fill removal at Pier 64, (2) accelerated fill removal at Pier 1/2, (3) accelerated shed removal at Pier 2, and (4) the improvement of the water-recreation access site at Pier 52. These requirements for alternative public benefits would allow the Commission to make the above finding that the revised public benefits and the revised development entitlement would be in balance. The amendment will result in the provision of open water by removing fill and new Bay views by removing fill; and

Whereas, the package of benefits included in this amendment supports the Commission making the finding that the revised public benefits and revised development entitlement would be in balance and the public benefits required by this amendment would be sufficient to provide 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 and to offset the impacts of the 34th America's Cup on public use and enjoyment of the Bay and shoreline public access in the project area; and

Whereas, The City and County of San Francisco, the lead agency for the 34th America's Cup project, prepared, circulated, and, on December 15, 2011, certified a Final Environmental Impact Report (FEIR) pursuant to the California Environmental Quality Act (CEQA) for the both the 34th America's Cup and the James R. Herman Cruise Terminal projects. The FEIR was appealed to the Board of Supervisors of the City and County of San Francisco, and on January 24, 2012, the certification was upheld. The FEIR states, in part, that impacts to threatened, endangered or protected species, either directly or through habitat modifications would be less than significant with mitigation; and

Whereas, the San Francisco Bay Conservation and Development Commission has evaluated the environmental impact of amending the *San Francisco Waterfront Special Area Plan* by allowing the ability to use all four open water basins for the berthing of vessels associated with the 34th America's Cup events and requiring a package of public benefits that includes fill removal and shed removal, under the Commission's functional equivalency regulations as authorized by Public Resources Code Section 21080.5, and the California Code of Regulations, Title 14, section 15251(h); and

Whereas, this evaluation considered the conclusions and analysis of the 34th America's Cup and the James R. Herman Cruise Terminal Environmental Impact Report along with supplemental analyses included in the staff's January 4, 2012 environmental assessment; and

Whereas, the San Francisco Bay Conservation and Development Commission finds that there will be no significant adverse impacts on the environment brought about by the amendment; and

Whereas, the amendments to the *San Francisco Waterfront Special Area Plan* enacted by this resolution are intended to be a routine program change of the Commission's coastal management program for the San Francisco Bay segment of the California coastal zone as approved by the U.S. Department of Commerce under the federal Coastal Zone Management Act of 1972, as amended.

Now, Therefore, Be it Resolved That, the San Francisco Bay Conservation and Development Commission hereby adopts Bay Plan Amendment No. 4-11 which amends the SAP as follows:

I. Amends the *San Francisco Waterfront Special Area Plan* Northeastern Waterfront Findings as follows with the underlined language added to the SAP:

24. The use of the San Francisco Waterfront for special events may provide a unique opportunity to achieve several key objectives of the SAP, including bringing more people to the waterfront and increasing the public's enjoyment of the Bay. If special events use of the San Francisco Waterfront, including the designated open water basins, is consistent with the integrated public benefits identified in Finding 15, the use is temporary and provides public benefits to balance the temporary impacts which are commensurate with the size and duration of the event, then such a use could be found consistent with the SAP.

II. Amends the *San Francisco Waterfront Special Area Plan* Northeastern Waterfront Open Water Basin Permitted Uses as follows with the underlined language added to the SAP:

Temporary use for the 34th America's Cup event that increases the public enjoyment and interest in the Bay and is developed consistent with Finding 15 of the SAP, including the provision of public benefits that balance the extent and duration of the temporary use. (Policy expires June 30, 2014).

III. Amends the *San Francisco Waterfront Special Area Plan* Northeastern Waterfront Open Water Basin Policies as follows with the underlined language added to the SAP and struck through language deleted:

3. Within Open Water Basins, limit new fill to:
 - a. mooring buoys and pile-supported or floating platforms for non-commercial, transient boats to provide shoreline access;
 - b. Temporary use for the 34th America's Cup Events requiring temporary fill to berth vessels. Fill will be placed in May 2013 and removed no later than January 2014, except within the Brannan Street Open Water Basin, where fill will be placed in May 2012 and removed no later than January 2014. In the Rincon Point Open Water Basin, the temporary fill should be limited to the area from Pier 14 to the northern boundary of Rincon Park to ensure that public views from Rincon Park and the Promenade will be unobstructed by berthed vessels.

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IV. Amends the *San Francisco Waterfront Special Area Plan* Northeastern Waterfront Open Water Area Policies as follows with the underlined language added to the SAP and struck through language deleted:

1. Open Water Areas are those areas of the Bay not designated as Open Water Basins. Create new Open Water Areas as follows:
 - a. remove Pier 24;
 - b. By March 2013, remove a portion of Pier 1/2 as part of the 34th America's Cup Event project, Ferry Terminal Phase 2 development project, retaining only that portion required for retaining a vessel berthing facility and public access;
 - c. By March 2015, remove the existing shed at Pier 2 after the 34th America's Cup

Event project to improve Bay views and public access. ~~Remove the northern portion of Pier 2 either as part of: (1) the Agriculture Building improvement project or the Downtown Ferry Terminal Phase 2 development project, whichever comes first; or (2) any reconfiguration of the existing restaurant on Pier 2;~~

V. Amends the *San Francisco Waterfront Special Area Plan* Northeastern Waterfront Plan Implementation Requirements as follows with the underlined language added to the SAP and struck through language deleted:

4. The Port will:

k. As part of the 34th America's Cup project:

(i) By March 2013, remove a portion of Pier 1/2 retaining only that portion required for a vessel berthing facility and public access;

(ii) By March 2015, remove the existing shed at Pier 2 after the 34th America's Cup Event project to improve Bay Views and public access. Remove the northern portion of Pier 2 as part of the Downtown Ferry Terminal Phase 2 development project.

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VI. Amends the *San Francisco Waterfront Special Area Plan* Southern Waterfront Policies as follows with the underlined language added to the SAP and struck through language deleted:

Pier 52

1. As part of the 34th America's Cup events public benefits, improve the small craft launch at Pier 52 to make it accessible to all small craft users by March 2013 and permanently thereafter.

Central Basin

2. ~~When no longer needed for maritime activity, Pier 64 should be developed for a park and marina use in accordance with, but no limited to, the provisions of the Recreation and Open Space Plan of the City of San Francisco.~~ As part of the 34th America's Cup events public benefits, remove Pier 64 by March 2013.

VII. Amends the *San Francisco Waterfront Special Area Plan* **Special Area Plan Map 5** to add text and graphics identifying the Pier 64 pier removal. The text will state: Remove Pier 64. (See Figure 5)

Be it Further Resolved That, the San Francisco Bay Conservation and Development Commission authorizes the Executive Director to make minor, non-substantive editorial changes to this resolution under the California Administrative Procedures Act.

We certify that this resolution was adopted by a vote of ___ "yes" votes, ___ "no" votes and ___ abstentions at the Commission meeting held on April 5, 2012 at San Francisco, California.

Executed on this _____ day of _____, 2012 at _____, California

R. ZACHARY WASSERMAN
Chairman

STEVE GOLDBECK
Executive Director