

SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION

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TO: Commissioners and Alternates

FROM: Steve Goldbeck, Acting Executive Director (415/352-3611 steveg@bcdc.ca.gov)
Lindy Lowe, Senior Planner (415/352-3642 lindyl@bcdc.ca.gov)

SUBJECT: **Staff Recommendation for Proposed Bay Plan Amendment No. 4-11 Concerning an Amendment to the *San Francisco Waterfront Special Area Plan* Open Water Basin and Open Water Areas Policies, and the Implementation Requirements**
(For Commission Consideration on April 5, 2012)

Summary of Staff Recommendations

The staff recommends that the Commission adopt the attached Resolution No. 2012-05 that would:

1. Amend the *San Francisco Waterfront Special Area Plan* by:
 - (1) adding a finding that explains the policy changes; (2) modifying the Open Water Basin Permitted Uses to allow the temporary use for the 34th America's Cup events; (3) modifying the Open Water Areas Policies to expedite required pier removals in open water areas and
 - (4) requiring public benefits to balance the impacts of the temporary use of the basins.
2. Find that the proposed Bay Plan Amendment 4-11 will not have any significant adverse environmental effects, as outlined in the environmental assessment included with staff's preliminary recommendation.

The Port of San Francisco will make conforming amendments to its Waterfront Land Use Plan so that the Port and BCDC have consistent policies for the area of the waterfront from Pier 35 to China Basin.

Proposed San Francisco Waterfront Special Area Plan Amendments

Bay Plan Amendment Application 4-11. 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 allow for the 34th America's Cup (AC34) Events. The amendment would allow: (1) temporary use the Brannan Street Wharf Open Water Basin to moor team racing yachts and several large, private yachts; (2) temporary berthing of large, private yachts in a portion of the Rincon Point Open Water Basin from the northern boundary of Rincon Park to Pier 14; (3) temporarily berth large, private yachts in the Broadway Open Water



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Basin; and (4) temporary berthing of a variety of vessels in the Northeast Wharf Open Water Basin. The proposed uses are inconsistent with the open water basin policies in the SAP.

Elimination of Long-Term Use of Open Water Basins and Piers. At the time of the staff recommendation presented to the Commission on February 2, 2012, two of the four SAP-designated open water basins and several piers were contemplated by the City and County of San Francisco and the America's Cup Event Authority for long-term uses. Although the long-term development rights between the City and County of San Francisco and the Event Authority associated with the America's Cup project were not the subjects of this amendment, the issues raised by these long-term development rights were of concern to the public, BCDC staff and BCDC Commissioners. Since the February 2, 2012 Commission hearing for this amendment, the City and the Event Authority have revised the development agreement and eliminated all long-term development rights that were once associated with the project.

Applicant's Purpose for Requesting Bay Plan Amendment 4-11. The America's Cup project is inconsistent with one aspect of the SAP: the use of the open water basins to berth vessels associated with the races in 2012 and 2013. The America's Cup Event Authority and the Port of San Francisco requested an amendment to the SAP to allow the temporary berthing and mooring of assorted vessels in all four of the open water basins designated by the SAP.

The larger issues associated with the America's Cup, such as impacts to public access, public spaces, areas outside of the Port of San Francisco such as Crissy Field and Marina Green and impacts associated with the racecourse and transportation and other were not analyzed by this amendment as these larger issues are either not within the area covered by the SAP or are consistent with the current SAP policies and the analysis is occurring elsewhere, including the BCDC permit process.

Public Benefits Changes for Bay Plan Amendment 4-11. BCDC staff met frequently with the Port, the Event Authority and the City, as well as stakeholders interested in water-oriented recreation and public access to develop the public benefits package for the America's Cup amendment. As with the public benefits package for the cruise ship terminal, the stakeholder interviews conducted in the winter of 2010 were also consulted to determine possible priorities for improving the waterfront. The original proposal presented at the public hearing on February 2nd included the accelerated removal of the shed at Pier 2 in time for the America's Cup events. The Pier 2 shed is occupied by the restaurant Sinbad's, which has a month-to-month lease with the Port of San Francisco. Once the staff report for the staff recommendation was mailed, BCDC and Port staff began to negotiate a new time-frame for the Pier 2 shed removal. The operators of Sinbad's suggested a removal date January 2015 instead of March 2013 and BCDC and Port staff tentatively agreed to that proposal. At the February 2nd Commission hearing, several Commissioners directed staff to continue negotiations with the leaseholders and operators of Sinbad's to permit the restaurant to stay until after the America's Cup events. This change is reflected in the following benefits that were proposed by the Port and accepted by BCDC to mitigate for the loss of the open water basins during the events:

- Removal of Pier 64 by March 2013;
- Removal of Pier ½ by March 2013 to improve Bay ecology, improve public access and Bay views prior to the 2013 America's Cup Events;
- Removal of the restaurant at Pier 2 and the provision of temporary public access on Pier 2 by March 2015 to provide improved public access and Bay views after the 2013 America's Cup Events; and

- Improvement of the Pier 52 water-recreation access site by March 2013 to be available during the 2013 America's Cup Events and made available permanently after the events are over.

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 repaired 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.

The overall objectives for the public benefits in the 2000 SAP amendment as identified in the findings for the SAP were:

- removal of deteriorating piers that pose a threat to navigation, and to public safety and health;
- restoration of significant areas of open water to enhance the ecological health of the Bay and to facilitate needed public recreation and access opportunities;
- completion of a waterfront-wide, integrated public access network, guided by a policy framework for expanding public access; design policies that promote low-scale development and preserve significant Bay views; an implementation program to fund and construct the plazas and pier removals; and enhancement of Bay views and opportunities to enjoy water areas adjacent to the Embarcadero;
- preservation of important and unique historic resources along the waterfront; and
- development of new uses to enable public enjoyment of the waterfront, including life safety and seismic improvements and repairs of existing piers.

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.”

Developing Staff’s Preliminary Recommendation on Bay Plan Amendment No. 4-11. Discussions with stakeholders regarding the 4-11 amendment proposal, as well as in a number of meetings with the Port, City and Event Authority, staff endeavored to reduce or avoid the impacts of the current proposal and find the appropriate mitigation measures for the impacts that cannot be reduced or avoided. Through these negotiations, the long-term marina use at Rincon Point Open Water Basin was removed from the Host and Venue Agreement. This use at this site is consistent with the current policies in the SAP. Additionally, the public benefits proposal developed for the America’s Cup events was guided by the public comments provided at the public hearing as well as discussions with stakeholders. These new public benefits include: fill removal; at Pier 64 the improvement of an access site for water-oriented recreation at Pier 52 for use both during the America’s Cup events and permanently after the close of the events; the removal of the restaurant at Pier 2 by March 2015 after the 2013 America’s Cup events to provide new Bay views to the Bay and public access; and the early removal of Pier ½ prior to the 2013 America’s Cup events to bring Bay views closer to Embarcadero and the Promenade, improve Bay ecology and improve the public access experience. Additionally, the permits for the America’s Cup will require a number of public access benefits, both long and short term.

New findings and policies in the SAP address some of the concerns raised by the public during public hearings for the America’s Cup events. A finding regarding the need to provide public benefits for short-term uses of the waterfront that are in scale with the duration and magnitude of the events. This finding will help the Commission, the Port and the public in interpreting the open water basin policies in the SAP.

New implementation requirements proposed for the SAP were designed to provide a public benefits package that would balance out the proposals to amend the plan for the America’s Cup projects. The requirements also attempt to ensure that the new public benefits occur as close to the project sites as possible and also are required to be implemented sooner, or no later than, those that were required in the 2000 amendment.

On January 4, 2012, a staff report, preliminary recommendation and environmental assessment outlining the proposed amendments to the *San Francisco Waterfront Special Area Plan* findings, policies and maps was sent to the Commission and public for review. A public hearing to consider the proposed language changes occurred on February 2, 2012.

This final staff recommendation includes changes to the preliminary staff recommendation in response to the written and oral comments of Commissioners and the public. The changes to the Open Water Areas policies and Implementation Requirements extend the removal date for Pier 2 to 2015 from 2013 to allow the restaurant Sinbad’s to operate until after the America’s Cup events. Changes to Plan Map 5 are illustrated in the attachment to the Resolution 2012-02. Responses to Commission and public comments, both written and oral, are found in the section “Response to Comments” that starts on page.

Final Staff Recommendation

The staff recommends that the Commission amend the Bay Plan as follows:

Proposed 4-11 Amendments:

1. Add a finding related to proposed policy changes;

2. Modify Open Water Basin Permitted Uses to allow the temporary use for the 34th America’s Cup events;
3. Modify Open Water Basin Policy 3 to allow the temporary use for the 34th America’s Cup Events that will result in temporary fill to berth vessels;
4. Modify the Open Water Areas Policies to expedite the removal of Pier ½ and Pier 2; and
5. Modify the Implementation Requirements to include the following public benefits to balance the impacts of the temporary use of the basins. These public benefits include: (1) the removal of Pier 64 by March 2013, (2) the improvement of the water-oriented recreation facility at Pier 52, (3) remove Pier ½ by March 2013 to improve Bay views and Bay ecology by removing non-historic fill, and (4) remove shed at Pier 2, currently occupied by a the restaurant Sinbad’s that is on a month to month lease with the Port of San Francisco, by March 2015 to improve Bay views and public access by removing non-historic fill.
6. Make necessary changes to Plan Map 5.

Proposed Changes to the San Francisco Waterfront Special Area Plan for Bay Plan Amendment No. 4-11

The SAP sections modified by the recently adopted cruise ship terminal amendment (Bay Plan Amendment No. 3-11) would be modified by the proposed amendment. Proposed additions in language are shown as underlined, while proposed language deletions are shown as ~~struck through~~. Staff analysis explaining proposed changes is also provided.

Proposed Changes to NORTHEASTERN WATERFRONT (PIER 35 TO CHINA BASIN) Findings	
Findings	Staff Analysis
<p>Add underlined language as follows:</p> <p>24. <u>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.</u></p>	<p>The finding describes the potential benefits of allowing special events along the San Francisco Waterfront and the types of public benefits that can offset the impacts of such special events that privatize public access areas and disrupt normal, ongoing public use and enjoyment of the waterfront. The finding clarifies that future use of the waterfront from Pier 35 to China Basin for special events could be consistent with the SAP if public benefits are provided that are within the scale of the proposed event.</p>

Policies. The proposed policy changes facilitate the implementation of a public benefits package. The public benefits include a program of pier removal to create open water, shed removal to improve Bay views and the improvement of an existing water-oriented recreation site at Pier 52.

Proposed Changes to NORTHEASTERN WATERFRONT (PIER 35 TO CHINA BASIN)	
Open Water Basins Permitted Uses	Staff Analysis
<p>Add underlined language as follows:</p> <p><u>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)</u></p>	<p>The policy provides the use of the open water basins from July 2012 to January 2014 for the 34th America’s Cup events, if the project provides public benefits sufficient to offset impacts on public access and is consistent with the finding associated with the public benefits package required in the current SAP.</p>
Open Water Basins Policies	Staff Analysis
<p>Add underlined and delete struck-through language as follows:</p> <p>3. Within Open Water Basins, limit new fill to:</p> <p>a. mooring buoys and pile-supported or floating platforms for non-commercial, transient boats to provide shoreline access;</p> <p>b. <u>Temporary use for the 34th America’s Cup Events requiring temporary fill to berth vessels. Fill may be placed in May 2013 and must be removed no later than January 2014, except within the Brannan Street Open Water Basin, where fill may be placed in May 2012 and must be 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.</u></p> <p>Re-letter 3-b through i to <u>c</u> through <u>j</u>.</p>	<p>The policy provides for the duration and parameters of the temporary use of the open water basins for the America’s Cup events and identifies the associated public benefits required to balance and reduce the impacts of the temporary use of the open water basins. The policy also restricts the area that may be used within the Rincon Point Open Water Basin temporarily for the America’s Cup events.</p>

Proposed Changes to NORTHEASTERN WATERFRONT (PIER 35 TO CHINA BASIN)	
Open Water Area Policies	Staff Analysis
<p>Add underlined and delete struck-through language as follows:</p> <p>1. Open Water Areas are those areas of the Bay not designated as Open Water Basins. Create new Open Water Areas as follows:</p> <ol style="list-style-type: none"> a. remove Pier 24; b. <u>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,</u> retaining only that portion required for retaining a vessel berthing facility and public access; 	<p>This policy accelerates the requirement to remove Pier 1/2 so that is provided as part of the America's Cup project and is provided in time to be a public access, view and fill removal benefit for the public during the event.</p>
<p>Add underlined and delete struck-through language as follows:</p> <ol style="list-style-type: none"> c. <u>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;</u> 	<p>This policy requires removal of the Pier 2 shed after the America's Cup project to improve Bay views and public access.</p>
Plan Implementation Requirements	Staff Analysis
<p>Add underlined language as follows:</p> <ol style="list-style-type: none"> k. <u>As part of the 34th America's Cup project:</u> <ol style="list-style-type: none"> (i) <u>By March 2013, remove a portion of Pier 1/2 retaining only that portion required for a vessel berthing facility and public access;</u> (ii) <u>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.</u> <p>Reletter 4-k through l to l through m.</p>	<p>Adds Pier 1/2 and Pier 2 shed and deck removal to implementation requirements.</p>

Proposed Changes to SOUTHERN WATERFRONT	
Southern Waterfront Pier 52 Policies	Staff Analysis
<p>Add underlined language as follows:</p> <p>1. <u>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.</u></p>	Identifies a location for the one of the small craft launches that will be provided as part of the America's Cup project.
Central Basin Policies	Staff Analysis
<p>Add underlined and delete struck-through language as follows:</p> <p>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. <u>As part of the 34th America's Cup events public benefits, remove Pier 64 by March 2013.</u></p>	The policy identifies the fill removal required as part of the America's Cup project public benefits package.

Staff Analysis

In determining whether or not to recommend that the Commission initiate an amendment to the SAP for this project, staff analyzed the amendment requests to determine if amending the plan was necessary to achieve the objective of the project and if the project was broadly consistent with the goals and objectives of the SAP, the McAteer-Petris Act and the Bay Plan.

The Port and the Event Authority application to amend the SAP to allow for the temporary use of the open water basins to berth and moor vessels associated with the 34th America's Cup Events was initially problematic based on certain components in the request. The original amendment request included the use of all four open water basins, leaving only a portion of the Broadway Open Water Basin from Pier 7 to Pier 3 without vessels. BCDC staff felt that even temporary use of all four open water basins would have significant impacts on views and public access for four months or longer that would be inconsistent with the broad goals and objectives of the SAP, the McAteer-Petris Act and the Bay Plan. Through negotiations with the Port, the City and the Event Authority, the amendment request was revised to reduce the use of the Rincon Point Open Water Basin to leave the views in front of the park open and to berth boats only adjacent to Pier 14, north of Rincon Point Park. The revised amendment request also included public benefits for fill removal, shed removal and improved water-recreation access to balance the temporary impacts of the events. BCDC staff acknowledged that the America's Cup events would provide the public and the region with an international event that could draw more people to the Bay shoreline and provide for more opportunities to enjoy and learn about the Bay. With the revisions to the amendment request, the staff concluded that temporary use of the open water basins for the America's Cup events would be broadly consistent with the goals and objectives of BCDC's regulatory framework.

SAP Amendment Framework. The SAP provides a framework for evaluating amendments affecting the Northeastern Waterfront. The amendment process is described in the Northeastern Waterfront Plan Implementation Requirements; requirement 4-1 states, in part that "[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 benefits would be necessary to the health, safety and welfare of the public in the entire Bay Area." The amendment process does not state that the public benefits must be restricted to the Northeastern Waterfront, nor does it establish fill or shed removal ratios for the any fill removal offsets that occur outside of the Northeastern Waterfront. The amendment process also does not proscribe ways to provide alternative public access or public benefits in the event that a maritime or other use eliminates or impairs existing public access, benefits or views. The framework provides the Commission with broad discretion to determine how to achieve the balance of public benefits and development entitlements, but strictly requires that the balance be maintained.

In assessing the integrity of public benefits package required by the current SAP, it is important to determine the status of the Port's provision of public benefits to date. The background section of the January 4, 2011 staff report lists the status of the other public benefits required in the SAP. With the exception of the removal of approximately 14,000 square feet of Pier 24, the Port has completed the public benefits within the required timeframes and as described in the SAP. This includes removing Pier 34, removing the majority of Pier 24 and listing of the Embarcadero Historic District on the National Register, which was completed late, with the concurrence of the Commission. The Port is also pursuing funds and planning for a number of the other public benefits required by the SAP, such as Brannan Street Wharf, and Pier 36 removal, which were both approved by the Commission in November and the Port is seeking funds for and has developed a conceptual design for the Northeast Wharf Plaza, working with BCDC staff and stakeholders.

It is also important to evaluate the recent amendments to the SAP in conjunction with the proposed amendments to ensure that there are no unintended cumulative impacts that may create an imbalance of entitlement and public benefits.

The SAP has been amended twice since the 2000 amendment established the public benefits package and implementation requirements. The first amendment, approved by the Commission on December 3, 2009, was for the Exploratorium project. The amendment permitted the Port to reduce a fill removal requirement between Piers 15 and 17 and provide off-site fill removal at another location along the waterfront outside the Northeastern waterfront. The amendment resulted in reduced fill removal between Piers 15 and 17.

The Commission determined that the residual fill removal requirement at Piers 15-17 still provided many of the benefits that the larger amount of fill removal would have achieved, e.g., providing Bay access closer to the Embarcadero Promenade, providing public access around the open water area and improving views to the Bay from public access vantage points. The revised public benefits also required that fill be removed at an off-site location within the Port's jurisdiction sufficient to offset the retained fill. The Commission concluded that the amendment did not require a comprehensive approach to the SAP and determined that the overall benefits of the on and off-site fill removal requirements maintained the overall balance of benefits and entitlements.

The 2009 amendment provides some guidance for future amendments because the off-site fill requirement established ratios for fill removal, depending on whether the fill removal would occur within the same geographic area of the waterfront. The 2009 amendment provided that if the removed fill was within the same geographic area, close to the project site and/or removed sooner than what was originally required in the 2000 amendment, then less fill removal would be required. Conversely, more fill removal was required if the removed fill was outside the geographic area, far from the project site and was not completed within the timeframe established in 2000.

The second amendment, approved by the Commission on March 1, 2012, approved the cruise ship terminal at Pier 27, the elimination of the open water basin between Piers 19 and 27, the possible retention of the Pier 23 shed and an associated public benefits package. In the cruise ship terminal amendment, the staff recommended and the Commission adopted a phased approach to amending the SAP that accommodated the accelerated schedules of cruise ship terminal and the America's Cup events in the first phase, but required a comprehensive approach to amending the SAP in the second phase, which includes providing benefits throughout the Port's jurisdiction and comprehensively reviewing the amendments to ensure that the cumulative impacts do not result in an unintended erosion of public benefits and that the public benefits to be added to the SAP as a result of this and a subsequent amendment will work together to provide superior public benefits than may result from a project by project amendment.

34th America's Cup Project Proposal. Bay Plan Amendment No. 4-11 to the SAP for the America's Cup project would enable the Commission to allow the event sponsors to temporarily use portions of all four open water basins to moor and berth vessels associated with the America's Cup events. The Commission could authorize use of portions of Rincon Point Open Water Basin, portions of the Broadway Open Water Basin and all of the Northeast Wharf Open Water Basin for the 2013 events, provided the fill would be in place from approximately May 2013 to January 2014. All of the Brannan Street Wharf Open Water Basin could be used for the 2012 and 2013 events and the fill could only be in place from approximately May 2012 to January 2014.

The primary impacts associated with the temporary use of these open water basins include impacts to views of the Bay, increased intensity of use along the San Francisco Waterfront, impediments and restrictions on water-recreational access at these sites, impacts to Bay species that may use these open water basins, both from the active use, and the placement of fill and dredging in the Bay. The proposed public benefits were designed to balance these impacts by: (1) removing fill at Pier 64, and accelerating fill removal at Pier ½ to provide for Bay views and improved Bay ecology; (2) accelerating removal of a building currently used as a restaurant at Pier 2 to provide more public Bay views and public access along the Bay after the America's Cup; and (3) providing improved and increased access for water-recreation at Pier 52.

By providing public benefits along the waterfront that include new and accelerated fill removal, accelerated public view improvements and increased water-recreation access that will also be available in time for the events, the staff believes the public benefits proposal provides a balance to the temporary impacts that will be associated with the event. Additionally, the proposed restriction on where and for how long the berthing may occur in the open water basins also ensures that public benefit of these open water basins will not be lost on a long-term basis.

By changing the amendment request to reduce the original impacts at the Rincon Point Open Water Basin associated with the amendment, by eliminating the potential long-term inconsistencies related to marina rights and by requiring that the temporary use of the open water basins be off-set with benefits that will permanently reduce fill, improve views and provide more access to water-recreation opportunities, staff believes that the balance of public benefits is maintained by Bay Plan Amendment No. 4-11. Additionally, the America's Cup events will provide an opportunity for the Bay Area public, visitors and people around the world to have a new experience of the Bay and provide them with an opportunity to discover or re-discover the San Francisco Waterfront and the Bay. Increasing opportunities to enjoy the Bay and bringing more people to the San Francisco Waterfront and Bay shoreline are both important objectives of the SAP, the McAteer-Petris Act and the Bay Plan.

Based on the proposed amendment, staff recommends that the Commission find 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 that the temporary fill for the America's Cup events will result in a maritime event that will be enjoyed by people within and beyond the Bay Area region

Consistency with the McAteer-Petris Act

As described above, the Commission relied upon its authority pursuant to section 66632(f) of the McAteer-Petris Act to protect the "health, safety and welfare of the entire Bay Area" to approve the 2000 amendment to the SAP, which was otherwise inconsistent with certain provisions of McAteer-Petris Act. Subsequently in 2001, in Chapter 489, the state legislature declared that the amendments to the *San Francisco Bay Plan* and the SAP by the Commission in 2000 were authorized under Section 66632(f) of the McAteer-Petris Act as necessary to protect the health, safety and welfare of the entire Bay Area. 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 that would relax restrictions on uses while providing a variety of public benefits. These benefits would have to 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 or welfare of the public in the Bay Area. 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. SAP Northeastern Waterfront Finding 16 stated, "[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." Finally, 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 public in the entire Bay Area.

The America's Cup amendment needs to maintain the public benefits included in the SAP, by either implementing them as required, or by proposing new public benefits that are equal to or better than those required in the SAP prior to amendment. The proposed amendment to temporarily use the open water basins for berthing and mooring of vessels associated with the 34th America's Cup events maintains a balance of the public benefits envisioned by the SAP by providing long-term improvements along the waterfront, including fill and shed removal and increased opportunities for water-recreation. Additionally, the proposal was modified to reduce inconsistency with the SAP by removing the portion of the amendment requesting to berth large yachts in front of Rincon Park. By modifying the amendment request and providing public benefits to respond to the duration and magnitude of the temporary use open water basins, resulting in maintaining the balance of public benefits on which the 2000 amendment to the SAP was based, the proposed amendment is consistent with the findings of the SAP and with the objectives of the McAteer-Petris Act.

For these reasons, the staff recommends that the Commission determine that proposed Bay Plan Amendment No. 4-11 is consistent with the findings and declarations of policy contained in the McAteer-Petris Act and that the revised public benefits and revised development entitlement would be in balance and the public benefits required by this amendment would be sufficient for the Commission to find 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.

Environmental Assessment

There were no public or Commissioner comments received on the environmental assessment during the 30-day review period or during the public hearing. The staff recommends that the Commission find that Bay Plan Amendment No. 4-11 will not have significant adverse effects on the environment as recommended by the staff in its preliminary recommendation and environmental assessment.

Summary of Comments Received

Comments Received 4-11. No written comments were received following the distribution of the descriptive notice on November 3, 2011. The Commission received one written comment on staff's preliminary recommendation on the proposed amendment during the 30-day public review period (see summary of letter and response on page 37). The comment was from the operators of Sinbad's Restaurant, requesting that the Commission delay the removal of the Pier 2 shed where the lease space from the Port until January 2015.

The Commission held a public hearing on February 2, 2012 and 15 people spoke at the hearing on the proposed amendment.

Public Comment	Staff Response
Tom Stinson, operator of Sinbad's Restaurant, stated that he strongly opposed the idea of accelerating the removal of the shed where his restaurant is located and that it would not result in views of the race course and it would result in a loss of jobs for his employees. He made a counter-proposal that would result in the removal of the Pier 2 shed in January 2015.	In early January 2012, BCDC and Port staff began negotiations with the operators of Sinbad's Restaurant to allow the shed to stay in place until January 2015. The staff recommendation has changed the required date for the removal of the Pier 2 shed from March 2013 to March 2015.
Bill Robberson, President of the San Francisco Board Sailing Association, expressed concerns regarding the impact that the race course would have on access for board sailors and requested that ways to reduce this impact be looked at. He suggested providing access and facilities at Treasure Island and an earlier end to the races during race days.	The America's Cup project is inconsistent with only one aspect of the SAP, the use of the open water basins for berthing vessels for the event. The larger issues associated with the America's Cup, such as impacts to public access, public spaces, areas outside of the Port of San Francisco such as Crissy Field and Marina Green and impacts associated with the racecourse and transportation impacts and other types of impacts were not analyzed by this amendment as these larger issues are either not within the jurisdiction of the SAP or are consistent with the current SAP policies and the analysis is occurring elsewhere. The analysis of the larger project is occurring as part of the BCDC permit process that will occur in three hearings—two in March for the Pier 30-32 strengthening and the Cruise Ship Terminal project and a comprehensive one in May or June for the

	larger America's Cup project. Additionally, BCDC will be reviewing the plans for the racecourse and the National Park Service lands through its federal consistency review authority. It is for these reasons that the scope of this amendment and the associated public benefits are narrow and focus only on the issues raised by berthing vessels in the open water basins. These issues include temporary impacts to Bay views, impacts associated with temporary fill, and impacts to water-oriented recreation associated with use of the open water basins.
Christine Maley-Grubl, the Executive Director of the Fisherman's Wharf Community Benefit District, spoke in support of a public process to designate the area around Pier 43 as an open water basin.	Comment noted.

Public Comment	Staff Response
Paul McDonald, resident of San Francisco, spoke in support of the America's Cup and the amendment proposal.	Comment noted.
Julie Smith spoke in support of the America's Cup and the proposed amendment.	Comment noted.
Patrick Whitmarsh, member of the San Francisco Board Sailing Association, expressed concerns regarding crowding at Crissy Field and the impacts the racecourse will have on access. He also suggested improvements to Treasure Island boardsailing access and facilities as a way to address these impacts.	See comment responding to Bill Robberson's concerns above.
Paul Nixon, representing Bay Access, wants to ensure that the America's Cup project and events results in long-term benefits and improved access.	Staff believes that both the SAP amendment and the upcoming permit processes will result in long-term benefits and improved access for water-recreationists. Also, see comment responding to Bill Robberson's concerns above.
Tom Gandesbery, a sailor on San Francisco Bay, expressed concerns regarding crowds and access at Crissy Field and requested alternative	See comment responding to Bill Robberson's concerns above.

racecourse areas be evaluated.	
Ellen Johnck, resident of San Francisco, expressed support for the staff recommendation and the America's Cup.	Comment noted.
Jane Connors, Senior Property Manager for the Ferry Building, expressed opposition to the accelerated removal of Pier ½ as part of the America's Cup project to improve Bay views and Bay ecology. She stated that the Port had failed to find replacement parking for the pier that was red-tagged and closed to public use in 2008, and that prior to 2008 served as parking for the Ferry Building.	Pier ½ was identified as a fill removal site to satisfy the fill removal requirements of several agencies, including BCDC. In order to provide public benefits that will respond to the impacts associated with the America's Cup use of the open water basins, including impacts to Bay views, public access and Bay ecology, fill removal is a necessary part of the public benefits package and this parking lot has been red-tagged and closed to public uses for safety reasons since 2008, there are no plans or funds to rehabilitate it, it contains no historic resources and it is required to be removed as part of the public benefits package required in the 2000 amendment to the SAP. If this parking lot were to be repaired and restored, then the Port would have to identify a new site for fill removal that was of similar size and in a similar location.
Public Comment	Staff Response
Ruben Hechanova, President of the Dolphin Club, asked the Commission to pay attention to the needs of those Bay users who were here before the America's Cup proposal and will remain after it leaves.	Staff believes that both the SAP amendment and the upcoming permit processes will result in long-term benefits and improved access for water-recreationists. See comment responding to Bill Robberson's concerns.
Dave Osgood, representing the Rincon Center Tenants Association, stated that the amendment would allow views to be blocked all around Pier 14 and that he opposed this proposal as well as the retention of the Pier 23 shed.	Mr. Osgood is correct that the reduction of the private yacht berthing area in the Rincon Point Open Water Basin did not eliminate all impacts in this area and that there will be temporary impacts to Pier 14, which will have yacht berthing on both sides of it. It is for this reason that BCDC is requiring fill and shed removal to be part of the public benefits associated with the project, to balance the temporary view and fill impacts associated with the project. The amendment for the cruise ship terminal project only allows the retention of the Pier 23 shed if the Port identifies a new open water basin between Pier 35 and China Basin, again ensuring the balance of public benefits.

Keir Beadling, expressed strong support for the America's Cup.	Comment noted.
Brad Benson, representing the Port of San Francisco, spoke in support of the amendment and the process to develop the recommendation. He also stated that the Port and the City were absorbing the comments made by the water-oriented recreationists and identified the Coast Guard process as the appropriate process to evaluate these issues.	Comment noted. Also see response to Bill Robberson's concerns.
Aaron Peskin, former member of the San Francisco Board of Supervisors, stated general support for the staff recommendation. He stated that he remains concerned about the rights to negotiate a marina at Brannan Street Wharf and that by approving the short-term use at Brannan Street Wharf the Commission was inviting the long-term use of a marina in that location.	The amendment includes a new finding to further clarify that a marina in an open water basin is an inconsistent use and would require a subsequent amendment to the SAP and the provision of a replacement open water basin. Any long-term marina proposal at Brannan Street Open Water Basin would require approval of an amendment to the SAP, BCDC permits and additional CEQA analysis.

Public Comment	Staff Response
Commissioner John Vasquez asked where the idea for the removal of Sinbad's restaurant came from and he suggested that he would like to change the SAP to allow the Pier 2 shed to remain.	Several stakeholders identified either the accelerated removal of Sinbad's restaurant or the World Trade Club building as part of the public benefits package for the America's Cup project. In early January, BCDC and Port staff began negotiations with the operators of Sinbad's Restaurant to allow the shed to stay in place until January 2015. The staff recommendation has changed from requiring removal of the Pier 2 shed in March 2013 to March 2015. The SAP currently requires that the shed and pier at Pier 2 be removed in conjunction with Phase 2 of the Ferry Terminal Project, as part of the public benefits required by the 2000 amendment to the SAP. These public benefits include improvement to Bay ecology, Bay views and public access. If the pier and shed were to remain, then the SAP would need to be amended and new fill removal would need to be found that was of similar size and in a similar location to maintain the balance of public benefits.

<p>Commissioner Jim McGrath asked how the removal of the Pier 2 shed, where Sinbad’s restaurant has a month to month lease, is related to the America’s Cup project. He also asked about the issue of fill removal in the SAP and whether the requirement to remove the fill at Pier 2 was being conducted for benefits already obtained by another party.</p>	<p>The America’s Cup project proposes to use all four open water basins for the temporary berthing and mooring of vessels associated with the events. The impact of this use includes impacts to Bay views, public access and Bay ecology. The removal of the shed at Pier 2 would improve public access and Bay views. Additionally, the current SAP requires that the shed and pier at Pier 2 be removed as part of the public benefits required by the 2000 amendment to the SAP. The 2000 amendment to the SAP eliminated the replacement fill removal requirement (or 50% rule) and provided the Port with an expanded number of uses that could be permitted on the piers in exchange for a set of public benefits. Projects like the Exploratorium are now allowed and possible due to 2000 amendment to the SAP. These public benefits include improvement to Bay ecology, Bay views and public access. If the pier and shed were to remain, then the SAP would need to be amended and new fill removal would need to be found that was of similar size and in a similar location.</p>
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Public Comment	Staff Response
<p>Commissioner Geoffrey Gibbs also expressed interest in changing the SAP to allow the Pier 2 shed to remain. He asked if it was just the SAP that required the Pier 2 shed to be removed or if it is also necessary as part of the expansion for the Ferry Terminal project.</p>	<p>See responses to concerns raised by Commissioners Vasquez and McGrath. Additionally, the ferry terminal expansion project is designed with the shed and pier removed at Pier 2.</p>
<p>Commissioner Jane Hicks asked why Sinbad’s Restaurant was not considered a historic resource.</p>	<p>Sinbad’s is not a historic resource as it consists of a series of buildings and structures that have been placed episodically over the past 40 years.</p>
<p>Chair Sean Randolph directed staff to continue to work with the operators of Sinbad’s restaurant on a compromise to the original staff recommendation that the shed that the restaurant currently occupies be removed by March 2013.</p>	<p>In early January, BCDC and Port staff began negotiations with the operators of Sinbad’s Restaurant to allow the shed to stay in place until January 2015. The staff recommendation has from requiring removal of the Pier 2 shed in March 2013 to March 2015.</p>
<p>Commissioner David Chui asked if the compromise that would result in delaying the</p>	<p>The public benefits associated with the removal of the Pier 2 shed will still be</p>

removal of the shed at Pier 2 at least two years would result in the need to find additional public benefits for the amendment.	achieved if the shed is removed after the event. The only difference is a delay in Bay views and no opportunity to provide additional public access at the site during the America's Cup events. BCDC staff has not requested additional public benefits from the Port.
Commissioner Wagenknecht asked that the staff retain both options, removal by March 2013 and removal at a later date, in case the alternative public benefits that would result in improved Bay views and public access areas cannot be found.	Staff is currently recommending that the Commission approve the removal of the Pier 2 be in March 2015, rather in March 2013. The Commission ultimately has the authority to direct staff within the parameters of this amendment.
Vice Chair Anne Halsted wanted to ensure that the America's Cup Event Authority was committed to paying for the removal of the Pier 2 shed regardless of when it is being removed.	The America's Cup Event Authority is committed to paying for the removal of Pier 2 shed, even if that removal occurs after the America's Cup events area over.
Commissioner Jim McGrath reiterated concerns regarding water-oriented recreation access, the impacts of the racecourse on access at Crissy Field and also stated a concern regarding the closure of areas that are currently public spaces at Marina Green and Crissy Field and making them private or requiring people to pay to enter.	Staff believes that both the SAP amendment and the upcoming permit processes will result in long-term benefits and improved access for water-recreationists. See comment responding to Bill Robberson's concerns.

Public Comment	Staff Response
Commissioner Tom Bates reiterated the concerns that public spaces were going to be providing benefits to private parties and he also asked about the number of teams that will be participating, as he had heard that the number of teams was only three.	Staff believes that both the SAP amendment and the upcoming permit processes will result in long-term benefits and improved access for water-recreationists. See comment responding to Bill Robberson's concerns.
Chair Sean Randolph asked how many race days there were going to be in 2012 and then in 2013.	There will be 12 race days in 2012 and up to 45 in 2013.
Commissioner Barry Nelson stated that it was important that the Commission understand which potential impacts are associated with which decisions.	See comment responding to Bill Robberson's concerns.
Commissioner Gilmore asked if the racecourse would be set by the Coast Guard	The racecourse should be established by the Coast Guard by the time the comprehensive

by the time the Commission would vote on the permits for the America's Cup.	major permit for the America's Cup project is heard in May or June. The Commission will hold hearings and possible votes on two components of the America's Cup project prior to the Coast Guard's decision on the racecourse, for the strengthening of Piers 30-32 and for the cruise ship terminal project.
Vice-Chair Anne Halsted asked about the rights to negotiate a marina at Brannan Street Wharf and what rights were actually provided the event authority at this location.	See response to Aaron Peskin's concerns.

The Commission received two written comments on staff's preliminary recommendation on the proposed amendment during the 30-day public review period. Both letters were from the operators of Sinbad's Restaurant, requesting that the Commission delay the removal of the Pier 2 shed where the lease space from the Port until January 2015 and thanking the Commission for their comments at the February 2, 2012 public hearing.

1. Thomas Stinson, Sinbad's Restaurant (letter dated January 22, 2012)

Comment: The operation of Sinbad's could enhance the America's Cup event by providing improved service during the event.

Response: Comment noted.

Comment: Removing Sinbad's by March 2013 would result in the loss of jobs and result in negative impacts to the economy.

Response: The proposal to accelerate the removal of the Pier 2 shed was not designed to remove Sinbad's Restaurant from the San Francisco Waterfront. As a tenant of the Port, Sinbad's Restaurant could be relocated to other Port lands. When BCDC staff learned the Sinbad's Restaurant was not going to be relocated, BCDC and Port staff began to meet with Sinbad's operators to develop a compromise that would extend the amount of time the restaurant could remain at Pier 2.

Comment: Sinbad's operators were not consulted or invited to participate in public hearings on this matter.

Response: The first public hearing on this proposal was held on February 2, 2012. There were no earlier public hearings on this proposal.

Comment: It is unnecessary to accelerate the removal of Sinbad's because there are ample viewing opportunities around the Pier 2 site.

Response: The preliminary staff recommendation included the accelerated removal of the Pier 2 shed as part of the public benefits package for the America's Cup amendment to the *San Francisco Waterfront Special Area Plan (SAP)*. The America's Cup Event Authority and the Port of San Francisco requested the amendment to allow the use all four open water basins designated by the SAP for the berthing of vessels associated with the 34th America's Cup Events. The use of all four open water basins would have impacts on Bay views, Bay ecology, opportunities for water-oriented recreation and public access. The accelerated removal of the Pier 2 shed would mitigate for the impacts to Bay views and public access along a part of the waterfront that is visited by many people, the area surrounding the Ferry

Building. Waterfront stakeholders have identified the area surrounding the Ferry Building as an area where public access and Bay views should be improved.

Comment: Sinbad's operators request that BCDC embrace a compromise on the proposal to accelerate the removal of the Pier 2 shed.

Response: After the issuance of the staff report on January 4, 2012, both Port and BCDC staff began to meet with both you and your brother Duane Stinson to determine opportunities for a compromise that would allow the Pier 2 shed and restaurant to remain beyond March 2013, but still result in a date certain for removal that would ensure the benefits associated with improved Bay views and public access would occur along a busy part of the San Francisco Waterfront. Based on those negotiations and the direction of the Commission at the public hearing on February 2, 2012, all parties have agreed to a compromise that results in an amendment to the SAP that requires that the Pier 2 shed be removed by March 2015.

2. Thomas Stinson, Sinbad's Restaurant (letter dated February 7, 2012)

Comment: Sinbad's operators appreciated the Commission's fair, impartial hearing of the issues related to the accelerated removal of the Pier 2 shed on February 2, 2012.

Response: Comment noted.