

# SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION

50 California Street • Suite 2600 • San Francisco, California 94111 • (415) 352-3600 • Fax: (415) 352-3606 • www.bcdc.ca.gov

November 19, 2010

## Application Summary

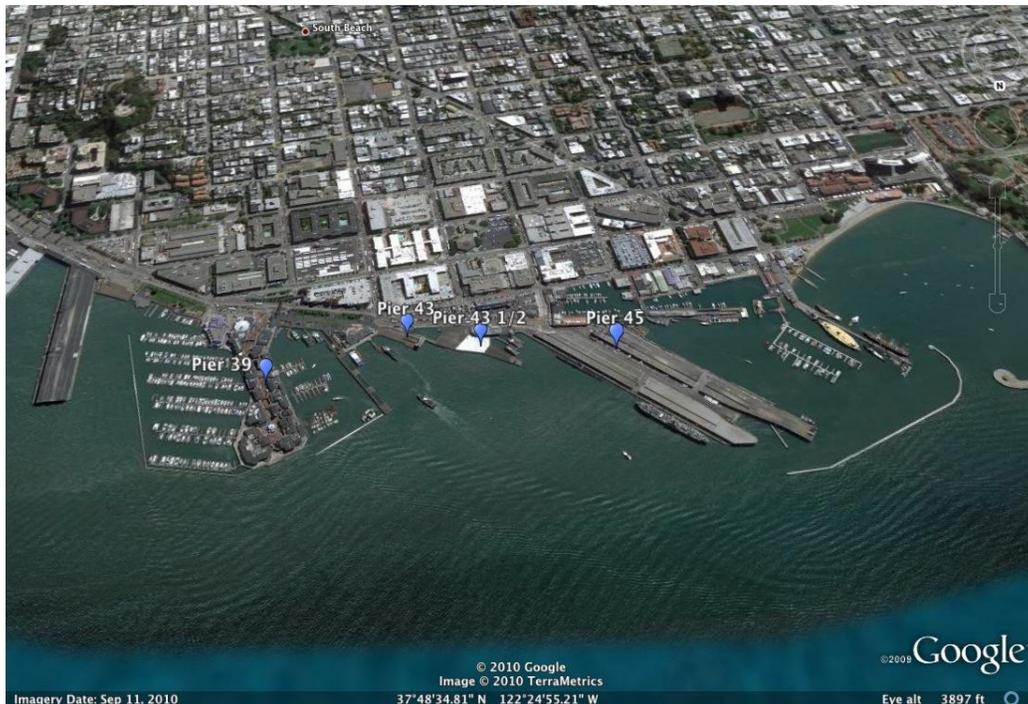
(For Commission consideration on December 2, 2010)

**Number:** BCDC Permit No. M93-16, Material Amendment No. Three  
**Date Filed:** October 6, 2010  
**90th Day:** January 4, 2011  
**Staff Assigned:** Max Delaney (415/352-3668, maxd@bcdc.ca.gov)

### Summary

**Applicant:** The Port of San Francisco (The Port)

**Location:** In the Bay and within the 100-foot shoreline band, at Pier 43 and Pier 43½, along the northern waterfront of the City and County of San Francisco (Exhibit 1).



Making San Francisco Bay Better

**Project:** The Port proposes to improve public access along the waterfront by removing most of Pier 43½, constructing a new pedestrian and bicycle promenade, repairing and reconstructing portions of an existing seawall and placing rip rap along the seawall for shoreline protection, constructing sidewalk and roadway improvements along the Embarcadero Roadway, and installing public access improvements and furnishings throughout the site (Exhibit 2). Several small commercial uses (vendor carts and some outdoor dining) are also proposed in order to activate the waterfront and replace lost revenue sources (primarily from lost bus parking spaces) for the Port.

**Table 1. Fill Areas for the Project (in square feet)**

Description	Type of Fill	To Be Removed	To Be Placed	Total Net Area
<i>Rip Rap</i>	Solid	0	4,500	4,500
<i>Sea Wall Placement</i>	Solid	(2600)	2,600	0
<b>Total Solid Fill</b>				<b>4,500</b>
<i>Pier 43½ (including bell display platform)</i>	Pile-Supported	(76,920)	0	(76,920)
<i>New Promenade and Replacement of Portions of 43½ and Pier 43 (Base Project)</i>	Pile-Supported	0	19,405	19,405
<i>New Public Access Plaza by Pier 43 (Alternative A)</i>	Pile-Supported	0	2,200	2,200
<i>Wider Promenade North of the Franciscan Restaurant (Alternative B)</i>	Pile-Supported	0	2,310	2,310
<b>Total Pile-Supported Fill</b>		<b>(76,920)</b>	<b>23,915</b>	<b>(53,005) *</b>

\* This figure reflects the net fill removal for the project if Alternatives A and B are constructed. If Alternatives A and B are not constructed, the net fill removal would be approximately 57,515 square feet.

**Issues**

**Raised:** The staff believes that the application raises five primary issues: (1) whether the project is consistent with the *San Francisco Special Area Plan*; (2) whether the project is consistent with the Commission's fill policies, including safety of fills and sea level rise; (3) whether the project is consistent with the Commission's public access and appearance, design and scenic views policies; (4) whether the project is consistent with the Commission's policies on water quality; and (5) whether the project is consistent with the Commission's natural resource policies.

## Background

The proposed project is located along the San Francisco waterfront in the Fisherman's Wharf area, north of "Little" Embarcadero between Powell & Taylor Streets and Piers 43 & 45. Pier 43½ is an existing pile-supported pier structure located over the Bay that predates the Commission. Pier 43½ has historically been used for parking associated with the Franciscan Restaurant, other restaurant and commercial facilities, and ferry boat service (Exhibit 4). Over its lifetime, the pier structure has deteriorated, with portions of the structure and supporting pilings failing. A deteriorating timber seawall also lies along the shoreline beneath the pier and is located approximately five feet north of the northern curb of the adjacent Embarcadero Roadway.

Based on the advice of the Attorney General, the Commission treats projects on piers that predate the Commission, such as those that do not involve any work on the pier decking or support pilings and joists, as being within the Commission's 100-foot shoreline band jurisdiction. Projects involving the complete removal or replacement of a pier's deck or its supporting pilings, are considered to fall within the Commission's Bay jurisdiction. The removal of all or most of pier deck and pilings and its replacement with new deck and pilings would generally constitute "further filling" of the Bay within the meaning of Section 66605 of the McAteer-Petris Act, and would trigger the water-oriented use limitation set forth in the law. While the Commission can authorize minor fill for improving shoreline appearance and public access under certain circumstances, the Commission generally considers parking (which a substantial portion of Pier 43½ once supported) to be a non-water-oriented use for which fill cannot be placed.

The Port first began repairing significant portions of Pier 43½ in the early 1990's. Prior to this time, the Port performed routine maintenance work on the pier, including replacing piles that were more than 60% deteriorated, under BCDC Permit M77-17 the permit issued to the Port of San Francisco authorizing routine repairs and maintenance. In 1992, the Port initiated a series of projects to replace portions of asphalt decking at Pier 43½ in areas used for both parking and public access, replace numerous pilings, replace a boat fendering system along the west side of the pier, and fix sinkholes. The Commission determined that these repairs were not routine maintenance as authorized under Permit M77-17. BCDC Permit M93-16 and Amendment

No. One to Permit M93-16 were both issued a few years later as after-the-fact approvals for these repairs. The Commission required public access improvements as part of these authorizations, determined the work was approvable as a water-oriented use and for public access purposes and was consistent with the San Francisco Waterfront Special Area Plan and the McAteer-Petris Act.

In the late 1990's, The Port determined that Pier 43½ needed further repairs to stabilize it, and applied for another amendment to M93-16. Because the proposed repairs, combined with those already completed under previous authorizations, approached replacement of 50% of the pier, the staff determined the Commission should review the proposed repairs as a material amendment. In 2002, the Commission issued Material Amendment No. Two, which authorized replacing some pilings and the repair of portions of the deck for parking, and required new public access areas on the pier. Upon completion of the work authorized by Amendment No. Two, approximately 48% of the structure had been replaced. The Commission found that the repairs authorized by Amendment No. Two were minor in nature, yet approached a threshold that, if exceeded, would result in perpetuating the life of the structure. The goal of completing the repairs authorized by Amendment No. Two was to allow continued use of the pier for three to five additional years. It was anticipated that a Fisherman's Wharf Special Area Plan would be completed within that time period which would specify possible changes to Pier 43½ and the stretch of waterfront along the Little Embarcadero. With the issuance of Amendment No. Two, the Commission found that this repair work, in combination with the "minor repair" work already authorized in the original permit and previous amendments to BCDC Permit No. M93-16, did not significantly extend the life of the pier and its attendant non-water-oriented uses and should be considered further "minor repair." Amendment No. Two expressly authorized only interim repair and use of Pier 43½ and included a special condition that specifies that all parking uses on Pier 43½ must be completely removed within six years or authorized by the Commission as a material amendment to this permit under certain circumstances. In addition, this condition states that any future authorization may require additional public access. The portions of Pier 43½ that had not been repaired through Amendment No. Two would likely continue to deteriorate and the pier would likely require further stabilization in the future.

In November 2002, the Commission and the San Francisco Port Commission formed a joint Fisherman's Wharf Planning Committee (Committee) to develop recommendations for the Fisherman's Wharf area of the waterfront. The Committee held 16 public meetings to solicit public input, discuss issues and develop planning recommendations related to open space, public access, traffic circulation and parking. The proposed project design was developed as a result of those recommendations. Funding for the project comes from the City of San Francisco's Neighborhood Parks Bond, which was passed by voters on February 5, 2008.

Material Amendment No. Three to BCDC Permit No. M93-16 would authorize the removal of the majority of Pier 43½, the construction of a new promenade and new public access spaces between Piers 43 and 45, the replacement of approximately 520 linear feet of sea wall with a concrete sea wall with rip rap placed to protect its base, and the construction of other public access amenities and roadway improvements.

### Project Description

**Project  
Details:**

The applicant, the Port of San Francisco (The Port), describes the project as follows:

**In the Bay:** Conduct the following:

- (1) Remove the majority of existing Pier 43½, including the public access platform (Vista Point) and bell sounding display at the northwest corner, resulting in the removal approximately 76,920 square feet (1.77 acres) of pile-supported fill;
- (2) Construct, use and maintain a new promenade between Powell and Taylor Streets and replace and repair portions of Pier 43 and Pier 43½ resulting in the placement of approximately 19,405 square feet (0.45 acres) of pile-supported fill;
- (3) Construct, use and maintain a wider promenade/public access viewing area on the north side of the Franciscan Restaurant, resulting in the placement of approximately 2,310 square feet (0.05 acres) of pile-supported fill;
- (4) Construct, use and maintain a new public access plaza between Pier 43 and the shoreline resulting in the placement of approximately 2,200 square feet (0.05 acres) of pile-supported fill;
- (5) Remove approximately 750 creosote pilings associated with pier 43½ and another 140 remnant creosote pilings from the open water area between Pier 43 and the shoreline and place approximately 95 new concrete or steel pilings to support the new promenade;
- (6) Remove approximately 520 linear feet of five-foot high timber sea wall and replace it with a new five-foot-high concrete sea wall (360 cubic yards of replacement solid fill over an approximately 2,600-square-foot area); and

- (7) Place approximately 305 cubic yards of rip rap at the base of the concrete sea wall over an approximately 4,500-square-foot area (0.10 acres) to provide shoreline protection.

**Within the 100-foot shoreline band:** Conduct the following:

- (1) Reconstruct, use and maintain a 15-foot-wide by 340-foot-long (approximately 4,860 square feet (0.11 acres)) section of new sidewalk (part of the new promenade) and construct, use and maintain approximately 225 linear feet of new curb to the east of the Franciscan Restaurant, to create a new bulb-out along the northern edge of the Embarcadero Roadway in order to create a wider promenade area;
- (2) Realign approximately 500 linear feet of curb to the east of the Franciscan Restaurant to better define the public access plaza at the south end of Pier 45;
- (3) Repair and/or replace approximately 2,590 square feet of paved sidewalk between the Franciscan Restaurant and Taylor Streets; and
- (4) Construct, use, and maintain two new crosswalks to the west of the Franciscan Restaurant.

**In the Bay and within the 100-foot shoreline band:** Conduct the following:

- (1) Repair surface paving over an approximately 5,290-square-foot area (0.12 acres) to improve a public access plaza at the south end of Pier 45;
- (2) Provide, use and maintain an approximately 800-square-foot outdoor dining area at the east end of the Franciscan Restaurant;
- (3) Install, use, and maintain up to eight 10-foot-long by 6-foot-wide by 8-foot-high moveable vendor carts; and
- (4) Install, use and maintain up to 60 benches, 15 new trash receptacles, lighting, and approximately four interpretive and directional signs throughout the site.

**Fill:**

The Port's proposed project includes a base project design and two alternative add-ons (Alternatives A and B), which would be constructed if sufficient funding is available. The base project would remove the majority of the dilapidated Pier 43½ structure, construct a new promenade, and make repairs to portions of Pier 43. The base project would remove approximately 76,920 square feet (1.77 acres) of pile-supported fill (previously used mainly for parking) and place approximately 19,405 square feet (0.45 acres) of pile-supported fill for public access. If funding allows, the project would place approximately 2,200 square feet (0.05 acres) of additional pile-supported fill to create a public access plaza adjacent to Pier 43 (Alternative A) and approximately 2,310 square feet (0.05 acres) of additional pile-supported fill to widen the promenade and create a viewing area on the north side of the Franciscan (Alternative B) (Exhibits 2 and 3).

The base project would result in a net increase of Bay surface area of approximately 57,515 square feet (1.32 acres) by removing pile-supported fill and a net increase of approximately 305 cubic yards of solid fill (rip rap) over an approximately 4,500-square-foot area (0.10 acres). If Alternatives A and B are

constructed, the increase in Bay surface area would be approximately 53,005 square feet (1.22 acres).

**Public  
Access:**

As stated above, most of Pier 43½ is currently closed to the public because it is structurally unsound. A narrow pedestrian walkway that is enclosed by chain link fencing runs around the east and north side of the Franciscan Restaurant. At the tip of Pier 43½ is an approximately 2,900-square-foot (0.07 acres) public access platform that contains a display of a historic pier-sounding bell. While this platform is structurally sound, it is currently inaccessible to the public due to the unsafe condition of the rest of Pier 43½. Pier 43 is currently open to the public and contains the historic ferry arch. Pier 45 contains commercial fishing facilities and public access along the northern apron where the U.S.S. Pamponito is moored. A sidewalk also runs along the northern edge of the Embarcadero Roadway between Powell and Taylor Streets that is currently open to the public.

The proposed project would remove the majority of Pier 43½ (including the public access platform and historic bell display) and construct a new promenade and public access spaces between Powell and Taylor Streets. As part of the base project, the Port would construct a 35-foot-wide promenade between Powell and Mason Street and a 15-foot wide promenade on the north side of the Franciscan Restaurant. If funding allows, the Port would also construct a 2,200-square-foot public access plaza between Pier 43 and the shoreline (Alternative A) and widen the promenade on the north side of the Franciscan to 38 feet (Alternative B). Other streetside improvements include a new curb bulb-out between the Franciscan and Pier 43 and new curbs and surface improvements to improve a public access plaza at the south end of Pier 45. The Port would install seating, lighting, trash receptacles, and signage throughout the site. The Port proposes no new parking.

Type of Public Access	Square Feet	Acres	New or Improved?
Promenade and Public Access Spaces (Base Project)	19,405	0.45	New and Improved
Pier 43 Public Access Plaza (Alternative A)	2,200	0.05	New
Wider Promenade North of the Franciscan (Alternative B)	2,310	0.05	New
Pier 45 Public Access Plaza and improved sidewalk areas (Base Project)	12,740	0.29	Improved
<b>TOTAL *</b>	<b>36,655</b>	<b>0.84</b>	<b>New and Improved</b>

*\*Total includes Alternatives A and B. The total amount of new and improved public access would be approximately 32,145 square feet (0.74 acres) without Alternatives A and B.*

**Priority**

**Use:** The proposed project is not located within an area designated for a priority use

by the *San Francisco Bay Plan* but is located within an area that is within the boundaries of the *San Francisco Waterfront Special Area Plan*.

**Schedule and Cost:**

The Port proposes to begin construction in January 2011 and expects to complete the project by June 2012. The total project cost for the base project is estimated at \$8,000,000 and the estimated cost for the project including Alternatives A and B is \$9,500,000.00.

**Staff Analysis**

A. **Issues Raised:** The staff believes that the application raises five primary issues: (1) whether the project is consistent with the *San Francisco Special Area Plan*; (2) whether the project is consistent with the Commission's fill policies, including safety of fills and sea level rise; (3) whether the project is consistent with the Commission's public access and appearance, design and scenic views policies; (4) whether the project is consistent with the Commission's policies on water quality; and (5) whether the project is consistent with the Commission's natural resource policies.

1. **San Francisco Special Area Plan.** The project is located within the Fisherman's Wharf planning area of the *San Francisco Waterfront Special Area Plan*. The Waterfront SAP states that new or replacement fill project at Piers 43 and 43½ is only allowable to maintain public access to the Bay and replace commercial recreational uses. The proposed project would remove pile-supported fill from the Bay previously used for parking and a small amount of public access, would open up new views to the Bay from the shoreline, and would construct new fill and replacement fill to create a public access promenade and other public access spaces along a popular section of the San Francisco waterfront.

The Commission should determine whether the project would be consistent with the *San Francisco Waterfront Special Area Plan*.

2. **Fill.** The Commission may allow fill only when it meets certain fill requirements identified in Section 66605 of the McAteer-Petris Act, which states, in part, that:
  - (a) fill "should be limited to water-oriented uses (such as water-oriented recreation or public assembly) or "minor fill for improving shoreline appearance and public access";
  - (b) fill in the Bay should be approved only when "no alternative upland location" is available;
  - (c) fill should be "the minimum amount necessary to achieve the purpose of the fill";
  - (d) "the nature, location, and extent of any fill should be such that it will minimize harmful effects to the Bay area, such as, the reduction or impairment of the volume, surface area or circulation of water, water quality, fertility of marshes or fish or wildlife resources, or other conditions impacting the environment..."; and
  - (e) "fill should be authorized when the applicant has such valid title to the properties in question that he or she may fill them in the manner and for the uses to be approved." The San Francisco Waterfront Special Area Plan states that for Piers 43 and 43½, "no new fill should be permitted except to maintain present uses, including tour boats, ferries, and public access to the Bay" and that "replacement fill should be limited to replacement of commercial recreation uses involuntarily destroyed."

- a. **Water-Oriented Use.** Most of the fill in the Bay proposed by the project would be pile-supported. Its sole purpose is for creating safe public access areas and improving

shoreline appearance. The proposed solid fill, a concrete sea wall to replace an existing timber sea wall and placing rip rap for shoreline protection, is necessary to create a permanent shoreline and create a secure footing for the public access areas.

- b. **Alternative Upland Location.** All proposed fill in the Bay is for constructing a new promenade along the Bay shoreline. The new promenade would improve connections to the surrounding public access areas, replace the public access on Pier 43½ that has been closed due to the deteriorated condition of the structure, and provide increased access to the Bay for the public. Thus, there is no alternative upland location for the project.
- c. **Minimum Amount Necessary.** To repair the seawall, the project would replace approximately 365 cubic yards of fill from an approximately 2,600-square-foot area along 520 linear feet of shoreline with a new concrete sea wall with the same dimensions. The project would also place approximately 305 cubic yards of new rip rap over an approximately 4,500-square-foot area. The applicant states that the proposed solid fill would be the minimum amount necessary to repair an existing sea wall and provide adequate shoreline protection. The remaining pile-supported fill would all be for public access. Because the Port would remove most of Pier 43½, the new promenade would result in a significant net increase of Bay surface area.
- d. **Effects on Bay Resources** (See also discussions below on Water Quality, and Fish, Other Aquatic Organisms, and Wildlife). The Bay Plan policies on water surface area and volume state that, “the surface area and volume of the Bay should be kept as large as possible in order to maximize active oxygen interchange, vigorous circulation, and effective tidal action” and that “water circulation in the Bay should be maintained, and improved as much as possible.” These policies also state that “any proposed fills, dikes or piers should be thoroughly evaluated to determine their effects on water circulation and then modified as necessary to improve circulation or at least to minimize any harmful effects.”
 

The removal of Pier 43½ would provide a substantial increase in the water surface area of the Bay. The project would result in an increase in surface area of approximately 50,185 square feet (1.15 acres if Alternatives A and B are constructed) and 54,795 square feet (1.26 acres if only the base project is constructed). The majority of fill would be pile-supported and would minimize impacts on water volume and circulation.
- e. **Valid Title.** The City of San Francisco has legal ownership of the area where the proposed work would occur.
- f. **Safety of Fills / Sea Level Rise.** The Bay Plan policies on Safety of Fills state, in part, that “to prevent damage from flooding, structures on fill or near the shoreline should have adequate flood protection including consideration of future relative sea level rise as determined by competent engineers” and that “to minimize the potential hazard to Bay fill projects and bayside development from subsidence, all proposed developments should be sufficiently high above the highest estimated tide level for the expected life of the project....”

The applicant states that “at this time, the Port has not identified a unified strategy to manage sea level rise and is considering projects on a case by case basis.” The San Francisco Port Building Code requires that the Port consider 100-year Base Flood

Elevations (BFEs), as determined by the Federal Emergency Management Association (FEMA), when planning development projects along the waterfront. The 100-year BFE is defined by FEMA as the “flood elevation having a 1% chance of being exceeded in a given year.” The current BFE (i.e., water level during a 100-year flood event) at the project site is approximately 9.20 feet MLLW datum. The elevation of the existing piers and seawall averages approximately 10.59 feet above MLLW or 16-17 inches above current BFE. The inland area in the project vicinity is relatively flat with an elevation varying from 9.84 to 10.34 feet above MLLW. The Embarcadero Roadway elevation averages around 10.34 feet above MLLW (Exhibit 3).

The proposed project has a design life of approximately 75 years. The Port considered the project as both a stand-alone structure and within the context of flood protection along the overall waterfront. The Port reviewed several design strategies for addressing potential sea level rise at the project site including the following: (a) raising the deck by the predicted sea level rise during the project life; (b) providing a solid barrier around the Bay perimeter of the promenade; and (c) designing the deck so that it could be raised in the future. The Port has stated that engineering the substructure of the new promenade so that it could be raised in the future would be cost-prohibitive. Further, the Port states that “since the art of earthquake engineering is advancing, and codes are ever evolving, anything we [do] now may not be sufficient to meet code in the future” and has opted to “deal with structural issues of a future deck raising at that time should it be necessary.” The Port also concluded that constructing a solid barrier around the entire promenade would be cost-prohibitive and “is not a desirable solution due to the blocking of the waterfront views” which “may be appropriate in small areas along the waterfront.” The final strategy chosen includes: (a) designing the deck structure to withstand forces from a potential sea level rise of up to 45 inches; (b) providing finishes that can tolerate limited coastal flooding; and (c) tilting the deck toward the Bay and providing a water edge railing with a short solid base, thus gaining 12 inches of additional protection along the length of the project, an elevation similar to the maximum predicted BFE at 2073 (61 years after project opening). The Port believes “this strategy provides maximum public benefit for the project by integrating with the current design of the waterfront and providing a structure that will be safe and usable for 99% of design life days, and usable immediately after any coastal flooding recedes.” The proposed elevation of the top of curb at the base of the new promenade’s railing would be approximately 11.34 feet above Mean Low Lower Water (MLLW) and the bottom of the new structure would be at or just above the BFE. Given this elevation, the project would be potentially vulnerable to inundation from 100-year flood events in approximately 2050 (assuming a 16-inch sea level rise) and vulnerable to extreme tide events by 2075 (Exhibit 3). By the end of the project design life in 2087 (assuming a 45-inch sea level rise), extreme high tides may result in tidal flooding lasting 1-2 hours and occurring several times per year. The project has been designed so that a portion of the new promenade and pile-supported public access areas are higher in elevation than the roadway and surrounding areas. Since the entire area drains directly to the Bay, flooding and ponding would likely be worse inland of the site and would need to be addressed along this entire section of waterfront.

- g. **Fill Credit and the 50% Rule.** The San Francisco Bay Plan contains a replacement fill policy, also known as the 50% Rule, that states, in part, “that BCDC can permit fill on publicly-owned land for Bay-oriented commercial recreation and Bay-oriented public assembly, provided that the fill is a replacement pier that covers less of the Bay than was being uncovered, and the amount of Bay-oriented commercial recreation or Bay-oriented public assembly uses cover no more than 50% of the area of the Bay uncovered and the remainder (50%) of the replaced pier must be used either for public recreation, public access or open space, including open water.”

When a project results in the removal of fill from the Bay, the Commission can provide a fill credit to the proponent based on the amount of fill removed. In calculating that fill credit, the Commission can either consider the net amount of fill removed or the total amount of fill removed depending on the scope and purpose of the project. As part of the Pier 43 Promenade Project, the Port would remove up to a total of 76,920 square feet of pile-supported fill (1.77 acres). The Port would then place up to approximately 23,915 square feet of replacement pile-supported fill (0.55 acres) to construct the public promenade and associated public access areas. Section 66605 of the McAteer-Petris Act allows the Commission to authorize “minor fill for improving shoreline appearance and public access,” which means, the proposed fill for the new promenade would be approvable even without the removal of Pier 43½ if the Commission found that the fill met the criteria of Section 66605 of the McAteer-Petris Act. The Port is proposing to remove a structure that was previously used for parking and replace it with significantly less fill, all of which is for public access. The new public access will provide a more appropriate use of the shoreline and greatly improve the appearance of the waterfront.

Port staff and Commission staff are currently discussing possible changes to the 50% Rule for the Fisherman’s Wharf area in order to better achieve planning objectives for this portion of the waterfront. When the San Francisco Waterfront Special Area Plan is amended in the future, the net removal of fill from this project will likely be taken into account as part of the analysis of modifying or eliminating the 50% Rule.

The Commission should determine whether the project is consistent with its law and policies regarding Bay fill, safety of fills and sea level rise, and should determine whether to grant the Port fill credit of 76,920 square feet (representing the removal of all existing fill) or 54,795 square feet (representing the net fill removed).

### 3. **Public Access**

- a. **Maximum Feasible Public Access.** Section 66602 of the McAteer-Petris Act states, in part, that “...existing public access to the shoreline and waters of the...[Bay] is inadequate and that maximum feasible public access, consistent with a proposed project, should be provided.” In addition, the Bay Plan policies on public access state, in part, that “a proposed fill project should increase public access to the Bay to the maximum extent feasible...” and that “access to and along the waterfront should be provided by walkways, trails, or other appropriate means and connect to the nearest public thoroughfare where convenient parking or public transportation may be available.”

The project is located immediately adjacent to Fisherman’s Wharf and Pier 39, two of the most popular visitor destinations along the San Francisco waterfront. Most of

Pier 43½ is currently closed to the public and blocked off by chain-link fencing because it is structurally unsound. The public is able to walk through a narrow area between the fencing and north side of the Franciscan Restaurant but the access is not very desirable for a number of reasons, including its distance from the open waters of the Bay, it's irregular paving, the fact that this walkway is usually in the shade, and the unattractiveness of the chain link fencing around Pier 43½. At the tip of Pier 43½ is an approximately 2,900-square-foot (0.07 acres) public access platform (referred to as Vista Point in BCDC Permits M93-16 and M88-4) containing a display of a historic pier-sounding bell, which is structurally sound but inaccessible to the public due to the unsafe condition of the rest of the pier (required for public access as part of BCDC Permit No. M93-16, Amendment No. Two).

The project's sole purpose is to improve public access. Along this section of waterfront, the Port would provide a new 35-foot-wide promenade and public access spaces between Powell and Mason Streets, a 15-foot-wide promenade on the north side of the Franciscan, and an improved public access plaza at the south end of Pier 45. Based on comments from the Commission staff, the Commission's Design Review Board, and the Port's Waterfront Design Review Committee that the base project design proposes a promenade that may be narrow in some places, the Port developed a design for two additional public access areas (Alternatives A and B) to be constructed if sufficient funding is available (See Section B-2 below, entitled "Design Review Board) for additional discussion). Alternative A would involve constructing a new 2,200-square-foot public access plaza adjacent to Pier 43 with a children's play area and/or picnic tables which would provide a spacious public access transition between the Pier 43 Promenade project and existing public access provided at the Pier 43 Historic Arch. This plaza also would provide a greater variety of recreational and picnicking opportunities along the waterfront than currently exists and room for some vendor carts. Alternative B would involve constructing a wider promenade (38 foot width) around the north side of the Franciscan Restaurant. The project would also provide benches, lighting, and interpretive and directional signage throughout the site. In addition, the project would widen and improve the Bay Trail along this section of waterfront. Pedestrians and bicyclists attempting to travel around the Franciscan Restaurant are currently constrained by the narrow passageway on Pier 43½ on the north side of the Franciscan Restaurant, the narrowness of the existing sidewalk between Pier 43 and Pier 43½, and other obstacles including an aboveground elevator structure on the south side of the Franciscan Restaurant. The proposed project would provide a more enjoyable experience for the public by affording them spectacular views of the Bay bringing the public to the water.

- b. **Removal of Existing Public Access on Pier 43½ and Along the Shoreline.** BCDC Permit M93-16, co-issued to the Port of San Francisco and the Franciscan Restaurant, previously required a 5,300-square-foot area on Pier 43½ (consisting of the 2,900-square-foot Vista Point public access area at the tip and a walkway connecting the shoreline with Vista Point). This public access was required as a condition of previous permit amendments when the Port conducted repairs and replaced sections of Pier 43½ in order to prolong the life of the structure. Since the majority of Pier 43½ is now being removed, this public access area would no longer be required and no longer possible with the pier removed. BCDC Permits M93-16 and M88-4

(also co-issued to the Port and the Franciscan Restaurant) required other public access within the project site, including a 3,000-square-foot area along the southern edge Pier 43, a 4,500-square-foot area along the Embarcadero Roadway between the Franciscan and Pier 43, and a 1,500-square-foot public access area around the Franciscan Restaurant. These areas would be reconstructed and maintained for public access by the Port as part of the Pier 43½ Promenade Project. BCDC Permit M88-4 would also need to be amended to reflect the proposed changes to the public access in the area.

The base project would result in approximately 32,145 square feet (0.74 acres) of new and improved public access. If Alternatives A and B are constructed, the project would result in an additional 4,510 square feet (0.10 acres) of new and improved public access.

- c. **Barrier Free Access.** The Bay Plan policies state that public access improvements “should permit barrier free access for the physically handicapped to the maximum extent.”

All the proposed public access areas would be ADA-accessible.

- d. **Appearance, Design, and Scenic Views.** The Bay Plan policies on appearance, design, and scenic views state, in part, that “...maximum efforts should be made to provide, enhance, or preserve views of the Bay and shoreline, especially from public areas, from the Bay itself, and from the opposite shore” and that “local government should be encouraged to eliminate inappropriate shoreline uses and poor quality shoreline conditions.”

The proposed project would demolish a pier that is slowly falling into the Bay that was previously used as a parking lot. A new promenade and associated public access spaces would be constructed along the shoreline. The project would also relocate a historic bell sounding display, currently encased in a belltower located within the Vista Point public access area at northwest corner of Pier 43½. The removal of the 23-foot-high by 13-foot-wide by 15-foot-long belltower would increase views to the Bay. In addition, the removal of the Pier 43½ structure, including a series of remnant piles and timbers within the pier footprint, would create new open water between Piers 45 and 43. The construction of a new promenade along this open water area would afford great views of Central San Francisco Bay and would improve the visual appearance of the shoreline. In addition, the project proposes to remove several parking spaces for buses along the Embarcadero Roadway and install a new curb bulb-out between the Franciscan and Pier 43. The bulb-out would be constructed in order to widen the new promenade but would also serve to discourage vehicles from stopping and dropping-off at this location. The construction of the bulb-out and the removal of bus parking would open up views to the Bay from Jefferson Street (1 block inland).

The Commission should determine whether the proposed project is consistent with the Bay Plan policies regarding public access and appearance, design and scenic views.

- 4. **Water Quality Policies.** The Bay Plan policies on water quality state, in part, that “Bay water pollution should be prevented to the greatest extent feasible. The Bay’s tidal marshes, tidal flats, and water surface area and volume should be conserved and, whenever possible, restored and increased to protect and improve water quality.” The

policies also state that “[w]ater quality in all parts of the Bay should be maintained at a level that will support and promote the beneficial uses of the Bay as identified in the San Francisco Bay Regional Water Quality Control Board’s (RWQCB) Basin Plan and should be protected from all harmful or potentially harmful pollutants.” The policies, recommendations, decisions, advice, and authority of the State Water Resources Control Board and the Regional Board should be the basis for carrying out the Commission’s water quality responsibilities.” Finally, the Bay Plan policies on Water Quality state that “new projects should be sited, designed, constructed, and maintained to prevent or, if prevention is infeasible, to minimize the discharge of pollutants into the Bay by: (a) controlling pollutant sources at the project site; (b) using construction materials that contain nonpolluting materials; and (c) applying appropriate, accepted, and effective best management practices; especially where water dispersion is poor and near shellfish beds and other significant biotic resources.”

On March 14, 2003, the Regional Water Quality Control Board (RWQCB) issued a Conditional Approval of Low Threat to Water Quality Activities (Approval) authorization to the Port for the Port’s Northern Waterfront Embarcadero Area. The proposed project is within the designated area of activities covered by the Approval and is consistent with the list of low threat activities described by the RWQCB’s authorization. Specifically, the project would demolish an existing pier and remove and replace piles, substructure, and decking in a manner that covers less surface area than the existing structure. The Approval requires the Port to employ mitigation measures to minimize the proposed project’s impact on water quality including, employing best management practices to minimize the discharge of construction materials and any incidental particulates falling from the pier deck, temporary access areas, equipment staging areas, and other construction areas, preventing asphalt, creosote pile shavings, concrete, silt, clay, sand, sawdust, or other materials from entering the Bay, using a floating debris barrier or absorbent boom around the areas where work is occurring, and keeping spill containment and clean-up equipment on-site at all times during construction.

This project would remove approximately 750 creosote pilings currently supporting Pier 43½ and another 140 remnant pilings from the open water area adjacent to Pier 43. Since creosote can leach from pilings into the water column and is toxic to organisms laying eggs or attaching to them, creosote piles can adversely impact fish and wildlife. The project would benefit water quality by removing these pilings. The new promenade and pile-supported structures would require the installation of 95 new pilings, all of which would be concrete or steel with no impact on water quality.

The Mitigated Negative Declaration (MND) for the proposed project, which was certified on October 30, 2009, states that “the project would not require substantial expansion of wastewater/stormwater treatment facilities or an extension of a sewer trunk line as the project sites are all currently served by existing facilities. As no new wastewater/storm water infrastructure would be required to serve the project, no significant effects would result.”

The Commission should determine whether the proposed project is consistent with its policies on water quality.

## 5. **Natural Resources Policies**

a. **Fish, Other Aquatic Organisms and Wildlife.** The Bay Plan policies on fish, other

aquatic organisms and wildlife state, in part, that “the Commission should consult with the California Department of Fish and Game and the U.S. Fish and Wildlife Service or the National Marine Fisheries Service whenever a proposed project may adversely affect an endangered or threatened plant, fish, other aquatic organism or wildlife species...and give appropriate consideration of (their) recommendations in order to avoid possible adverse impacts of a proposed project on fish, other aquatic organisms and wildlife habitat.”

There are no wetlands, eelgrass beds, or mudflat habitat in the vicinity of the project site so the project would not be likely to adversely affect habitat. The proposed project has the potential to impact fish and pinnipeds by generating elevated levels of underwater sound pressure levels associated with installing the new piles. In a July 16, 2010 letter to the NOAA National Marine Fisheries Service (NMFS), the Port outlined the mitigation measures and best management practices that they intend to employ during construction to avoid impacts to fish and pinnipeds. Measures would include using a vibratory hammer to install steel pilings and only driving them between June 1 and November 30 when listed fish species are not likely to be present at the site, limiting the use of an impact hammer to concrete pilings only, monitoring underwater sound levels during all pile-driving activities to ensure that they do not exceed levels that are safe for fish, and employing additional sound attenuating measures (such as bubble curtains and cushioning blocks) if noise thresholds are exceeded. In addition, if marine mammals are observed within 1,500 feet of the project site, the applicant would allow them to completely exit the site before pile driving resumes. Of the 95 pilings to be driven, 26 are located high up in the intertidal zone so there would be little or no water present during pile-driving. Another 25 pilings are located close to the Mean Higher High Water (MHHW) line and the Port would drive these piles in an average of three feet of water, which should reduce sound impacts. The NMFS has not issued a response letter to the Port or biological opinion for the proposed project. However, NMFS staff has communicated to the Port that the proposed mitigation measures should be adequate to avoid or minimize adverse impacts to fish and wildlife.

The Mitigated Negative Declaration (MND) for the proposed project states that “some construction activities in and over water could impact fish habitat or special-status species” and that “pile-driving...could impact these fish species by disturbing sediment, which could impact herring spawn that may have settled in the vicinity.” Port staff and Commission staff have both communicated with the California Department of Fish and Game regarding potential impacts of the project on herring. In order to avoid or minimize potential impacts to herring, the proposed project would employ mitigation and conservation measures such as avoiding in-water work between December 1<sup>st</sup> and March 1<sup>st</sup> or, if work is required during those months, having a trained herring observer on-site at all times during construction to monitor the site for herring spawns and stopping construction activities immediately if herring are detected at the site.

To the extent feasible, the Port would also avoid demolition work where Western Gulls have been observed nesting from April 15 to August 30. If demolition is necessary during these months, the Port would implement such mitigation measures as surveying structures to be removed for nests or remains of nests from previous

seasons, installing wire mesh or nets or other means of preventing nesting, or if barriers to nesting prove ineffective, removing nests prior to egg laying to prevent birds from nesting during the construction period.

The Commission should determine whether the project is consistent with its laws and policies regarding natural resources.

## B. Review Boards

1. **Engineering Criteria Review Board.** The Commission's Engineering Criteria Review Board (ECRB) did not review the proposed project. The Commission's staff engineer has worked closely with Port staff, however, to review the preliminary engineering plans and has provided comments on the project.
2. **Design Review Board.** The Design Review Board (Board) first reviewed the proposed project on February 8, 2010. The original project design that was brought to the Board proposed a triangular public access plaza with a raised wooden viewing/seating platform on the north side of the Franciscan. The original design also involved leaving the existing public access platform (Vista Point) at the tip of Pier 43½ with the historic bell sounding display and constructing a 2,400-square-foot pile-supported walkway to connect the triangular plaza with the platform. The Board raised concerns that the section of the promenade at the northeast corner of the Franciscan may not be wide enough to accommodate the anticipated level of use by the public and that pedestrians and bicyclists may feel "squeezed." The Board commented that the historic ferry arch is a structure of significance and suggested that the Port consider designing the promenade and the adjacent project area to better incorporate the arch. The Board raised concerns that the triangular public access space on the north side of the Franciscan may become congested as the public enters and leaves the new pedestrian bridge to Vista Point and suggested that the Port further study the design of this connection between the bridge and promenade. The Board also suggested that the Port consider reducing the number of furnishings along the promenade in order to avoid cluttering the space.

The Port modified the proposed project in response to the Board's initial comments and the project was reviewed by the Board a second time on May 10, 2010. The Port had modified the project to replace the proposed triangular plaza north of the Franciscan with a 15-foot-wide promenade in this location. The Port also widened the promenade at the northeast corner of the Franciscan from 22 to 25 feet to improve pedestrian flow around the corner of the restaurant. The Port also incorporated a new public access plaza between the promenade and Pier 43 (Alternative A) in an effort to incorporate the Ferry Arch into the project design. The new space would provide an area where the public can linger and enjoy views of the Ferry Arch as well as provide a better connection between Pier 43 and the promenade. Lastly, the modified design eliminated a proposed four-foot wide planter along the Embarcadero Roadway and reduced the number of proposed furnishings and vendor carts to improve pedestrian circulation along the new promenade. The Board stated they liked the modifications to the project design and also recommended removing the platform with the historic bell display and relocating the display elsewhere along the waterfront, if possible.

In response to the Board's comments, the applicant worked with Commission staff to develop a final design that eliminated the public access platform with the historic bell display platform, eliminated the proposed bridge to the platform, and added Alterna-

tives A (the proposed Pier 43 public access plaza) and B (the wider promenade on the north side of the Franciscan).

- C. **Environmental Review.** On October 7, 2009, the San Francisco Planning Department, acting as lead agency under the California Environmental Quality Act, prepared a Draft Negative Declaration of Environmental Impacts for the project. The document was adopted by the San Francisco Planning Commission on October 30, 2009. A summary of the final environmental document is attached as Exhibit 7.
- D. **Relevant Portions of the McAteer-Petris Act**
1. Section 66602.1
  2. Section 66605
  3. Section 66632
- E. **Relevant Portions of the San Francisco Bay Plan**
1. *San Francisco Bay Plan* Policies on Fish, Other Aquatic Organisms, and Wildlife (page 15)
  2. *San Francisco Bay Plan* Policies on Water Quality (page 17)
  3. *San Francisco Bay Plan* Policies on Water Surface Area and Volume (page 20)
  4. *San Francisco Bay Plan* Policies on Safety of Fills (page 31)
  5. *San Francisco Bay Plan* Policies on Public Access (page 57)
  6. *San Francisco Bay Plan* Policies on Appearance, Design and Scenic Views (page 61)
  7. *San Francisco Bay Plan* Policies on Fill for Bay-Oriented Commercial Recreation and Bay-Oriented Public Assembly on Privately-Owned or Publicly-Owned Property (page 73)

#### Exhibits

1. **Project Vicinity Map**
2. **Proposed Site Plan**
3. **Cross Section of the New Promenade**
4. **Existing Site Conditions and Photos**
5. **Proposed Furnishings**
6. **Rendering of the Proposed Project**
7. **Summary of the Final Environmental Document**