

SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION

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Agenda Item #10

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TO: Commissioners and Alternates

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SUBJECT: Port of San Francisco's Proposed Development of an Event Facility and Associated Improvements at Piers 30-32 (City and County of San Francisco)
(For Commission consideration on May 2, 2013)

Introduction. The Commission will receive a briefing by representatives from the Port of San Francisco on a proposal to: (1) construct a 13.5-story multi-use event center, a parking garage, retail buildings, the Golden State Warriors' practice and administrative facilities, a municipal fire boat station, and docking facilities for water transit vessels and/or cruise ships at Piers 30-32; (2) reinforce the supporting pier and piling structure; and (3) create public access areas and amenities along the pier perimeter and within plazas located at varying elevations. The Piers 30-32 project site is located approximately 650 feet south of the San Francisco-Oakland Bay Bridge, on The Embarcadero/Herb Caen Way, in the City and County of San Francisco.

Project Status. The BCDC staff is currently involved in three processes related to the proposal at Piers 30/32:

1. **CEQA:** In December 2012, the City of San Francisco ("City") Planning Department released a Notice of Preparation ("NOP") of a Draft Environmental Impact Report ("DEIR") regarding the proposed project. On January 23, 2013, the BCDC staff submitted comments to the City. (BCDC comments can be found at <http://sfport.com/Modules/ShowDocument.aspx?documentID=5326>.)
2. **Public Trust:** The public trust doctrine holds that navigable waters and tidal lands are the property of the state and must be protected for public use and enjoyment. The Bay Plan policy on public trust lands (p. 88) states, in part, when taking actions on such lands, the Commission "should assure that the action is consistent with the public trust needs for the area and, in case of lands subject to legislative grants, should also assure that the terms of the grant are satisfied and the project is in furtherance of statewide purposes." Public trust uses cited in the Bay Plan include commerce, navigation, fisheries, wildlife habitat, recreation and open space. The policies of the *San Francisco Waterfront Special Area Plan* ("Special Area Plan") provide that within the Northeastern Waterfront area, from Pier 35 to China Basin, "permitted uses" at piers not designated for removal, including the project site, would be only those "consistent with the Public Trust Doctrine and the Port's Legislative Trust Grant." The BCDC staff has met with the Port staff and the State Lands Commission staff to review and provide comments on AB 1273, introduced by Assembly Member Ting at the request of the Port, which would provide a legislatively-authorized public trust consistency determination for the project on Piers 30-32.¹

¹ This briefing does not address in detail the public trust issue related to the proposed project. The public trust issue is an issue scheduled for a separate BCDC meeting on May 16, 2013. (Legislation can be found at: http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201320140AB1273)



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3. BCDC Laws and Policies: The BCDC staff has met with the City and Port staff to review preliminary design plans for the proposed project and discuss issues related to the Commission's laws and policies, namely the McAteer-Petris Act (MPA) (Cal. Gov't Code § 66600 *et seq.*), the Commission's *San Francisco Bay Plan* ("Bay Plan"), and the Special Area Plan. Policy issues related to the project are discussed below.

Prior Commission Action for Project Site. Piers 30-32 is a 12.7-acre pile-supported pier structure built in 1912 and modified in 1926 and 1952. It was historically used for freight handling and is currently used for vehicle parking and special events. In 2001 and 2003, the State enacted legislation that established a public trust consistency determination for the City and County of San Francisco's proposed primary international cruise ship terminal. In November 2005, the Commission issued BCDC Permit No. 5-03 for the construction of an international cruise ship terminal and mixed-use development, including retail, entertainment, office space, parking and public access amenities. The permitted project, however, was never built due to construction-related costs. Since that time, the Commission has approved the City and County of San Francisco's primary cruise ship terminal at Pier 27. In June 2012, the Commission issued BCDC Permit No. 2012.001.00, which authorized, among other things, the temporary use of and modifications to Piers 30-32 to support the America's Cup event operations and team facilities, and also to provide temporary public access at the site.²

Commission Permit Process. The proposed multi-use event center is currently in the preliminary design phase and a permit application has not yet been submitted to BCDC. The Commission staff has advised the Port and the City that a project of such scope will require a major permit application, including a Commission public hearing and vote, and a review by BCDC's advisory boards, the Design Review Board, and the Engineering Criteria Review Board. Lastly, if the project is inconsistent with the Special Area Plan, as the Commission staff believes it to be, an amendment to the San Francisco Waterfront Special Area Plan will be required before a BCDC permit can be issued to ensure consistency with the Commission's laws and policies.

Relevant Commission's Laws and Policies. The Commission staff believes that the current proposal raises a variety of issues related to BCDC's laws and policies—a comprehensive list of which is included in the above-referenced comment letter on the NOP. Briefly, some of the more significant policy issues raised by the proposed project include, but are not limited to, massing, height, public space design and accessibility, on-pier parking and operation, the amount and type of retail, and issues relating to the public trust. The following is a partial list of supporting BCDC laws and policies:

1. The **McAteer-Petris Act** (§66605) sets forth criteria for Commission authorization of fill in the Bay, including that the fill be the minimum necessary, minimize adverse effects on Bay resources, and be constructed in accordance with sound safety standards. Further, §66602 provides that "maximum feasible public access, consistent with a proposed project, should be provided." In the Northeastern Waterfront, from Pier 35 to China Basin, the Special Area Plan waives the provisions in Section 66605(a) and (b) that require that projects on piers be water-oriented and have no alternative upland locations so long as they are consistent with the public trust doctrine and the Port's legislative trust grant (p. 23). These provisions were waived in exchange for a public benefits package as defined in the Special Area Plan. Other provisions of Section 66605 of the McAteer-Petris Act still apply.
2. The *San Francisco Waterfront Special Area Plan* contains policies by which the proposed project would be evaluated. These policies include:
 - a. **Piers Not Designated For Removal** (p. 23-24), which provides, in part, that projects "be designed so as to take advantage of [their] nearness to the Bay, and [to] provide opportunities for enjoyment of the Bay in such ways as viewing, boating and fishing."
 - b. **Open Water Basins** (p. 24-26), which provides, in part, that these areas (south of Piers 30-32) "be focal points of public use and enjoyment."

² Two administrative amendments to Permit No. 2012.001.00 have also been issued, both of which qualified as "minor repair and improvements" pursuant to the Commission's Regulations (CCR. Title 14 (Natural Resources §10601).

- c. **Open Water Areas** (p. 26-29), which provides, in part, that in these areas (north and east of Piers 30-32) limited uses are allowed, not including fill for a proposed fire station. (The construction of a fire station within an open water area would require an amendment to the Special Area Plan.)
 - d. **Public Access** (p. 32-41), which provides, in part, that public access should be open and free, connected physically and visually to the Bay, and "be located at ground or platform level, but minor variations in elevation intended to enhance design of open space may be permitted." The public access policies state that "visual access to the Bay is a critical part of public access." It requires that public access on Piers 30-32 consist of perimeter access, a significant park/plaza on the pier perimeter, additional areas like small parks or plazas integrated into the perimeter access, and significant view corridors. Public open spaces within the interior of large piers that do not provide physical or visual proximity to the Bay are not included in the determination of maximum feasible public access. Major projects on piers should provide at least 35% of the pier to public access. The Bay Plan public access policies (p. 66-69) also state that access should "permit barrier free access for persons with disabilities to the maximum extent feasible."
 - e. **Waterfront Design** (p. 42), which provides, in part, that "development should take advantage of its location on the Bay and reflect and recognize the unique identity of the waterfront districts established by [among other things] building scale." In addition, the Waterfront Design policies state that "building height and bulk should generally be low scale in order to preserve views to the Bay, minimize shading of on-pier public access areas and reflect the historic character of the waterfront."
 - f. **Transportation and Parking** (p. 44-45), which state, in part, "[p]arking on piers will be planned to minimize adverse impacts on public access through such measures as avoiding queuing that extends over Herb Caen Way or other public access areas...."
3. The *San Francisco Bay Plan* contains additional policies by which the proposed project would be evaluated, including:

Climate Change (p. 31-39) and **Safety of Fills** (p. 39-41), which provide, in part, that projects be designed taking into account future sea level rise and flood conditions and be designed to be resilient through mid-century and, beyond that, adaptable to rising sea levels. Further, the **Public Access** policies state, in part, that access be designed and managed to avoid significant adverse impacts from sea level rise and shoreline flooding.

Further Discussion. As stated above, on May 2, 2013, the Commission will receive an informational briefing on the proposed event facility at Piers 30-32. The BCDC staff will provide a brief introduction and, following a slideshow presentation by the Port of San Francisco and the project team, the public will be given an opportunity to comment and the Commission may provide general policy guidance on the proposed development. It is important to note that a separate BCDC public hearing regarding AB 1273 (Ting) will be held on May 16, 2013 at MetroCenter in Oakland, California.