SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION
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Agenda Item #9

May 3, 2013

TO: Commissioners and Alternates

FROM: Lawrence Goldzband, Executive Director (415/352-3653 larryg@bcdc.ca.gov)
Steve Goldbeck, Chief Deputy Director (415/352-3611 steveg@bcdc.ca.gov)

SUBJECT: Staff Summary on Pending Legislation – AB 1273 *Tidelands and Submerged Lands: City and County of San Francisco: Piers 30-32: Multipurpose Venue*
(For Commission consideration on May 16, 2013)

Summary

Assembly Bill 1273 (attached) by Assembly Member Ting would, among other things, make a legislative finding that the proposed mixed-used development and a multipurpose arena for the Golden State Warriors on Piers 30-32 on the San Francisco waterfront is consistent with the public trust doctrine if the Port of San Francisco finds that certain conditions are met. A staff report and possible recommendation will be provided for the Commission's May 16, 2013 meeting in the event that the Commission wishes to take a position on the bill.

Background

AB 1273 was introduced by Assemblymember Phil Ting on February 22, 2013. Its purpose is to make a legislative finding that the proposed mixed-used development and a multipurpose arena for the Golden State Warriors on Piers 30-32 on the San Francisco waterfront is consistent with the public trust doctrine if certain conditions are met. Any development found by the Port to be consistent with the conditions in the legislation would satisfy all legislative or regulatory requirements for findings of consistency with the public trust doctrine under the Burton Act, the Port's Special Area Plan, the San Francisco Bay Plan or any other applicable statute, regulation or plan.

AB 1273 has been amended twice (on March 21, 2013 and April 24, 2013) to address some issues raised by staff of the State Lands Commission and BCDC. The bill was approved by both the Assembly Natural Resources and Local Government Committees, and was referred to the Assembly Appropriations Committee on May 2, 2013.

The conditions that must be met for the Port to find the project consistent with the public trust are found in Section 5 of the bill. Those conditions require, among other things, that any development protect significant public views of the Bay, provide free public access to portions of the arena, provide continuous public access around the perimeter of Piers 30-32, and provide a significant maritime program that includes, but is not limited to, berthing for fire boats, cruise vessels, ferries, water taxis, and recreational boats. The bill limits non-maritime office space to 70,000 square feet, limits retail use to venue-supporting or trust retail purposes, and limits parking to 500 spaces.

The amendments adopted on April 24, 2013 require at least fifteen public trust-consistent events per year, including free and low-cost visitor serving events, at least three of which must be located at the arena. The amendments also require the Port to approve a plan to address anticipated sea level rise through 2050. The Port also must submit a plan to the State Lands Commission every five years to ensure that the required trust-related activities are effectively implemented. The amendments also require the bill to sunset if the development is not approved within 10 years.

AB 1273 waives all legislative or regulatory determinations of consistency of the public trust doctrine that otherwise would be required absent such legislation, including those required by BCDC and the State Lands Commission, if the Port determines that the project meets all the terms and conditions in Section 5. Thus, passage of AB 1273 would deem the major feature of the project – the basketball arena – consistent with the public trust if the Port determines that it meets all the terms and conditions in the bill. However, Section 7 of the bill expressly preserves the authority of BCDC to approve, deny or condition permits for the project, including its determination that the project provides maximum feasible public access under the MacAteer-Petris Act, Bay Plan and Special Area Plan.

The Project Proposed at Piers 30-32. As described in the Port's May 2, 2013 briefing before the Commission, the development described in AB 1273 involves an approximately 135-foot-tall building on the 13-acre, 553,778 square foot pile-supported structure along the Embarcadero at the east end of Piers 30-32. Lower scale retail buildings would be located along the Embarcadero. The existing Pier structure is nearing the end of its useful life, and currently serves as a parking lot for approximately 1,000 cars and temporary berthing for overflow cruise ships and other deep draft vessels. According to the bill, it would cost approximately $45 million to remove the Pier, and $120 million to make it useable for the development of a mixed-use and multi-purpose arena facility. The feasibility study prepared for the City and County of San Francisco provides that the multi-purpose 17,000-19,000 seat arena will be the new home of the Golden State Warriors, and also serve as an event venue for other public assembly uses including conventions, performing arts and other purposes.[1] It is projected that the events venue will have approximately forty-three Warrior home games per year, and 150 additonal events with an annual expected paid attendance of 2,240,000 persons. According to the Port, the proposed development will contain approximately 50% open space, 105,000 square feet of visitor-serving retail and restaurants, a 21,000-square-foot basketball practice facility, and 40,000 square feet of event management and team operations space. AB 1273 also authorizes 500 parking spaces at the site.

Seawall Lot 330, across the Embarcadero from Piers 30-32, is an approximately 2.3-acre, 101,330-square-foot area of filled tidelands. AB 418 (Ammiano) terminated the public trust on Seawall Lot 330 in 2011, and the Port plans to sell or lease Seawall Lot 330 to the Warriors at fair market value. The Warriors plan to construct 33,000 square feet of retail space, 200-300 parking spaces, 100-130 residential units, and a 200-250 room hotel on Seawall Lot 330. The Port plans to finance the estimated $120 million costs of improving Piers 30-32 for the proposed development by the proceeds of the sale or lease of Seawall Lot 330, using rent credits for leasing the Pier to the developer, and securing property tax increment financing from a community facilities district. The arena itself will be privately financed.

A staff report and possible recommendation will be provided prior to the Commission's May 16, 2013 meeting in the event that the Commission wishes to take a position on AB 1273. The staff report will analyze in more detail:

- the role of the State Lands Commission, the Legislature and BCDC in implementing the public trust doctrine;
- the history of development proposed on Piers 30-32 and similar developments;
- the effect of the bill on the Commission's ability to review development of the site; and
- the effect of the bill on the Bay, public trust uses, and public access.

[1] Report on Findings of Fiscal Responsibility and Feasibility. http://sfgov3.org/modules/showdocument.aspx?documentid=3078

AMENDED IN ASSEMBLY APRIL 24, 2013

AMENDED IN ASSEMBLY MARCH 21, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL No. 1273

Introduced by Assembly Member Ting

February 22, 2013

An act to amend Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 11, 13, and 14 of Chapter 489 of the Statutes of 2001, relating to tidelands and submerged lands.

LEGISLATIVE COUNSEL'S DIGEST

AB 1273, as amended, Ting. Tidelands and submerged lands: City and County of San Francisco: Pier 30-32: multipurpose venue.

(1) Under existing law (the Burton Act), the state granted certain lands to the City and County of San Francisco in trust for purposes of commerce, navigation, and fisheries, and subject to specified terms and conditions relating to the operation of the Port of San Francisco. Existing law (the McAteer-Petris Act) establishes the San Francisco Bay Conservation and Development Commission and requires the commission to regulate fill and development within a specified area in San Francisco Bay. Existing law declares specified lands along the San Francisco waterfront to be free from the public trust for commerce, navigation, and fisheries, as provided, and authorizes the San Francisco Port Commission to approve a cruise ship terminal development, other maritime facilities, and commercial and office space on a specified area of the San Francisco waterfront. Existing law authorizes the State Lands Commission to convey to the City and County of San Francisco all of the rights, title, and interest held by the state in trust to specified lands

along the waterfront, but prescribes terms and conditions for the use of those lands in connection with the cruise ship terminal development, as provided.

This bill would revise the above-described authorization for the conveyance of lands for use for a cruise ship terminal development to instead authorize the San Francisco Port Commission to approve a *mixed-use* development on the San Francisco waterfront at Pier 30-32, which would include a multipurpose venue, if specified conditions are met. The bill would authorize the State Lands Commission to convey to the City and County of San Francisco all of the rights, title, and interest held by the state in trust to specified lands along the waterfront, but would prescribe terms and conditions for the use of those lands in connection with a multipurpose venue, as described. The bill would make conforming changes with regard to the revised authorization.

(2) This bill would make legislative findings and declarations as to the necessity of a special statute for the City and County of San Francisco with respect to the development of Pier 30-32.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. This act shall be known, and may be cited, as the Pier 30-32 Revitalization Act.

SEC. 2. Section 1 of Chapter 489 of the Statutes of 2001, as amended by Section 1 of Chapter 68 of the Statutes of 2003, is amended to read:

Sec. 1. For purposes of this chapter, the following terms have the following meanings:

(a) “AB 418” means Chapter 477 of the Statutes of 2011.

(b) “America’s Cup” means the 34th America’s Cup.

(c) “BCDC” means the San Francisco Bay Conservation and Development Commission established pursuant to Section 66620 of the Government Code.

(d) “Bay jurisdiction” means the jurisdiction, powers, and duties of BCDC pursuant to Title 7.2 (commencing with Section 66600) of the Government Code within the area defined in subdivision (a) of Section 66610 of the Government Code.

(e) “Bay Plan” means the San Francisco Bay Plan as adopted and administered by BCDC pursuant to Title 7.2 (commencing

with Section 66600) of the Government Code, including all amendments thereto.

(f) "Brannan Street Wharf" means a major San Francisco waterfront park in the area of Piers 34 and 36, as identified in the Special Area Plan.

(g) "Burton Act" means Chapter 1333 of the Statutes of 1968, as amended.

(h) "Burton Act trust" means the statutory trust imposed by the Burton Act (Chapter 1333 of the Statutes of 1968, as amended), pursuant to which the state conveyed to the City and County of San Francisco, in trust, by transfer agreement, and subject to certain terms, conditions, and reservations, the state's interest in certain tide and submerged lands.

(i) "City" means the City and County of San Francisco.

(j) ~~"McAteer–Petris~~ "*McAteer-Petris* Act" means Title 7.2 (commencing with Section 66000) of the Government ~~Code~~ *Code, as that act may be amended from time to time*.

(k) "Public trust" or "trust" means the common law public trust for commerce, ~~or navigation~~ *navigation,* and fisheries.

(*l*) "Port" means the City and County of San Francisco acting by and through the San Francisco Port Commission.

(m) "San Francisco Bay" means those areas defined in Section 66610 of the Government Code.

(n) "San Francisco waterfront" means those portions of the area transferred to the ~~port~~ *Port* pursuant to the Burton Act that also lie within the area defined in subdivisions (a) and (b) of Section 66610 of the Government Code.

(o) "Seawall Lot 330" means that parcel of property, *or any portion thereof,* located in San Francisco identified on that certain map entitled SUR 790, and shown on Page 318 of the City and County of San Francisco 100 Scale Ownership Maps, which is on file with the city's Bureau of Street Use and Mapping.

(p) "SB 815" means Chapter 660 of the Statutes of 2007, as amended.

(q) "Shoreline band jurisdiction" means the jurisdiction, powers, and duties of BCDC pursuant to Title 7.2 (commencing with Section 66600) of the Government Code to regulate uses within the area defined in subdivision (b) of Section 66610 of the Government Code to ensure, in part, maximum feasible public access, as prescribed in Section 66632.4 of the Government Code.

(r) "Special Area Plan" means the San Francisco Waterfront Special Area Plan, dated July 20, 2000, adopted by BCDC, as amended from time to time.

(s) "Street" means those lands located within the South Beach/China Basin Planning area of the San Francisco waterfront at Seawall Lot 330, and also lying within Parcel A of those lands transferred to the City and County of San Francisco pursuant to the Burton Act, as recorded May 14, 1969, in Book C 169 at Pages 573 to 664, inclusive, in the San Francisco Recorder's office, as more particularly described as that portion of Main Street, located between Bryant Street and the Embarcadero, vacated per Ordinance 14-93 on January 11, 1993, on file with the San Francisco Bureau of Street Use and Mapping, in Book 10, Page 94. All streets and street lines described in the preceding sentence are in accordance with that certain map entitled SUR 790, and shown on Page 318 of the City and County of San Francisco 100 Scale Ownership Maps, on file with the City's Bureau of Street Use and Mapping.

(t) "Trust retail uses" means visitor-serving retail and restaurant establishments and similar retail uses that facilitate and encourage public use of the waterfront.

~~(t)~~

(u) "Waterfront Land Use Plan" means the Waterfront Land Use Plan, including the Waterfront Design and Access Element, adopted by the port pursuant to Resolution No. 97–50, as amended from time to time.

SEC. 3. Section 2 of Chapter 489 of the Statutes of 2001 is amended to read:

Sec. 2. The Legislature finds and declares all of the following:

(a) Tide and submerged lands in California are held in trust for the enjoyment and use by the people of the state pursuant to the common law public trust doctrine. Public trust lands may be used for water-related purposes, including, but not limited to, commerce, navigation, fishing, swimming, general recreation, open space, and wildlife habitat.

~~(a)~~

(b) In 1965, the Legislature adopted the ~~McAteer–Petris~~ *McAteer-Petris* Act to protect and enhance the San Francisco Bay and its natural resources. ~~The McAteer–Petris Act~~ *Among other things, the McAteer-Petris Act* grants BCDC regulatory authority over further filling in San Francisco Bay through exercise of its

bay jurisdiction, and limits that activity to (1) water-oriented uses that meet specified criteria; (2) minor fill that improves shoreline appearance or public access; and (3) activities necessary for the health, safety and welfare of the public in the entire bay area. The McAteer-Petris Act also ~~authorizes~~ *mandates* BCDC to require the provision of maximum feasible access to the bay *and its shoreline* consistent with ~~the~~ *a* project ~~over a 100-foot shoreline band through the exercise of its shoreline band jurisdiction~~.

(c) In 1969, the Legislature received and acted upon the BCDC's report and recommendations from a three-year study of the San Francisco Bay. The resulting Bay Plan contains, among other things, BCDC's policies to guide use and protection of all areas within BCDC's jurisdiction, including the bay and the 100-foot shoreline band, and ensures that proposed projects, among other things, minimize bay fill and provide maximum feasible public access to the bay.

~~(b)~~

(d) In 1969, pursuant to the Burton Act, the state conveyed by transfer agreement certain state tide and submerged lands to the Port. The lands are held by the Port in trust for purposes of commerce, navigation, and fisheries, and are subject to the terms and conditions specified in the Burton Act and the public trust. During the ~~three~~ *four* decades since passage of the Burton Act, issues have arisen concerning the application of the ~~McAteer–Petris~~ *McAteer-Petris* Act to the piers along the San Francisco waterfront. To address those issues, BCDC and the Port undertook two intensive and careful planning processes, which lasted over nine years.

~~(c)~~

(e) The first process culminated in 1997 with the adoption by the Port of the Waterfront Land Use Plan and with the adoption by the Board of Supervisors of the City and County of San Francisco and the Planning Commission of the City and County of conforming amendments to the City's General Plan and Planning Code.

~~(d)~~

(f) In July 2000, after the second five-year cooperative process involving the Port, BCDC, the Save San Francisco Bay Association, and numerous interested community groups and ~~individuals,~~ *individuals* was completed, the Port adopted further

amendments to the Waterfront Land Use Plan. BCDC also adopted amendments to the Special Area Plan that is incorporated into, and made a part of, the ~~San Francisco~~ Bay Plan, to create consistent plans for the area of the San Francisco waterfront between Pier 35 and China Basin. At the present time, the ~~Waterfront Land Use~~ *Special Area* Plan addresses specific ~~McAteer–Petris~~ *McAteer-Petris* Act issues relating to public access and the preservation and enhancement of open water as a bay resource in this area. The plan also defines public access opportunities on each pier in this area and calls for the removal of certain additional piers to enhance water views and create additional bay surface area.

~~(e)~~

(g) A major objective of the joint effort described in subdivisions ~~(b), (c), and (d)~~ *(d), (e), and (f)* is to establish a new criterion in the ~~San Francisco~~Bay Plan that would permit fill on the San Francisco waterfront in an area where a Special Area Plan has been adopted by BCDC for uses that are consistent with the public trust and the Burton Act trust. The Special Area Plan for the area between Pier 35 and China Basin ~~should provide~~ *provides, in part,* for all of following:

(1) The nature and extent of maximum feasible public access ~~for~~ *to* the ~~piers~~ *bays and the waterfront,* including perimeter access *at the piers,* a ~~history walk~~ *system of integrated public parks, promenades, a Bayside History Walk* on most piers, and other significant access features on piers where appropriate.

(2) Two major public plazas, the Brannan Street Wharf adjacent to Pier 30-32 and ~~another in the vicinity of~~ *a new plaza at* Pier 27.

(3) A public planning process to lead to the creation of a third major public plaza in the Fisherman's Wharf area.

(4) The *restoration and preservation of significant open water basins and areas through the* removal of certain piers to uncover additional bay surface *and the restriction of new bay fill in open water basins and areas to minor amounts needed to improve public access and shoreline appearance and accommodate permissible water-oriented uses*.

(5) The creation and funding of a special fund within the Port to finance the removal of the selected piers and the construction and maintenance of those public plazas.

(6) A historic preservation mechanism to ensure preservation *and enhancement* of important historic resources on the ~~piers~~

piers, including the designation of the National Register Embarcadero Historic District.

(7) The preservation and improvement of existing views and creation of new views of the bay from the shoreline.

~~(7)~~

(8) The ability of the Port to repair, improve, or use the piers not designated for removal between Pier 35 and China Basin for any purpose consistent with the Burton Act, the public trust and the Special Area Plan.

~~(f)~~

(h) The San Francisco waterfront, which has been the subject of this planning process, provides benefits to the entire bay area, and serves as a unique destination for the region's public. These regionwide benefits include enjoyment of a unique, publicly owned waterfront that provides special maritime, navigational, recreational, cultural, and historical benefits that serve the bay area. Accordingly, the adoption by BCDC, and the ratification by the Legislature, of the Special Area Plan, as amended, is necessary to protect the health, safety, and welfare of the public in the entire bay area for purposes of subdivision (f) of Section 66632 of the Government Code.

~~(g)~~

(i) The Port is a valuable public trust asset, a vibrant and world-renowned tourist destination, and a vital component of the regional, state, and national economies. The Port faces unique challenges in implementing the Waterfront Land Use Plan~~ and Special Area Plan~~. Deferred maintenance on the Port's numerous historic piers and other structures, together with limitations on revenue generating opportunities, has caused deteriorating conditions along the San Francisco waterfront. The~~ estimated~~ *Port's estimate of the* cost of implementing~~ the Port's~~ *its* capital plan is over two billion dollars ($2,000,000,000), which substantially exceeds the projected revenues~~ of the Port available for these purposes. A purpose of this act is to further the public trust by facilitating the Port's implementation of the important parts of the Waterfront Land Use Plan, the Special Area Plan, and the Port's capital plan, subject to environmental review, as required under the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).~~ *estimated by the Port to be available for these purposes.*

SEC. 4. Section 3 of Chapter 489 of the Statutes of 2001 is amended to read:

Sec. 3. The Legislature also hereby finds and declares all of the following with respect to Seawall Lot 330 and the street:

(a) The lands comprising the street are tide and submerged lands that have been filled and reclaimed, and were reserved to the state solely for street purposes.

(b) The filled and reclaimed tide and submerged lands constituting the street have been filled and reclaimed for, and in connection with, a highly beneficial plan of improvement for harbor development.

(c) The street is not used, suitable, or necessary for navigation purposes and is not necessary, or used for street purposes.

(d) The street or any interests in the street that are to be sold by the city, and over which the Burton Act trust and the public trust will be terminated, constitute a relatively small portion of the granted tide and submerged lands.

(e) Section 3 of Article X of the California Constitution permits the sale to any city, county, city and county, municipal corporation, private person, partnership, or corporation of tidelands reserved to the state solely for street purposes, which tidelands the Legislature finds and declares are not used and not necessary for navigation purposes, subject to those conditions that the Legislature may impose to protect the public interest.

(f) The existence of the street limits the potential development of Seawall Lot 330. The proposed sale will be consistent with Section 3 of Article X of the California Constitution, if all of the following conditions are met:

(1) The consideration for the sale of the street, pursuant to Section 3 of Article X of the California Constitution, shall be the fair market value of those lands or interests in the lands.

(2) The street to be sold by the city and over which the public trust or the Burton Act trust, or both trusts, will be terminated has been filled and reclaimed, and the street consisting entirely of dry land lying above the present line of mean high tide is no longer needed or required for the purposes of the public trust or the Burton Act trust.

(3) The street to be sold by the city and over which the public trust or the Burton Act trust, or both trusts, will be terminated has been cut off from direct access to the waters of San Francisco Bay

by past filling of intervening property for a major roadway (the Embarcadero), which has provided, and will continue to provide, lateral public access to the water.

(4) The street was reserved to the state for street purposes and is not used or necessary for navigation purposes. Therefore, in accordance with Section 3 of Article X of the California Constitution, that street can and should be conveyed into private ownership for uses consistent with, and in furtherance of, this act.

(g) It is therefore the intent of the Legislature, subject to the terms and conditions set forth in this act to authorize the city to dispose of the street for private use free from the public trust or the Burton Act trust.

(h) In 2003, the Port and the State Lands Commission entered into an exchange agreement pursuant to Chapter 310 of the Statutes of 1987 by which a portion of Seawall Lot 330 was freed from the public trust and the Burton Act trust and was sold for fair market value, the proceeds from which were dedicated to construction of the Brannan Street Wharf. The Legislature enacted SB 815 in 2007, which lifted the public trust and ~~the~~ Burton Act trust use restrictions from the remainder of Seawall Lot 330, including the street, until 2094. In 2011, the Legislature enacted AB 418 *in part* to facilitate the America's Cup, which, subject to certain conditions, freed the remainder of Seawall Lot 330, including the street, from the public trust and authorized the Port to sell Seawall Lot 330 at fair market ~~value,~~ *value* subject to ~~the approval of~~ the State Lands ~~Commission~~ *Commission's approval*. ~~This~~

(i) This section does not limit the effect of, or the authority granted ~~to,~~ *to* the Port ~~by~~ *by,* SB 815 and AB 418 with respect to Seawall Lot 330, including the street.

SEC. 5. Section 4 of Chapter 489 of the Statutes of 2001 is amended to read:

Sec. 4. The Legislature further finds and declares that the following unique circumstances exist at Pier 30-32 on the San Francisco waterfront, and that therefore, this act sets no precedent for any other location or project in the ~~state:~~ *state, including on the San Francisco waterfront or in San Francisco Bay:*

(a) The Pier 30-32 platform bayward of the Embarcadero consists of obsolete, pile-supported pier structures that are physically no longer capable of serving most trust-related purposes without substantial modification and repair. The pier is an

approximately 13-acre facility centrally located along the waterfront and with a natural deep water berth along its east face. However, the poor structural condition of Pier 30-32 currently limits the use of the pier to automobile parking and occasional, temporary use as a tertiary berth for cruise ships and other deep draft vessels. The pier has a limited remaining useful life. The Port estimates that the cost of removing the pier would exceed forty-five million dollars ($45,000,000).

(b) Preserving Pier 30-32 requires a substantial capital investment to improve the piles and decking to modern seismic standards. The ~~estimated~~ *Port estimates that the* cost of rehabilitating the pier substantially exceeds ~~its~~ *the Port's estimates of the pier's* fair market value. The Port does not have adequate funding in its 10-year capital plan for the costs to improve or to remove the pier due to limited Port resources and competing Port priorities, including completion of a new international cruise terminal at Pier 27 and the preservation of historic maritime resources in the Port's jurisdiction. The Port must conserve Port revenue to support those maritime uses and public improvements for which private investment is not economical. ~~Therefore, it is not feasible for the Port to directly fund all necessary capital improvements to preserve the pier and construct new, needed maritime or other public trust facilities on Pier 30-32.~~

(c) Over the past decade, the Port has sought to preserve and develop Pier 30-32 through public-private partnerships. In 2001, the Legislature authorized the development of Pier 30-32 with a new cruise ship terminal, office space, and retail space. The need for a new cruise ship terminal has been recognized for over 40 years. A 1998 assessment by the Port found that cruise industry experts considered the present terminal at Pier 35 on the San Francisco waterfront to be inferior to other cruise terminals in the United States. That assessment also concluded that the existing San Francisco passenger terminal at Pier 35 cannot accommodate modern cruise ships. The Port's 1998 assessment evaluated alternative locations for a new cruise ship terminal and concluded that Pier 30-32 was the most viable site for a new cruise terminal in San Francisco because of ~~dredging~~ *its position adjacent to deep water*, site configuration, and development considerations. The Port solicited proposals and selected a developer for a cruise ship terminal at Pier 30-32. The developer subsequently abandoned

that project after determining that the financial investment required to improve the substructure of Pier 30-32 was cost prohibitive, and no other developer could be found who was willing to accept assignment of the development rights for the project. The Port has since identified Pier 27 as the preferred location for its new cruise ship terminal in San Francisco, and construction of the terminal building is currently underway.

(d) In 2011, the America's Cup Event Authority proposed to improve Pier 30-32 to host racing teams and hospitality facilities during the America's Cup in 2013, and to acquire long-term development rights to Pier 30-32. Those planned facilities were ultimately relocated to other piers due primarily to the cost of rehabilitating the substructure of Pier 30-32.

(e) The Waterfront Land Use Plan and the Special Area Plan recognize that the development of Pier 30-32 and the surrounding area within the South Beach/China Basin subarea identified in the Waterfront Land Use Plan would further the public trust purposes of increasing maritime activities and expanding public use and enjoyment of the waterfront on trust lands at this location.

(f) The Port now proposes a mixed-use development at Pier 30-32, ~~the primary proposes of~~ which ~~are to (1)~~ *will* further public use, access, and enjoyment of the tidelands and surrounding water at this location by providing a multipurpose venue for events and public assembly, coupled with public access, open space, ~~commercial public trust uses, and parking serving the uses on Piers 30-32 and visitors to the waterfront, and (2) preserve and enhance maritime uses and water-oriented recreational activities at the site~~ *and venue-supporting or trust retail uses; significant maritime facilities, including an occasional berthing area for large vessels; bay-oriented recreational activities; and limited ancillary parking as reasonably necessary to meet the visitor-serving needs of the mixed-used development, including the multipurpose venue, all of which are designed to preserve and improve public and visual access to the bay and its shoreline*.

~~(g) In addition to providing a destination for events, public assembly, and public access to the bay, the planned improvements include maritime facilities on the pier. Possible improvements include a new facility for the city's fire boats; berthing facilities for waterborne transit, such as water taxis, ferries, or commercial excursion boats; recreational water sports access, such as a public~~

~~kayak launch area; periodic, temporary berthing for deep draft vessels on the east side of the pier, and other berthing facilities. New maritime facilities will promote local waterborne transit and may establish the proposed development at Pier 30-32 as a waterside destination for recreational boating.~~

~~(h) The city's fire boats have operated on the San Francisco Bay since 1878 and have provided critical fire protection services to the city in situations like the Loma Prieta earthquake when the ability of the fire boats to pump bay water to fight fires saved a significant portion of San Francisco's Marina District, as well as the recent fire at Pier 29. In addition, the city's fire boat operation provides unique rescue and response services on the San Francisco Bay that are of regionwide significance. The current fire boat station at Pier 22 ½ is no longer sufficient to serve the needs of the operation. A new fire boat facility at Pier 30-32 would provide an opportunity to improve and expand fire boat operations.~~

~~(i)~~

(g) Pier 30-32 is ideally situated to provide public access to *and enjoyment of* the waterfront *and bay*. It is within walking distance of the Ferry Building, the San Francisco Giants baseball stadium, and regional transit hubs, including the ~~proposed~~ Transbay Transit ~~Center,~~ *Center, which is under construction,* has unmatched views of the Bay *and the Bay* Bridge, and is immediately adjacent to the Brannan Street Wharf project, which will provide a 58,700-square-foot pile-supported park over the bay, consistent with the Special Area Plan. The Port committed to the construction of the Brannan Street Wharf earlier than required under the Special Area Plan through investment of approximately twenty-five million dollars ($25,000,000) for the removal of 175,000 square feet of pile-supported fill and development of public access improvements . The Brannan Street Wharf project is currently under construction and is anticipated to be completed by June 2013. The value of the Brannan Street Wharf as a recreational resource is diminished by the current condition and use of Pier 30-32, which ~~presents visual blight and~~ cannot support dedicated public access on the pier *and full realization of the Brannan Street Wharf Open Water Basin*.

~~(j)~~

(h) The inclusion of *significant* public access improvements, maritime facilities, and ~~commercial public~~ *venue-supporting or* trust *retail* uses, together with a new multipurpose ~~venue,~~ *venue*

for events that bring people from around the state to the waterfront to use and enjoy the public trust assets of San Francisco, enhances and promotes the trust ~~objectives~~ *uses* of ~~furthering maritime commerce and improving public access and use on the San Francisco waterfront~~ *the tidelands location*.

~~(k)~~

(i) The ~~estimated~~ *Port estimates the* cost of the construction of the substructure and related improvements required to make Pier 30-32 useable for the proposed *mixed-use* development is in excess of one hundred twenty million dollars ($120,000,000), which significantly exceeds the *Port's* appraised fair market value of the pier. The ~~project proposes~~ *Port plans* to finance *the* substructure costs with private ~~capital,~~ *capital and the following public revenue sources:* the proceeds from the sale or lease of Seawall Lot 330 pursuant to AB 418, rent credits for the lease of Pier 30-32 to the developer of the venue, property tax increment from an infrastructure financing district, and possibly special taxes from a community facilities district. ~~The multi-purpose~~ *Construction of the multipurpose* venue structure ~~itself~~ will be entirely privately financed and will not require any expenditure of money from the city's general fund, or from other city or Port ~~funds, for its construction~~ *funds*.

(j) There are presently few visitor-serving amenities in the vicinity of Pier 30-32. The Port's efforts to develop its property for hotel use have been unsuccessful. The development of the multipurpose venue at Pier 30-32 and the termination of the trust use restrictions at Seawall Lot 330 would create substantial new demand for visitor-serving uses at that location and would make those uses financially feasible as part of an overall residential and mixed-use development at Seawall Lot 330. Also, Seawall Lot 330 presents an opportunity to enhance the trust value of the project on Pier 30-32 by attracting more people to the waterfront and providing accommodations to people from both the San Francisco region and other areas of the state through visitor-serving uses, which may include visitor-serving retail, restaurants or hotel use, or any combination of these.

SEC. 6. Section 5 of Chapter 489 of the Statutes of 2001, as amended by Section 2 of Chapter 68 of the Statutes of 2003, is amended to read:

Sec. 5. *(a)* The Legislature, in the exercise of its retained power as trustee of the public trust, and in view of the unique circumstances existing at Pier 30-32 on the San Francisco waterfront and the considerable statewide public benefit and promotion of the public trust that will be brought about by the preservation, *improvement, and modernization* of the pier, construction of a new multipurpose venue *for events and public assembly*, establishment of maritime uses, ~~and~~ improved public ~~access andcommercial public~~ *access, public use and enjoyment of the site, establishment of venue-supporting or* trust *retail* uses on ~~this~~ *the* site, *and additional public trust benefits,* hereby authorizes the Port to approve a *mixed-use* development on the San Francisco waterfront at Pier 30-32 that includes a multipurpose ~~venue,~~ *venue for events and public assembly* if the Port finds that all of the following conditions are met:

(1) The mixed-use development is designed to attract people to the waterfront, increase public enjoyment of the San Francisco Bay, encourage public trust activities, and enhance public use of trust assets and resources on the waterfront.

~~(a)~~

(2) (A) The ~~venue facility~~ *mixed-use development* is designed to provide ~~vantage points offering~~ *multiple significant* views of the Bay ~~Bridge,~~ *Bridge and* the San Francisco ~~Bay, or both,~~ *Bay* from *a variety of elevations and vantage points, including significant views of the Bay Bridge and the San Francisco Bay from the interior* concourses ~~on the south and east sides~~ *of the multipurpose venue and views* of the ~~venue, and~~ *Bay Bridge* from certain seating ~~areas, and, consistent with programming needs of events, the~~ *areas within the multipurpose venue.*

(B) The multipurpose venue facility is located to minimize interference with public views of San Francisco Bay to the extent feasible.

(C) The multipurpose venue facility ~~shall provide~~ *provides* free public access to patrons and nonpatrons alike to *exterior* portions of the building ~~on the east side of the venue,~~ from which the public can view the San Francisco Bay, subject to reasonable limitations based on security. *In addition, to encourage the public to come to the bay's edge, the design of the multipurpose venue shall provide significant free public views of the inside of the multipurpose venue from the outside, and the operator of the multipurpose venue shall*

be required to allow the public to view the inside of the multipurpose venue from the outside during events whenever feasible.

(3) The mixed-use development is designed to achieve and enhance maximum feasible public access to and minimum fill in the bay in a manner that is consistent, as determined by BCDC in its separate permit process, with the Special Area Plan, the McAteer-Petris Act, and the Bay Plan.

~~(b) The development includes a public access component that meets the requirements of the Special Area Plan and the San Francisco Bay Plan as interpreted by BCDC, provides new public vantage points on the north, east, and south sides of Pier 30-32 from which to view San Francisco Bay, and provides continuous public access around the entire perimeter of Pier 30-32 (configured as necessary to accommodate use by the fire boat station, berths, or other maritime uses on the pier edge, to the extent each of those uses is incorporated into the development) and between Pier 30-32 and the Brannan Street Wharf.~~

(4) The mixed-use development includes significant public plazas open to the public on a substantially permanent basis that can be accessed via public pedestrian promenades at the site that encourage public use of the site and provide a variety of views of the San Francisco Bay and the San Francisco cityscape.

(5) The mixed-use development includes continuous public access around the perimeter of Pier 30-32 open to the public year round, with limited exceptions for temporary safety-, security-, and maritime-based interruptions, and includes an interpretive program to enhance the public's enjoyment of the site.

~~(c) The Brannan Street Wharf project, as described in the Special Area Plan, shall be substantially complete and open to the public prior to approval of the Pier 30-32 development.~~

~~(d)~~

(6) The *mixed-use* development includes a significant *and appropriate* maritime program ~~that provides for maritime uses along the north and east edges of Pier 30-32, which uses may include, without limitation~~, *which shall be consistent with the Special Area Plan and shall include, but is not limited to*:

~~(1)~~

(A) A city fire station and berthing facilities for city fire boats, *or, in lieu thereof, one or more other maritime uses on the north side of Pier 30-32*.

~~(2)~~

(B) Facilities for berthing at the east end of Pier 30-32, including facilities that can accommodate periodic use by cruise or other deep draft vessels*, or other facilities that promote the deep water berth at Pier 30-32*.

~~(3)~~

(C) ~~Direct~~ *Facilities that enable direct* public access to the water ~~in the form of a launch for~~ *by* human-powered ~~vessels, subject to feasibility and public safety considerations~~ *vessels or swimmers, if feasible, on the south side of Pier 30-32, or water-oriented recreational uses facing the Brannan Street Wharf open water basin*.

~~(4) Guest berths that accommodate private vessels for day use.~~

~~(5) Water-based transit facilities, including water taxi and ferry landings.~~

~~(e) The development provides for the use of the south edge of Pier 30-32 by recreational craft or other maritime uses, which may include, without limitation, the types of facilities referenced in paragraphs (2) to (5), inclusive, of subdivision (d), or for public access or public water-oriented recreational uses facing the Brannan Street Wharf open water basin.~~

(D) Water-transit docking or berthing facilities for water taxis, ferries, or both.

~~(f)~~

(7) Any nonmaritime office space ~~provided~~ on Pier 30-32 is *limited to 70,000 square feet, and any nonmaritime office space provided on Pier 30-32 is* for use *only* by the primary tenants of the multipurpose ~~venue, or is ancillary to~~ *venue for events and public assembly,* the ~~use of the multipurpose~~ venue*,* ~~the~~ *supporting or trust* retail uses on Pier 30-32*, and* the operation and management of the open ~~space,~~ *space* and other public facilities on Pier 30-32.

~~(g)~~

(8) ~~At least half of all~~ *All* retail *venues* on Pier 30-32 ~~is~~ *are limited to venue-supporting or* trust retail *uses*. ~~For purposes of this subdivision only, "trust retail" means visitor serving public trust retail and restaurant use.~~

~~(h)~~

(9) Any parking included on Pier 30-32 is *limited to 500 spaces,* located under active uses on Pier 30-32, substantially screened from public view, and designed ~~to avoid~~ *so that ingress and egress avoids* material interference with pedestrian, *wheelchair,* and bicycle traffic along Herb Caen Way and *material interference with* the public's access to and use of the open space on the surface of the pier. *Parking shall be designed to accommodate visitors to the site and shall not be reserved for residential use.*

(10) Public trust-consistent events, uses, and programming are offered regularly at the site of the mixed-use development. The site shall be made available to the Port or its designee for those events on at least 15 days per year, including at least three days on which the multipurpose venue shall be made available to the Port or its designee for those events. These events shall include free and low-cost visitor-serving events.

(11) A public community room is available at the site for free or low-cost use by members of the public statewide, without preference to local residents or organizations.

(12) The development of the site is required to be consistent with a plan to address anticipated sea-level rise through year 2050, which shall include enforceable strategies incorporating an adaptive management approach to sea-level rise for the duration of the ground lease term.

(13) The development approved for Seawall Lot 330 includes a hotel or other visitor-serving uses that the Port finds will materially enhance public trust uses on Pier 30-32 and the San Francisco waterfront.

(b) (1) If a multipurpose venue for events and public assembly is approved and constructed on Pier 30-32, the Port shall submit and present at a properly noticed public State Lands Commission meeting a trust program report to the State Lands Commission, no later than five years from the date of the opening of the multipurpose venue, and every five years thereafter through the term of the ground lease for the multipurpose venue, that contains all of the following information:

(A) A list and description of the trust-related events and programming that have occurred at the site of the mixed-use development and in the multipurpose venue over the preceding five-year period, including the dates on which the events occurred

or the multipurpose venue was made available for those events, and identifying any free and low-cost visitor-serving events.

(B) A description of the efforts made by the Port, its tenants, and subtenants to publicize the availability of Pier 30-32, including the multipurpose venue, for trust-related events and other efforts undertaken to solicit such events.

(C) A description of the maritime program on those portions of Pier 30-32 within the purview of the Port or the City, including a list of the facilities constructed, identification of any tenants, licensees, or other operators of the maritime facilities, and a description of the nature and frequency of the maritime use.

(D) A description of the tenants and use of the nonmaritime office space and the use of the public community room on Pier 30-32.

(E) Any other information specifically requested by the State Lands Commission that pertains to the City or Port program of trust uses for Pier 30-32 and that is reasonably obtainable by the City or Port.

(2) (A) The Port, and the City, if applicable, shall work cooperatively with the executive officer of the State Lands Commission to develop an implementation plan if the executive officer of the State Lands Commission, upon review of the trust program report, determines both of the following:

(i) That Pier 30-32 is not being used for at least 13 trust-related events annually at the site as a whole or is not being used for at least three trust-related events annually at the multipurpose venue as specified in paragraph (10) of subdivision (a); or, that the City or the Port has not implemented the maritime program for Pier 30-32 for its intended purposes, as specified in paragraph (6) of subdivision (a).

(ii) That the Port, or the City, as applicable, has not taken effective action to achieve the objectives specified in clause (i).

(B) The executive officer of the State Lands Commission shall provide written notice to the Port and the City of a determination under subparagraph (A) requiring the development of an implementation plan, including the basis for that determination. An implementation plan developed pursuant to this paragraph shall ensure that the objectives of clause (i) of subparagraph (A) are met for the next five-year reporting period and shall be consistent with the terms and conditions set forth in governmental

approvals for development of the project and in then-existing leases and other contracts affecting use of the site, including rights of leasehold mortgagees under those contracts. In accordance with this subparagraph, the implementation plan may include a plan for improving outreach, publicity, or marketing efforts for trust events or to attract maritime operators or users.

(3) In conjunction with the Port's report required in paragraph (1), the tenant of the multipurpose venue shall submit and, if requested by the executive officer of the State Lands Commission, present at a properly noticed public State Lands Commission meeting, an informational report to the State Lands Commission describing how the event program at the multipurpose venue is meeting the objectives for use of that venue set forth in paragraph (2) of subdivision (a).

SEC. 7. Section 6 of Chapter 489 of the Statutes of 2001 is amended to read:

Sec. 6. The Legislature finds and declares that the 2000 amendments of the ~~San Francisco~~ Bay Plan and the Special Area Plan by BCDC are authorized under subdivision (f) of Section 66632 of the Government Code as necessary to protect the health, safety, and welfare of the public in the entire bay area, and BCDC's actions with respect to those amendments are hereby ratified and confirmed.

SEC. 8. Section 7 of Chapter 489 of the Statutes of 2001, as amended by Section 3 of Chapter 68 of the Statutes of 2003, is amended to read:

Sec. 7. Any *legislative or regulatory* requirement for findings of consistency with the public trust doctrine or the Burton Act trust under the Special Area Plan, the Bay Plan, or any other applicable statute, regulation, or plan shall be deemed satisfied if the Port has made a finding that the Pier 30-32 development is consistent with the requirements of Section ~~6~~ *5* of ~~the Pier 30-32 Revitalization Act~~ *this act*. Except ~~as provided in this section,~~ *with respect to a finding of consistency with the public trust doctrine,* nothing in ~~that~~ *this* act is intended to limit the *authority and* discretion of BCDC to approve or deny permits for the ~~projects~~ *multiuse development plan on Pier 30-32 generally* described in ~~that~~ *this* act in a manner consistent with the McAteer-Petris Act, the Bay Plan, *and* the Special Area Plan, ~~and that act, or to~~ *including the authority and discretion of BCDC to impose conditions on the*

permits for the project. This act shall not limit the *authority and* discretion of BCDC to enforce permits issued for the projects described in ~~that~~ *this* act.

SEC. 9. Section 8 of Chapter 489 of the Statutes of 2001 is amended to read:

Sec. 8. (a) For the purpose of effectuating the sale of the street, including the conveyance of the street by the city, free of the public trust and the Burton Act trust, the State Lands Commission may convey to the city by patent all of the rights, title, and interest held by the state by virtue of its sovereign trust title to the street, including any public trust interest or Burton Act reservation or trust interest, not heretofore conveyed, subject to any reservations the State Lands Commission determines appropriate.

(b) In any case in which the state, pursuant to this act, conveys filled tidelands and submerged lands transferred to the city pursuant to the Burton Act, the state shall reserve all minerals and all mineral rights in the lands of every kind and character now known to exist or hereafter discovered, including, but not limited to, oil and gas and rights thereto, together with the sole, exclusive, and perpetual right to explore for, remove, and dispose of those minerals by any means or methods suitable to the state or to its successors and assignees, except that, notwithstanding the Burton Act, or Section 6401 of the Public Resources Code, any such reservation shall not include the right of the state or its successors or assignees in connection with any mineral exploration, removal, or disposal activity, to do either of the following:

(1) Enter upon, use, or damage the surface of the lands or interfere with the use of the surface by any grantee or by the grantee's successors or assignees.

(2) Conduct any mining activities of any nature whatsoever above a plane located 500 feet below the surface of the lands without the prior written permission of any grantee of the lands or the grantee's successors or assignees.

(c) This section does not require the state, the city, or the Port to reserve mineral rights in any portion of Seawall Lot 330, including any portion of the street, that is conveyed pursuant to AB 418.

SEC. 10. Section 9 of Chapter 489 of the Statutes of 2001 is amended to read:

Sec. 9. The city may, pursuant to Section 3 of Article X of the California Constitution, sell the street to any private person, partnership, or corporation, with the approval of the State Lands Commission, if the city first finds that the sale is consistent with the legislative findings and declarations set forth in Section 3. That sale shall not be effective unless and until the State Lands Commission, at a regular open meeting with the proposed sale of the street as a properly scheduled agenda item, does or has done, all of the following:

(a) Finds, or has found, that the consideration for the sale of the street pursuant to Section 3 of Article X of the California Constitution shall be the fair market value of the street.

(b) Adopts, or has adopted, a resolution approving the sale that finds and declares that the street has been filled and reclaimed, is cut off from access to the waters of San Francisco Bay, and is no longer needed or required for the promotion of the public trust or the Burton Act trust, and that no substantial interference with the public trust or Burton Act trust uses and purposes will ensue by virtue of the sale. The resolution shall also declare that the sale is consistent with the findings and declarations in Section 3, and the sale is in the best interests of the state and city. Upon adoption of the resolution, or at a time that is specified in the resolution, the street shall thereupon be free from the public trust and the Burton Act trust.

(c) Finds, or has found, that the proceeds for the sale of the street will be devoted to trust-related capital improvements by the Port.

(d) This section does not apply to a conveyance of any portion of Seawall Lot 330, including the street, that is made pursuant to AB 418.

SEC. 11. Section 11 of Chapter 489 of the Statutes of 2001 is amended to read:

Sec. 11. A deed, patent, agreement, or other instrument executed in furtherance of this act, or an action of the state, the city, or the Port to approve the use, lease, or conveyance of any portion of port property subject to this act, or to approve project agreements, grant entitlements, or permits, or issue bonds or other indebtedness in connection with the use and development of that property in accordance with this act, shall be conclusively presumed to be valid, unless held to be invalid in an appropriate

proceeding in a court of competent jurisdiction to determine the validity of the instrument, agreement, or approval commenced within 60 days after the recording of the instrument or agreement, or the recording of a memorandum evidencing the instrument or agreement, or, in the case of an approval, within 60 days after the approval.

SEC. 12. Section 13 of Chapter 489 of the Statutes of 2001 is amended to read:

Sec. 13. (a) An action may be brought under Chapter 4 (commencing with Section 760.010) of Title 10 of Part 2 of the Code of Civil Procedure to establish title to any lands conveyed pursuant to this act or by the parties to any agreement regarding a street sale or exchange of land entered into pursuant to this act or pursuant to Chapter 310 of the Statutes of 1987 to confirm the validity of the agreement. Notwithstanding Section 764.080 of the Code of Civil Procedure, the statement of decision in the action shall include a recitation of the underlying facts and a determination whether the conveyance or agreement meets the requirements of this act, and, if applicable, Chapter 310 of the Statutes of 1987, Sections 3 and 4 of Article X of the California Constitution, and any other law applicable to the validity of the conveyance or agreement.

(b) For purposes of Section 764.080 of the Code of Civil Procedure, and unless otherwise agreed in writing, an agreement entered into pursuant to this act shall be deemed to be entered into on the date it is executed by the executive officer of the ~~commission~~ *State Lands Commission*, who shall be the last of the parties to sign prior to the signature of the Governor. The effective date of the agreement shall be deemed to be the date on which it is executed by the Governor pursuant to Section 6107 of the Public Resources Code.

(c) An action may be brought under Chapter 9 (commencing with Section 860) of Title 10 of Part 2 of the Code of Civil Procedure to determine the legality and validity of a deed, patent, agreement, or other instrument executed in furtherance of or authorized by this act, or an action of the city or Port to use, lease, or convey any property, or to approve project agreements, grant entitlements, or permits, or issue bonds or other indebtedness in connection with the use and development of that property, in accordance with this act. Prior to the filing of an action, the

Attorney General and the executive officer of the ~~commission~~ *State Lands Commission* shall be provided written notice of the action and a copy of the complaint. An action authorized by this subdivision may be combined with an action authorized by subdivision (a).

SEC. 13. Section 14 of Chapter 489 of the Statutes of 2001 is amended to read:

Sec. 14. *(a)* This act does not alter the obligations of the city or the Port under the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code), including any obligation to consider alternatives to a project proposed for Pier 30-32 or Seawall Lot 330.

(b) If a mixed-use development at Pier 30-32 that includes a multipurpose venue for events and public assembly meeting the conditions of Section 5 of this act has not been approved within 10 years of the effective date of this act, the provisions of Section 5 and Section 7 of this act shall become inoperative as of the date that is 10 years from the effective date of this act.

SEC. 14. For purposes of this act, subdivision (d) of Section ~~9 of Chapter 477 of the Statutes of 2011~~ *of AB 418* shall not apply to any sale of Seawall Lot 330 if the proceeds of the sale are applied to the cost of rehabilitating the Pier 30-32 substructure or the cost of constructing maritime or public access improvements on Pier 30-32.

SEC. 15. The Legislature finds and declares that a special law is necessary and that a general law cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution because of the unique circumstances applicable only to the trust lands described in this act.

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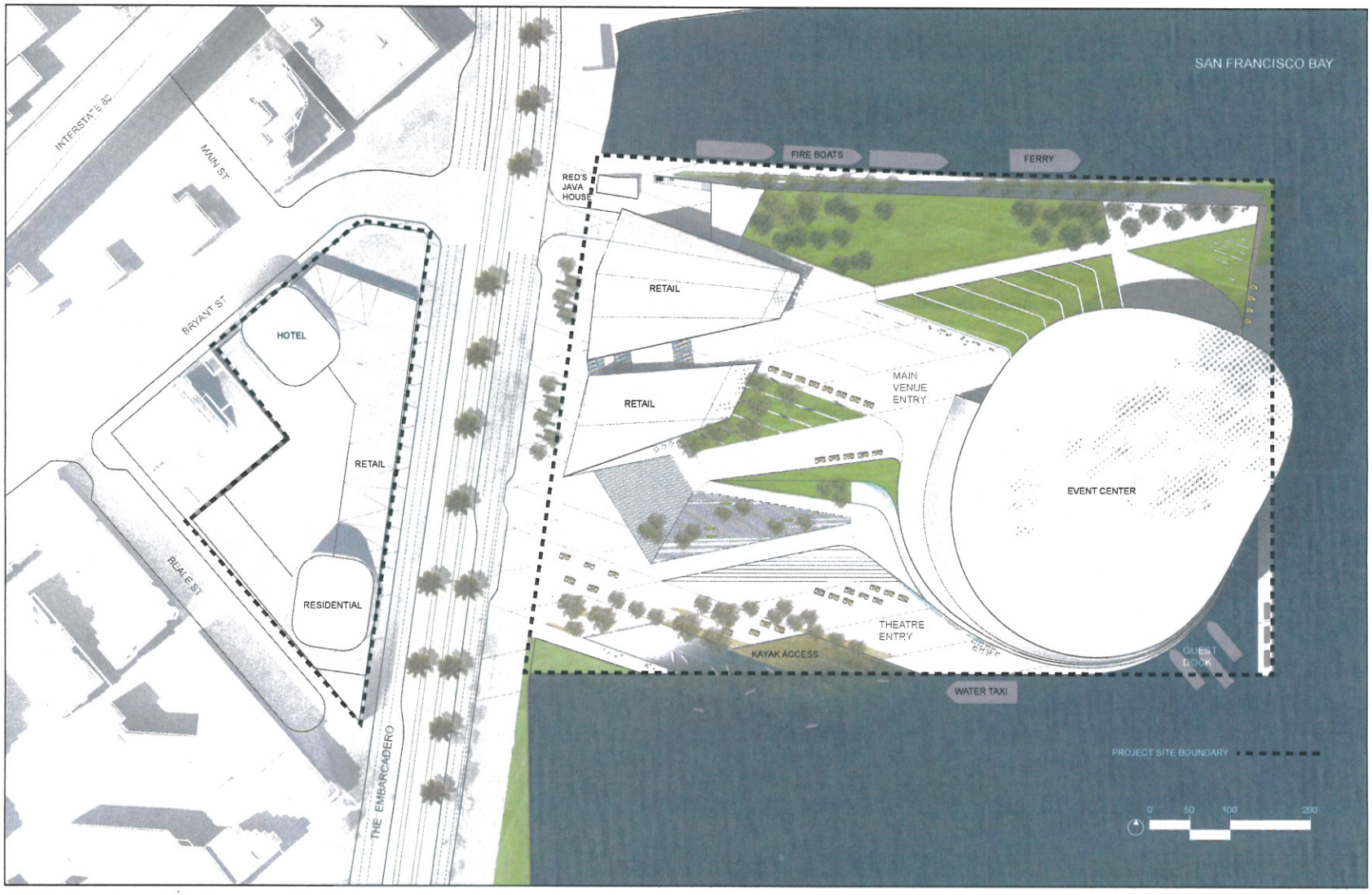
SOURCE: Google Maps, ESA, 2012

Event Center and Mixed-Use Development at Piers 30-32 and Seawall Lot 330

Project Location



NOTE: Uses shown in the figure are subject to design refinements.

SOURCE: AECOM, Snøhetta, 2012

Event Center and Mixed-Use Development at Piers 30-32 and Seawall Lot 330

Conceptual Site Plan for Piers 30-32 and Seawall Lot 330