

San Francisco Bay Conservation and Development Commission

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October 25, 2024

TO: Commissioners and Alternates

FROM: Larry Goldzband, Executive Director (415-352-3653; larry.goldzband@bcdc.ca.gov)
Cory Mann, Principal Waterfront Planner (415-352-3649; cory.mann@bcdc.ca.gov)

SUBJECT: Public Hearing and Vote to Re-Initiate Proposed Bay Plan Amendment No. 3-17, an Update to the San Francisco Waterfront Special Area Plan
(For Commission consideration on November 7, 2024)

Staff Recommendation

The staff recommends that the Commission: (1) adopt the attached revised “Notice” to initiate the process to consider an amendment to the *San Francisco Bay Plan (Bay Plan)* to update the *San Francisco Waterfront Special Area Plan*; and (2) schedule a public hearing to consider the proposed amendment.

Staff Report

I. Summary

The Port of San Francisco (Port) has applied to the Commission to amend the *San Francisco Waterfront Special Area Plan (SFWSAP)* to align the policies of the SFWSAP with a recent update to the Port’s own local planning process, the *San Francisco Waterfront Plan (Waterfront Plan)*, and address other near-term priorities.

The Commission previously voted to initiate Bay Plan Amendment No. 3-17 (BPA 3-17) on September 19, 2019. At the time, the Port intended to undertake a comprehensive update of the entire SFWSAP. Commission and Port staff worked on the proposed amendment for several years but experienced delays relating to the pandemic and staff turnover. In 2023, Commission staff and Port staff engaged in discussions regarding the proposed development project at Piers 30-32 and Seawall Lot 330. These discussions evolved further to identify strategies to improve collaboration and mutual support between the agencies. As a result of these discussions, Commission staff and Port staff developed a Memorandum of Understanding (MOU) to provide a framework for coordination between Port staff and Commission staff on several Port priorities, including the SFWSAP Amendment. The Commission authorized the Executive Director to enter into the MOU at its December 21, 2023, meeting. The Commission also entered into a contract with the Port to reimburse the Commission for staff time and other costs associated with this BPA and other agreed upon work.



As described in the MOU, the Port and the Commission will take a phased approach to SFWSAP amendments, “first addressing near-term, narrowly focused amendments to the SFWSAP to address immediate issues that impact some of the Port’s development plans and then setting a pathway to undertake a more comprehensive update of the SFWSAP, following in time and informed by a number of ongoing or forthcoming longer-term planning processes.”

Consistent with the MOU, the Port is requesting to re-initiate BPA 3-17 to address the following SFWSAP amendments:

- 1) Update provisions to satisfy the fill requirement for the Exploratorium development project at Piers 15 and 17 by revising this requirement to include the Public Education Program;
- 2) Discontinue application of the Replacement Pier / Replacement Fill Policy (the 50% Rule) to the Fisherman’s Wharf geographic vicinity;
- 3) Postpone dates for outstanding SFWSAP public benefits requirements (public access improvements associated with Piers 19,19.5, 23, 29.5, the Bayside History Walk at Pier 29, and removal of the end of Pier 23 to a date determine by the Port and BCDC).
- 4) Other small changes to terminology and findings to remove outdated and obsolete information and better align the SFWSAP with the Port’s 2023 Waterfront Plan.

II. Planning Context

The McAteer-Petris Act allows for the *Bay Plan* to contain or incorporate by reference Special Area Plans with more specific findings and policies for portions of the Bay and its shoreline and other plans addressing special needs. In the past, the Commission has adopted Special Area Plans to apply policies in greater detail to specific shoreline and water areas in recognition of unique characteristics in a given area. Special Area Plans are developed in partnership with local governments, and when adopted by the Commission, are incorporated into the *Bay Plan*. The *San Francisco Waterfront Special Area Plan* (SFWSAP), first established in 1975, is one such plan.

In 1971, the Commission amended the *Bay Plan* to create new policies intended to facilitate development at the Port of San Francisco’s property in recognition of financial and physical constraints facing the Port. The “Policies Concerning Filling for Bay-Oriented Commercial Recreation and Bay-Oriented Public Assembly on Privately-Owned or Publicly-Owned Property” allow fill for repair, reconstruction, and reuse of piers for bay-oriented commercial recreation (uses like restaurants or hotels) provided that projects satisfy a number of specific requirements. Policy 1(a) in this section of the *Bay Plan* is colloquially referred to as the “50% Rule”. The 50% Rule contains two basic requirements for projects that propose to reconstruct and reuse piers for commercial recreation: 1) piers must be smaller in size, and 2) 50% of the reconstructed pier must be dedicated to open space or public access. In this context, staff have interpreted open space to mean removing the pier to create an open water basin. These policies remain in the *Bay Plan* today.

To effectuate these policies, the Commission and the Port created a Waterfront Advisory Committee that worked for two years to adopt the first SFWSAP in 1975. The SFWSAP sets forth policies for projects within the Commission's jurisdiction from Hyde Street Pier in Fisherman's Wharf to India Basin in Bayview-Hunters Point. The SFWSAP contains geographic-specific policies that specify permitted uses which may be allowed on fill in specified areas within the Commission's jurisdiction and guide the provision of public access, consistent with development projects.

The original SFWSAP did not result in the revitalization of the waterfront that was intended. Repair, reconstruction, and seismic strengthening of piers was—and remains—costly. The only project that could satisfy the 50% Rule while providing sufficient capital to repair and reconstruct a pier was the Pier 39 project in 1978. Numerous other constraints, including limited demand for exclusively water-oriented uses, impaired the ability of the Port to revitalize the waterfront. Furthermore, existing pile-supported piers that predate the Commission and undergo seismic or major structural repairs have been evaluated as Bay fill and thus subject to the 50% Rule if they were used for retail, restaurants, or other “commercial recreation.” This created an impediment for pre-existing businesses to repair and maintain the piers on which they operated.

In 2000, the Commission and the Port undertook a major update to the SFWSAP to align the Commission's policies with Port local planning efforts, including a 1997 *Waterfront Land Use Plan* that pushed for a wider diversity of uses and activities on the waterfront.

The Northeastern Waterfront

The major component of the 2000 update to the SFWSAP concerned the Northeastern Waterfront, from Pier 35 to China Basin. In this area of the waterfront, the SFWSAP was amended to respond to commercial realities of the Port by removing the 50% rule and allowing the Port to redevelop certain piers for uses consistent with the Public Trust Doctrine and the Port's legislative trust grant without triggering the McAteer-Petris Act Section 66605(a) Water-oriented use criterion, and Section 66605(c) no alternative upland location criterion. In exchange, the Port agreed to provide an integrated package of public benefits that could not be achieved through the Commission's permitting authority for individual projects. These public benefits have included pier removal, the creation of new open water basins, and the construction of public plazas and open space areas.

BCDC approved the 2000 SFWSAP amendment based on findings pursuant to the McAteer-Petris Act that the revised policies were necessary to “the health, safety and welfare of the public of the entire Bay Area” because the San Francisco Waterfront is a Port with maritime needs, the site of many historic resources, and includes unique recreation, transportation and economic assets that serve the entire region, as well as the State of California. Additional modifications to the Plan have occurred in the intervening years to facilitate the development of the Exploratorium at Piers 15 and 17; the development of the International Cruise Ship Terminal at

Pier 27; and the America's Cup sailing event in 2013, all within the Northeastern Waterfront. Most of the public benefits outlined in the SFWSAP have been completed, resulting in the revitalization of the Northeastern Waterfront.

It is critical to note that the open water basin and fill removal public benefits provided through this planning process *are not* compensatory mitigation for impacts associated with fill in the Bay from a project. Similarly, the public plazas required by the SFWSAP *are not* maximum feasible public access associated with a specific project. Rather, they are regional public benefits provided by the Port in exchange for having more flexibility to repair, reconstruct, and reuse piers for a wider range of uses.

Pier 15 and Pier 17 (MOU Item #1)

One of the public benefits required by the SFWSAP concerns Piers 15 and 17. SFWSAP Plan Implementation Requirements Policy 4(f) requires the Port to remove the deck and pilings that form the "valley" between Pier 17 and Pier 15 and certain non-historic additions to the Pier 15 and Pier 17 sheds. The policy further specifies that a project that proposes to retain a portion of that fill must be offset by the removal of an equal or greater amount of fill elsewhere.

When the Exploratorium was developed and brought to the Commission for approval in 2006, some of the preexisting fill area between Pier 15 and Pier 17 was found to be integral to the overall benefits provided by the project in order to provide a connection between Pier 15 and Pier 17. When the Commission approved BCDC Permit No. 2006.009.00 authorizing the Exploratorium project, it also amended the SFWSAP (Bay Plan Amendment No. 1-09) to revise these fill removal public benefits. Rather than remove all of the fill at Piers 15 and 17, the revised SFWSAP policy and permit Special Condition D provided that the Port and Exploratorium could remove fill at a different location along the waterfront. The amount of fill required to be removed as a public benefit is dependent on the location of the proposed removal. The permit (BCDC Permit No. 2006.009.04) has been subsequently amended to extend the deadline to provide the fill removal. As stated above, this fill removal requirement is not compensatory mitigation associated with the impacts of fill in the Bay from the Exploratorium project, or any other project impact. Rather, removal of preexisting fill is a component of the overall public benefits package outlined in the SFWSAP.

In the time since this public benefit was required as part of the SFWSAP in 2000, there has been an increasing focus on issues related to climate change and the vulnerability of the San Francisco waterfront. The Port, in collaboration with the Exploratorium, proposes to implement a regional sea level rise education initiative as a regionwide public benefit instead of removing preexisting fill at a different location on the San Francisco waterfront as would currently be required by the SFWSAP and associated permit.

As described above, the SFWSAP provides for an integrated package of public benefits that could not be achieved through the Commission's permit authority for individual projects, and these public benefits are not compensatory mitigation for any associated impacts. The Commission

may define the public benefits that are appropriate under the SFWSAP. Through this Bay Plan Amendment process, the Commission may determine that the public benefits associated with a regional public education program are an appropriate substitute for the fill removal and open water areas at Pier 15 and Pier 17, or required elsewhere, and may incorporate that public education program in the integrated package of benefits described in the SFWSAP.

If approved as part of this Bay Plan Amendment, the sea level rise education program would be designed to increase public engagement with sea level rise education and adaptation efforts around the Bay shoreline. The Exploratorium is developing a draft proposal building on recommendations found in regional, state, and national guidance for sea level rise and climate adaptation science and education. The draft goals for the program are to:

- Increase public understanding of sea level rise in the Bay Area from impacts to solutions;
- Elevate public awareness of regional cooperation initiatives and shared vulnerabilities; and,
- Expand student engagement with sea level rise content through teacher professional development and field trip opportunities.

Content and concepts will be identified in partnership with BCDC, Port, and local partners. As a starting point, the Exploratorium has suggested concepts including:

- Sea level rise foundations- Land ice melt, thermal expansion, tides, weather
- Climate resilience and adaptation pathways
- Groundwater rise and toxic sites
- Indigenous relationships to land and sea level
- Natural and nature-based solutions
- Historical ecology, land use, and bay fill
- Interconnectivity of the region through infrastructure vulnerability

The draft proposal will consist of several components, including public space activations, K-12 teacher professional development, public programming, and online resources. The draft proposal will be further refined in collaboration with the Port, the Commission, and other relevant partner organizations. If the Commission votes to initiate the Bay Plan Amendment process, staff will share the proposal with the Commission and the public as part of the staff report and preliminary recommendation in advance of a public hearing.

Fisherman's Wharf (MOU Item #2)

At the time of the 2000 update to the SFWSAP, there was mutual interest by the Commission and the Port to remove the 50% Rule from Fisherman's Wharf, just as the Commission removed the 50% rule for the Northeast Waterfront geographic area. However, the Commission and the Port did not reach agreement on the associated public benefits that the Port would provide in the Fisherman's Wharf geographic area in exchange for increased regulatory flexibility. Instead, the 2000 Amendment to the SFWSAP included Geographic-Specific Policies for the Fisherman's

Wharf geographic area that required the Commission and the Port to undertake a study and public process, after which the Port would develop a major public plaza and an open water basin within the Fisherman's Wharf area. After these public benefits were completed, the Policy provided that the Port could initiate a request to remove the 50% rule at Fisherman's Wharf.

Subsequently, the Commission and the Port undertook two studies in 2004 and 2014 to identify public plaza improvements. Based on this work, the Port constructed the Pier 43 Bayside promenade and a plaza at Pier 45, creating approximately 36,000 sq ft of public access space. The Port also created the open water basin by removing Pier 43 ½, approximately 77,000 square feet of fill. With these requirements completed, the Port requests an amendment to the SFWSAP as provided in the existing Fisherman's Wharf Geographic-Specific policy to remove the 50% Rule from Fisherman's Wharf to align the Fisherman's Wharf policies with those that have governed the Northeastern Waterfront since 2000. The amended SAP would require uses to be consistent with the Public Trust Doctrine and the Port's legislative trust grant (also known as the Burton Act).

Other Plan Changes (MOU Items #3-4)

In addition to the proposed updates regarding Piers 15/17 and the discontinuation of the 50% to the Fisherman's Wharf geographic vicinity of the SFWSAP, the MOU specifies that the Port and Commission will postpone the dates for certain outstanding SFWSAP public benefits requirements and make other small changes to terminology and findings to remove outdated and obsolete information. These proposed revisions are anticipated to be minor, in recognition of the need and agreement to comprehensively update the SFWSAP in a future Bay Plan Amendment process. Commission and Port staff anticipate that the comprehensive update will refocus the SFWSAP to address resiliency across the San Francisco waterfront.

III. Commission Procedure

Circulating a draft descriptive notice to the public is the first step in the process of amending the Bay Plan. A revised notice of the proposed amendment is required by the McAteer-Petris Act (Government Code Section 66652) and the Commission's regulations. If the attached revised descriptive notice is approved by the Commission on November 7, 2024, the Commission will initiate the process for this Bay Plan Amendment and at least one public hearing will be held to discuss the potential amendment. The staff will distribute a report with their preliminary recommendation for specific changes to the SFWSAP to all Commissioners, Alternates, and interested parties at least 30 days prior to that initial public hearing (planned for February 20, 2025), which is required by the Commission's regulations. After the public hearing, staff will make revisions based on public and Commissioner input, and then send the revisions along with a final recommendation and a response to public comments to all interested parties. Finally, the Commission will vote on the proposed amendment. Bay Plan Amendments must also be approved by the Office of Administrative Law.

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Revised Notice

Mailed October 25, 2024

Public Hearing Concerning Proposed Revised San Francisco Bay Plan Amendment No. 3-17 to Update the San Francisco Waterfront Special Area Plan

Notice is hereby given that the San Francisco Bay Conservation and Development Commission will consider an amendment to the *San Francisco Bay Plan*. The proposed amendment would involve updating the *San Francisco Waterfront Special Area Plan*, including policies for Fisherman's Wharf and the Northeastern Waterfront.

A Public Hearing on the possible amendment is scheduled to be held on Thursday, February 20, 2025, at 375 Beale Street in San Francisco, California, starting at 1:00 P.M. at a regular BCDC Commission meeting.¹

At least thirty (30) days prior to the initial meeting, the staff will prepare and distribute a staff report and preliminary recommendation on the proposed amendment. Interested persons may request the staff report and present written comments on or before February 20, 2025. Oral comments may be presented at the February 20, 2025, Commission meeting.

This revised **Notice** is prepared in conformance with Section 66652 of the California Government Code and Section 11001 of Title 14, Division 5 of the California Code of Regulations.

Whether the Bay Plan should be amended as described above, and in what manner, will be the subject of the public hearing and Commission deliberation.

Further information concerning the proposed amendment can be obtained by contacting Cory Mann, Principal Waterfront Planner, at the Commission's office, 375 Beale Street, Suite 510, San Francisco, California 94105, by telephone at 415 352-3649 or via email at cory.mann@bcdc.ca.gov.

¹ This proposed amendment to the Bay Plan was first initiated on September 19, 2019. The public hearing date was previously revised five other times after the initial public hearing was set for December 3, 2020. The previous scheduled public hearing dates were September 16, 2021, October 20, 2022, May 16, 2024, September 5, 2024, and November 7, 2024. On November 7, 2024, the Commission will conduct a public hearing and possible vote to authorize BCDC staff to re-initiate BPA 3-17 with a narrower scope than was first initiated by the Commission.

