

San Francisco Bay Conservation and Development Commission

375 Beale Street, Suite 510, San Francisco, California 94105 tel 415 352 3600 fax 415 352 3606
State of California | Gavin Newsom – Governor | info@bcdc.ca.gov | www.bcdc.ca.gov

April 24, 2020

TO: Commissioners and Alternates
FROM: Larry Goldzband, Executive Director (415/352-3653; larry.goldzband@bcdc.ca.gov)
Shannon Fiala, Planning Manager (415/352-3665; shannon.fiala@bcdc.ca.gov)

SUBJECT: Public Hearing and Vote on Whether to Initiate an Amendment to the San Francisco Waterfront Special Area Plan (Bay Plan Amendment 1-20) to Allow the Mooring of a Historic Ship at Pier 9 on The Embarcadero, San Francisco
(For Commission consideration on May 7, 2020)

Staff Recommendation Summary

The staff recommends that the Commission:

1. Adopt the attached proposed descriptive notice to initiate the process of considering a possible amendment to the *San Francisco Waterfront Special Area Plan* (Bay Plan Amendment 1-20);
2. Schedule a public hearing for July 16, 2020 to consider the proposed amendment; and
3. Authorize the Executive Director to enter into a contract to recover the Commission's costs for reviewing and acting on the proposed amendment application.

Background

On July 20, 2000, at a joint meeting with the San Francisco Port Commission, the Commission adopted amendments to the *San Francisco Waterfront Special Area Plan* (SAP) and the *San Francisco Bay Plan* (Bay Plan) and deleted the *San Francisco Waterfront Total Design Plan*. The amendments to the SAP covered the area of the waterfront between Pier 35 and China Basin and set out the location and conditions for the placement and removal of fill; made provisions for new public plazas and public access; included policies for historic preservation, waterfront design, parking and transportation; and included a number of implementation requirements for both the Port and the Commission. The amendments to the Bay Plan created a new basis for allowing replacement fill in the Bay, which, in conjunction with the SAP, effectively relaxed the Commission's control over uses on replacement fill in this area of the San Francisco waterfront.

The 2000 SAP amendments were based on findings that the public benefits that the Port would provide would exceed what the Commission could obtain through its regulatory program. The Commission relied on its seldom-used authority to protect the "health, safety, and welfare of the entire Bay Area" to approve amendments that were otherwise inconsistent with the McAteer-Petris Act. One of the public benefits included the creation of "open water basins" as focal points of public use and enjoyment of the northeastern waterfront. Open water basins were intended to provide opportunities for physical access between the Bay and piers and provide substantial Bay views from the boundary piers framing open water basins. Four open water basins were created to enable permanent enjoyment of the Bay, one of which, the "Broadway Open Water Basin" is located between Piers 3 and 9.



Current Policies

SAP General Policy 10 regarding the mooring of historic ships states that a minor amount of fill created by the mooring of a historic ship may be authorized pursuant to Commission Regulation Section 10704. SAP Open Water Basin policies state that in the Broadway Open Water Basin, existing berthing facilities for the historic ferry boat, Santa Rosa, and Bar Pilot vessels should continue to be allowed. Limited lay berthing of public transportation and excursion vessels, and temporary berthing of ceremonial and visiting ships should be allowed as long as the berthing of moored vessels is balanced with the preservation of views and the need to provide pier frontage to transient berthing. SAP Open Water Basin policies also limit new fill in open water basins to certain uses, including historic ships permitted as of July 2000. The SAP Implementation Requirements also provide that “future amendments of the SAP...may only be approved if the Commission finds that the revised public benefits and revised development entitlement would be in balance and the public benefits would be sufficient to warrant the Commission finding that the revised balance of public and private benefits would be necessary to health, safety and welfare of the entire Bay Area.”

Proposed Policy Changes

Bay Area Council (BAC), a non-profit organization, seeks to permanently moor a historic ferry, the Klamath, not permitted as of July 2000, adjacent to Pier 9 in the Broadway Open Water Basin. BAC has applied for an amendment to the SAP to alter the open water basin policies and make related necessary map changes. Specifically, BAC has proposed that the SAP be amended to:

- (1) modify General Policies to add a criterion that would allow one additional historic ship in addition to historic ships that were permitted as of July 20, 2000;
- (2) modify Open Water Basin Policy 3 regarding the limits on new fill by:
 - (a) adding a “one historic ship consistent with the language in Commission Regulation Section 10703(a) at Pier 9” to Part (c)(i) regarding berthing facilities in the Broadway Open Water Basin, and
 - (b) adding an allowance for “one historic ship consistent with the language of Commission Regulation Section 10703(a) at Pier 9” under Part (g) regarding historic ships.

Contract

Pursuant to the Commission’s regulations, BAC has agreed to enter into a contract with the Commission whereby BAC will provide up to \$30,000 for the staff and consultant work required to process and act on the proposed amendment. The staff is requesting authorization from the Commission for the Executive Director to enter into this contract.



Commission Procedure

Circulating a descriptive notice is the first step in the process of amending the SAP. Adopting a descriptive notice does not commit the Commission to approving or denying the proposed amendment. A notice of the proposed amendment that sets the date for the public hearing on the proposed amendment is required by the McAteer-Petris Act (Government Code Section 66652) and Section 11000 of the Commission's regulations (California Administrative Code, Title 14, Division 5). If the attached proposed descriptive notice is approved by the Commission on May 7, 2020, a public hearing will be held on July 16, 2020. The staff will distribute a report on the proposed amendment with the staff's preliminary recommendation for the specific changes to the SAP to all Commissioners, Alternates, and interested parties at least 30 days prior to the initial public hearing, as required by the Commission's regulations (California Administrative Code, Title 14, Division 5, Section 11003). Upon conclusion of the public hearings, and after submission of the Executive Director's final recommendation, the Commission can vote upon the proposed SAP changes. The descriptive notice must be mailed at least 30 days prior to the public hearings and the vote cannot take place earlier than 90 days from the mailing of the descriptive notice.

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Descriptive Notice

May 8, 2020

Proposed San Francisco Bay Plan Amendment No. 1-20

Hearing Concerning Amendment of the San Francisco Waterfront Special Area Plan to Accommodate a Proposal to Moor a Historic Ship at Pier 9 on The Embarcadero, San Francisco

Notice is hereby given that the San Francisco Bay Conservation and Development Commission will consider an amendment to the *San Francisco Bay Plan* (Bay Plan). The proposed amendment would modify the *San Francisco Waterfront Special Area Plan* to accommodate the mooring of a historic ship at Pier 9 on the Embarcadero in San Francisco.

A public hearing on the possible amendment is scheduled to be held July 16, 2020 at 375 Beale Street in San Francisco, California, starting at 1:00 P.M. At least 30 days prior to the initial public hearing, the staff will prepare and mail a staff report and preliminary recommendation on the proposed amendment. Interested parties may request the staff report and submit written comments before July 10, 2020. Oral comments may be presented at the July 16, 2020 Commission public hearing or thereafter as directed by the Commission.

This notice is prepared in conformance with Section 66652 of the California Government Code; Section 11001 of Title 14, Division 5 of the California Code of Regulations; and Section 312 of the federal Coastal Zone Management Act of 1972. If, after the hearing, the Commission adopts an amendment to the Bay Plan described in this notice and subsequent staff report, such amendment will be processed as a program change of the Commission's federally-approved Coastal Management Program for San Francisco Bay. Any federal agency interested should, therefore, submit comment to the Commission on or before July 16, 2020. Any written comment received subsequent to the close of the public hearing and public comment period will be distributed to the Commission. The staff will not provide a response to those comments in its staff recommendation but will advise the Commission whether it believes the comment raises a new, substantial issue. If the Commission determines that the comment raises a new, substantial issue, the Commission may reopen the public hearing, and the staff would prepare and distribute a new planning report.

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 Shannon Fiala by telephone at (415) 352-3665, or by e-mail at shannon.fiala@bcdc.ca.gov, or at the Commission's office, 375 Beale St, Suite 510, San Francisco, California 94105.

