

SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION

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November 25, 2009

TO: Commissioners and Alternates

FROM: Will Travis, Executive Director (415/352-3653 travis@bcdc.ca.gov)
Lindy Lowe, Senior Planner (415/352-3642 lindyl@bcdc.ca.gov)

SUBJECT: Staff Recommendation for Proposed Bay Plan Amendment No. 1-09 Concerning a San Francisco Waterfront Special Area Fill Removal Requirement between Pier 15 and Pier 17 (For Commission Consideration on December 3, 2009)

Preliminary Staff Recommendations

The staff recommends that the Commission adopt the attached Resolution No, 09-01 that would:

1. Amend the *San Francisco Waterfront Special Area Plan* by: (1) modifying Open Water Area Policy 1-d to allow the retention of a portion of the valley and the non-historic shed additions between Pier 15 and Pier 17 and require that any fill that is not removed at this location be offset by removal at another location along the San Francisco waterfront at a ratio of 1 to 1 in the northeastern waterfront and 2 to 1 in the southern waterfront, with an incentive for early removal; (2) modifying Plan Implementation Requirement 4-f-iv to: (a) allow for the retention of portions of the valley and non-historic shed additions between Pier 15 and Pier 17 and require that any area retained be offset with the same or greater amount of fill removal in another location along the San Francisco waterfront, (b) change the required timing of the fill removal between Pier 15 and Pier 17, or at another location, to occur within 10 years of the issuance of a certificate of occupancy for a major development at Pier 15, with an incentive to complete the fill removal within five years; and (3) making necessary map changes.

Proposed San Francisco Waterfront Special Area Plan Amendment

Plan Amendment Application. The Exploratorium, a California not-for-profit corporation and the Port of San Francisco have applied to amend the *San Francisco Waterfront Special Area Plan* (SAP), an element of the *San Francisco Bay Plan*, to allow the retention of a portion of the “valley” and non-historic sheds between Pier 15 and Pier 17, located in and owned by the Port of San Francisco. The SAP currently requires that the valley and non-historic shed additions be removed as one of several public benefits. The applicants propose that any required fill removal that is retained between Pier 15 and Pier 17 be removed at another location between Pier 35 and India Basin, and that the timing of the fill removal be changed from within 20 years of issuance of a certificate of occupancy for the



major reuse of Piers 27-31, or a comparable major development, to be within 10 years of certificate of occupancy for a major development at Pier 15.

The Exploratorium submitted a draft major permit application in 2006 and since that time has been working with BCDC staff to refine the project regarding public access, views and consistency with the SAP. The need to either meet the requirement to remove the valley and non-historic shed additions between Pier 15 and Pier 17 or to amend the SAP was identified by BCDC's staff at the time of the initial discussions on the application. The applicant continued to work with the staff on the other issues raised by the project and presented the project to the Design Review Board six times. The application to amend the SAP was submitted on June 15, 2009.

Applicant's Reason for Requesting the Plan Amendment. The Exploratorium, an internationally recognized museum that provides science, art and human perception exhibits, is proposing to relocate the museum from its current site at the Palace of Fine Arts in San Francisco to Piers 15 and 17. The project planned by the Exploratorium, which includes seismically upgrading the deteriorating pier substructure, bulkhead and shed buildings, providing public access, creating an outdoor exhibit area that highlights the Bay and the development of a museum that will ultimately fill both Piers 15 and 17, cannot be accommodated unless the fill removal is less than what is required by the SAP. In order to realize all of the benefits associated with the Exploratorium project while ensuring that the public benefits required by the SAP are also implemented, the plan amendment would allow for a portion of the fill removal required by the SAP to be offset by fill removal of at least the same amount that is currently required by the SAP.

The Exploratorium describes the amendment to the SAP as, "[t]he proposed amendments are, on balance, consistent with, and support, the goals and objectives of the McAteer-Petris Act, the *San Francisco Bay Plan* and the Special Area Plan, in that the valley improvements will greatly enhance the public's access to and ability to interact with the Bay" and that "[t]he water-oriented exhibits will draw the public to the Bay and will provide educational benefits that will help with the public's understanding and appreciation of the Bay as a valuable resource to be preserved and enjoyed. Lastly, retaining a portion of the non-historic additions on the Pier 15 and Pier 17 sheds will help to ensure that this beneficial waterfront use is sustainable and can continue to benefit the public in the long-term by providing space for current programmatic needs and future growth."

Background. On July 20, 2000, at a joint meeting with the San Francisco Port Commission, the Commission adopted amendments to the SAP, the *San Francisco Bay Plan* and rescinded the *San Francisco Waterfront Total Design Plan*. The amendment process began formally in 1996 and included a number of stakeholders, including Save the Bay, San Francisco Tomorrow and members of the communities surrounding the northeastern waterfront. The amendments to the SAP addressed the area between Pier 35 and China Basin and identified the location and conditions for the placement and removal of fill, made provisions for new public plazas and public access, prioritized and developed a strategy to achieve historic preservation, and provided policies regarding parking, transportation and waterfront design. The 2000 amendments to the SAP also included a series of implementation requirements that directed actions from both the Port and BCDC to ensure the provision of the public benefits associated with the SAP amendment.

The key overall public benefits of the 2000 SAP amendment as identified in the findings for the SAP are:

- the removal of deteriorating piers that pose a threat to navigation, and to public safety and health;
- the restoration of significant areas of open water to enhance the ecological health of the Bay and to facilitate needed public recreation and access opportunities;

- the completion of a waterfront-wide, integrated public access network, guided by a policy framework for expanding public access; design policies that promote low-scale development and preserve significant Bay views; an implementation program to fund and construct the plazas and pier removals; and enhancement of Bay views and opportunities to enjoy water areas adjacent to the Embarcadero;
- the preservation of important and unique historic resources along the waterfront; and
- the development of new uses to enable public enjoyment of the waterfront, including life safety and seismic improvements and repairs of existing piers.

The findings for the SAP amendment also state that the above benefits cannot be achieved under the application of BCDC's existing regulatory regime. The findings concluded that BCDC's regulatory regime at that time made it too difficult to repair, reconstruct or redevelop piers and that the uses that were permitted, exclusively water-oriented uses, were not in sufficient demand to provide these benefits.

In order to achieve the benefits described above, the Bay Plan was amended to establish a new basis for allowing replacement fill in the Bay. The Commission's regulatory program in place at the time restricted the uses permitted on replacement fill to water-oriented uses, such as Bay-oriented commercial recreation and public assembly, public recreation, open space and public access to the Bay, and required that on replacement fill, those uses other than public recreation, open space and public access to the Bay, would cover an area of the Bay no larger than 50 percent of the area being uncovered (known as the 50 percent rule). The 2000 Bay Plan and SAP amendments eliminated the application of the 50 percent rule in the area of the waterfront between Pier 35 and China Basin and allowed uses consistent with the public trust and the Port's legislative trust grant rather than limiting allowable uses to water-oriented uses such as public recreation, open space and public access. The findings for the SAP amendment supported this change by determining that the public benefits that would be required by the amended SAP would be greater than those that would be achieved under the Commission's regulatory program at that time. The Commission relied on its authority to protect the "health, safety and welfare of the entire Bay Area" to approve these amendments that were otherwise inconsistent with the McAteer-Petris Act.

The implementation requirements that ensure the public benefits required in the SAP include:

- Pier 34 removal within one year of adoption of amendments to the SAP or in July 2001 (Completed);
- Pier 24 removal within three years of adoption of amendments to the SAP or in July 2003 (Removed most of the pier on a revised schedule approved by BCDC, delay caused by Migratory Bird Treaty);
- Historic District Nomination by June 2002 (Completed in May 2005, delays approved by BCDC);
- Pier 36 removal within 15 years of the issuance of a certificate of occupancy for a major reuse of Piers 30-32, or a comparable development; (Port has secured \$4.7 million in the House of Representatives version of the 2009 Energy and Water Appropriation bill for Pier 36 removal pending the President's signature);¹

¹ Legislation passed in 2001 accelerated the time for removal of Pier 36 to "no later than five years after commencement of construction of the cruise ship terminal development." (Stat. 2001, ch. 489, as amended by Stat. 2003, ch. 68)

- Brannan Street Wharf: (1) construct Phase 1 of the Brannan Street Wharf within 5 years of the issuance of a certificate of occupancy for a major reuse of Piers 30-32, or a comparable development and (2) complete the Brannan Street Wharf within 15 years of the issuance of a Piers 30-32 certificate of occupancy if funding is available, and within 20 years if funding is not available (Port is planning to commence construction in 2011);²
- Northeast Wharf Plaza: construct Phase 1 of the Northeast Wharf Plaza upon the issuance of a certificate of occupancy for a major reuse of Piers 27-31, or a comparable development, by removing that portion of the Pier 27 shed required to create the Plaza, and 2) complete the Northeast Wharf Plaza within 15 years of the issuance of a Piers 27-31 certificate of occupancy, or a comparable development, if funding is available, and within 20 years if funding is not available (Port and BCDC will begin a public process to develop a program for the plaza in 2009 in conjunction with the Port's proposed cruise terminal project on Pier 27);
- Pier 15-17 valley and non-historic shed removal within 20 years of the issuance of a certificate of occupancy for a major reuse of Pier 27 or a comparable major development (the subject of this amendment, the Port and the Exploratorium are proposing to remove portions of the valley and non-historic shed additions and to remove sufficient fill in another location between Pier 35 and India Basin to offset the portions of the valley and non-historic shed additions that would be retained.);
- Portion of Pier 23 Shed removal within 15 years of the issuance of a Piers 27-31 issuance of a certificate of occupancy, or comparable development;
- Pier ½ removal triggered by Ferry Terminal Phase 2 development; and
- Pier 2 removal triggered by Ferry Terminal Phase 2 development or Agriculture Building renovation.

Among the many public benefits identified in the 2000 amendment to the SAP was the requirement to remove the valley and non-historic sheds between Pier 15 and Pier 17 to create an open water area. Pier 15 and Pier 17 were constructed in the early 20th Century as separate finger piers. The two piers were connected in the 1950s, covering the water between the two piers with a pile-supported platform. This pile-supported fill created a valley and allowed for the widening of both of the pier sheds and a connector building between the sheds. The removal of this fill and the building additions was included as a requirement in the 2000 SAP amendment in order to increase the amount of open water along the San Francisco waterfront. This contributed to a balance of public benefits and the creation of open water that did not compromise historic resources, which were two key goals of the plan. It is this requirement that is the subject of Bay Plan Amendment 1-09, proposed by the Exploratorium. This is the first amendment that has been proposed to SAP since the adoption of the 2000 amendment.

Comments on Descriptive Notice. The proposed amendment was initiated by Commission adoption of a descriptive notice, mailed on July 2, 2009. The hearing for the descriptive notice was held on July 16, 2009. There were two written and one oral public comments on the amendment proposal. Written comments were from David Lewis of Save the Bay and Jennifer Clary of San Francisco Tomorrow. The Save the Bay letter recommended that the amendment to the SAP be broadened to include a more comprehensive analysis of this and other issues along the San

² Legislation passed in 2001 accelerated the time for construction of Phase 1 of the Brannan Street Wharf to "contemporaneously with the construction of the cruise ship terminal development." (Stat. 2001, ch. 489, as amended by Stat. 2003, ch. 68)

San Francisco waterfront and the letter from San Francisco Tomorrow requested that a stakeholder process be developed to help shape the proposed amendment. Alec Bash spoke at the public hearing in favor of the Commission considering and adopting the proposed Bay Plan amendment. The Commission approved the descriptive notice and the staff began to work with the stakeholders to develop an amendment proposal that would meet the objectives of the Exploratorium, while ensuring that there would be no reduction of the public benefits required in the SAP as a result of the amendment.

Developing Staff's Preliminary Recommendation. There were two formal meetings of the stakeholders to discuss the amendment proposal. The plan amendment application proposed that the fill that was not removed between Pier 15 and Pier 17 would be offset at a ratio of 1 to 1 and would occur in the southern waterfront within 20 years of certificate of occupancy for Pier 15. The stakeholders included David Lewis from Save the Bay, Jennifer Clary of San Francisco Tomorrow, Nancy Shanahan and Aaron Peskin of the Telegraph Hill Dwellers. The stakeholders stated that they would like the fill removal to occur in the northeastern waterfront, since this was the area covered by the 2000 SAP amendment in which public benefits were balanced with less restrictions on fill and land use. They also expressed a concern that the fill should not be removed at a date later than what was required by the current SAP. They proposed that the fill removal offset occur closer to Piers 15-17, that it occur sooner and that if it occurred in the southern waterfront that it occur at a ratio of 2 to 1, rather than 1 to 1, in order to provide an incentive to locate the fill in the northeastern waterfront. They also expressed that the fill should be removed in a location where people would be able to enjoy it, rather than in a remote location with little public access.

BCDC and Port staff worked together to develop a joint proposal for the fill removal offset that responded to the concerns of the stakeholders and retained the public benefits in the SAP. The joint proposal for the fill removal is described in the proposed amendment language. There are several locations that have been identified for the potential offset. These locations include: portions of Piers 30-32 in the northeastern waterfront, Pier 70, Pier 98 Lash Pier, Carmen's on China Basin Channel, Pier 64 and Islais Creek. While this amendment does not identify the location of the fill removal offset, BCDC staff, Port staff and the stakeholders felt that it was important to identify the potential sites where the removal could occur to ensure the viability of the proposed pier removal offset requirement. The fill described above is all located in areas of either existing or planned public access and consists of a mix of decked structures and pile fields. The offset requirement associated with this amendment requires that decked structures make up a ratio of at least 1 to 1.

Final Staff Recommendation

The staff recommends that the Commission amend the Bay Plan as follows:

Proposed Amendments:

1. Modify Open Water Area policy 1-d to allow for the retention of a portion of the valley and the non-historic sheds between Pier 15 and Pier 17 and to require that the amount of fill that is retained between Pier 15 and 17, and the type of fill, pile-supported, decked structures, be removed at another location along the San Francisco waterfront.
2. Amend Plan Implementation Requirement 4-f-iv to allow for the retention of portions of the valley and non-historic shed additions between Pier 15 and Pier 17 and require that the area retained, be offset with the same amount and type of fill removal, decked structure, in another location along the San Francisco waterfront. If the fill removal occurs in the southern waterfront, the ratio of fill removal required will be 2 to 1, with at least 1 to 1, consisting of decked structures.
3. Modify the timing of the fill removal required by Plan Implementation Requirement 4-f-iv to occur within 10 years of the issuance of a certificate of occupancy for a major

development at Pier 15, with an incentive that reduces the 2 to 1 requirement to 1.5 to 1 for completing the fill removal within five years.

4. Make necessary changes to Figure 2 and Plan Map 2.

Proposed Specific Changes to the San Francisco Waterfront Special Area Plan

The SAP sections on Open Water Areas and Plan Implementation Requirements would be modified by the proposed amendment. Proposed additions in language are shown as underlined, while proposed language deletions are shown as ~~struck through~~.

Open Water Areas

Policies

1. Open Water Areas are those areas of the Bay not designated as Open Water Basins. Create new Open Water Areas as follows:

d. Remove the deck and pilings that form the “valley” between Pier 17 and Pier 15, and non-historic additions to the Pier 15 and Pier 17 sheds. A project that proposes to retain a portion of the valley or non-historic shed additions between Pier 15 and Pier 17 still must provide an open water area and remove the maximum amount of fill consistent with the project. Any portion of the valley and non-historic shed additions between Pier 15 and Pier 17 that is not removed should be offset by the removal of an equal or greater amount of fill between Pier 35 and India Basin, with at least 1 to 1 consisting of pile-supported, decked structures. Additional required fill removal can include pile fields. The retention of non-historic fill between Pier 15 and Pier 17 shall include a view corridor that provides views to and from the Bay between Pier 15 and Pier 17.

Plan Implementation Requirements

4. The Port will:

f. Upon Port issuance of a certificate of occupancy for the major reuse of Piers 27-31, or a comparable major development, in addition to that provided in implementation Requirement 4-e above, carry out the following public benefits:

iv) Remove the deck and pilings that form the “valley” between Pier 17 and Pier 15 and the non-historic shed additions. A project that proposes to retain a portion of the valley or non-historic shed additions between Pier 15 and Pier 17 still must provide an open water area and remove the maximum amount of fill consistent with the project. Any portion of the valley and non-historic shed additions between Pier 15 and Pier 17 that is not removed shall be offset by the removal of an equal or greater amount of fill, between Pier 35 and India Basin, with at least 1 to 1 consisting of pile-supported, decked structures. Additional required fill removal can include pile fields. This fill removal offset will occur within 10 years of issuance of a certificate of occupancy for a major development at Pier 15. The offset requirement for fill located within the northeastern waterfront shall be 1 to 1, consisting of the same type of pile-supported, decked structures. Fill removed outside of the northeastern waterfront shall be removed at a ratio of 2 to 1, with at least 1 to 1 consisting of decked structures. Additional fill removal can include pile fields. In order to provide an incentive to perform the fill removal sooner, the fill removal requirement for fill removed outside of the northeastern waterfront shall be reduced to 1.5 to 1 if the fill is removed within five years of issuance of a certificate of occupancy for a major development at Pier 15, with at least 1 to 1 consisting of pile-supported, decked structures. Offsite fill removal shall be conducted in consultation with BCDC, NOAA, the Regional Water Quality Control Board and the

Army Corp of Engineers to ensure that offsite fill removal will not result in significant environmental impacts.

Figure 2 Open Water Basins, Open Water Areas and Public Plazas. Include text that describes the fill removal offset that will occur in another area of the San Francisco waterfront. The text will state: See map 2. (See Figure 1)

Special Area Plan Map 2. Include text on the map that describes the fill removal offset that will occur in another area of the San Francisco waterfront. The text will state: Consistent with Open Water Area Policy 1-d. (See Figure 2)

Staff Analysis

The SAP provides a standard for evaluating the amendment proposal for off-site fill removal to offset the fill that will not be removed between Pier 15 and Pier 17. The standard in SAP Implementation Requirements, Requirement 4-1 states, “[f]uture amendments of the SAP, as adopted on July 20, 2000, affecting the northeastern waterfront area (Pier 35 to China Basin), 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 benefits would be necessary to the health, safety and welfare of the public in the entire Bay Area.” Requirement 4-1 does not state that the public benefits must be restricted to the northeastern waterfront, nor does it establish fill removal ratios for the any fill removal offsets that occur outside of the northeastern waterfront.

The second primary issue raised by the amendment is whether the amendment can be accomplished by focusing on the fill removal requirement between Pier 15 and Pier 17 or if the proposal requires a more comprehensive analysis of the SAP. In analyzing this issue, it is important to note the relationship of this benefit to the other public benefits required by the SAP and to provide the status of the other public benefits required by the plan. The requirement to remove the non-historic fill between Pier 15 and Pier 17 is not tied to other public benefits required in the plan and amending the requirement will not frustrate the provision of these benefits. The background section of this staff report lists the status of the other public benefits required in the SAP. With the exception of the removal of 14,000 square feet of Pier 24, the public benefits required to be completed at the time of this staff report have been completed by the Port. This includes removing Pier 34, removing the majority of Pier 24 and the listing of the Embarcadero Historic District on the National Register. The Port is also pursuing funds and planning for a number of the other public benefits required by the SAP, such as Brannan Street Wharf, Northeast Wharf Plaza and Pier 36 removal. Based on this information, the staff believes that an amendment focused on offsetting the reduction of the amount of fill required to be removed between Pier 15 and Pier 17 is reasonable and does not present a fundamental change to the SAP, nor necessarily result in a reduction of public benefits required by the plan. Therefore, it is the content of the plan amendment and the requirements that result from the amendment that are most important to determining whether the public benefits are, at minimum, preserved, while allowing for the development of the Exploratorium museum, as proposed, at the site.

The purpose of the amendment to the SAP is to allow for less fill removal between Pier 15 and Pier 17 than required by the SAP to accommodate the development of the Exploratorium, a non-profit, educational museum. In addition to providing for the development of the Exploratorium at the site, the amendment would result in a smaller open water area between Pier 15 and Pier 17, views of the smaller open water area from the public access along the Embarcadero, partial views of the Bay from the Embarcadero and partial views of the city from the Bay, public access around most of the open water area, the seismic strengthening of both piers and the provision of a use that would allow the public to enjoy the waterfront. The amendment creates two primary impacts: less open water between Pier 15 and Pier 17 and more constrained views of the open Bay from the Embarcadero and from the Bay to the city. By offsetting a portion of the fill removal requirement at another location along the San Francisco waterfront between Pier 35 Street Pier to India Basin, the amendment retains the benefits of fill removal at a different location. These benefits include improved physical and visual access, improved Bay ecological health and navigational safety. To ensure that the balance of revised public benefits with revised development entitlements associated with this amendment is met, the amendment would require that the ratio of offsite fill removal will increase from 1 to 1 to 2 to 1, if it is located outside of the northeastern waterfront. The proposed amendment requires that the fill removed be of the same type, decked structures, as the fill between Pier 15 and Pier 17 at a ratio of 1 to 1. To provide an incentive to provide the benefits to the public sooner, there is a requirement that the fill removal offset be completed within 10 years of a certificate of occupancy being issued for Pier 15. If the removal is completed within five years of a certificate of occupancy for Pier 15, then the ratio for fill removed outside of the northeastern waterfront is reduced from 2 to 1 to 1.5 to 1.

As described above, by requiring that a portion of the fill be removed between Pier 15 and Pier 17, many of the public benefits that the fill removal would have achieved will be intact on-site. The requirement that the fill that is not removed on-site be removed at another location between Pier 35 and India Basin and providing incentives for the fill to be removed within the northeastern waterfront and sooner than required by the current policies in the SAP, staff believes that the revised public benefits and the revised development entitlement associated with this amendment would be in balance and that the public benefits are sufficient to warrant the Commission finding

that the revised balance of public and private benefits would be necessary to the health, safety and welfare of the public in the entire Bay Area. Although the SAP makes no provisions for increased ratios or expedited benefits within the amendment process, these features of the amendment are important in providing a balance between the revised public benefits and the revised development entitlement and will ensure that while the Port continues to work with applicants, BCDC and stakeholders to redevelop the San Francisco waterfront from Hyde Street Pier to India Basin, the public benefits will be developed at an equal or greater rate to this redevelopment.

Consistency with the McAteer-Petris Act

As described above, the Commission relied upon its authority pursuant to section 66632(f) of the McAteer-Petris Act to protect the “health, safety and welfare of the entire Bay Area” to approve the 2000 amendment to the SAP, which was otherwise inconsistent with certain provisions of McAteer-Petris Act. Subsequently in 2001, in Chapter 489, the state legislature declared that the amendments to the *San Francisco Bay Plan* and the SAP by the Commission in 2000 were authorized under Section 66632(f) of the McAteer-Petris Act as necessary to protect the health, safety and welfare of the entire Bay Area. The findings that the Commission relied upon to make this determination included SAP Northeastern Waterfront Finding 14, which found that in order to achieve the objectives of the McAteer-Petris Act, such as Bay protection and public access, an amendment to the SAP would be required that would relax restrictions on uses while providing a variety of public benefits. These benefits would have to be sufficient to warrant BCDC to exercise its authority to set aside these use limitations on new Bay fill across a portion of the northeastern waterfront in the interests of the health, safety or welfare of the public in the Bay Area. SAP Northeastern Waterfront Finding 15 identified these public benefits to include the removal of deteriorating piers, the restoration of significant areas of open water, a public access network, Bay views, public plazas, historic preservation and the development of new uses to enable public enjoyment of the waterfront, including life safety and seismic improvements and repairs of existing piers. SAP Northeastern Waterfront Finding 16 stated that “[t]he public benefits described above could not be attained through application of BCDC’s existing regulatory regime. Restrictions limiting the repair, reconstruction or redevelopment of piers would prevent these benefits from being achieved since there is limited demand for exclusively water-oriented uses.” Finally, SAP Northeastern Waterfront Finding 20 states that the Commission finds that the amendments to the SAP are necessary to the health, safety and welfare of the public in the entire Bay Area.

Implementation Requirement 1 requires that future amendments of the SAP, as adopted on July 20, 2000, may only be approved if the Commission finds that the revised public benefits and the 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 the health, safety and welfare of the Bay Area. Based on the requirements included in the proposed amendment language, the proposal to allow a portion of the fill that is identified for removal by the SAP to be retained and removing the remaining fill at another location along the waterfront would allow the Commission to make the above finding that the revised public benefits and the revised development entitlement would be in balance. The proposed amendment will result in new public access areas, the provision of open water by removing fill both on and off-site, new Bay views, the development of a use to enable the public to enjoy the waterfront and seismic improvements to the historic and non-historic portions of Pier 15 and Pier 17. The offsite fill removal would provide new open water, new visual and physical access to the Bay and increased recreational opportunities, and enhanced ecological resources and navigational safety. By requiring more fill removal, if the proposed site is not within the Northeastern Waterfront and providing an incentive to remove the fill sooner, the public benefits associated with the fill removal would also possibly include more fill removed from the Bay and sooner than is currently required by the SAP. The package of benefits included in this amendment

allows for the Commission to make the finding that the revised public benefits and revised development entitlement would be in balance and the public benefits required by this amendment would be sufficient to provide that the revised balance of public and private benefits would be necessary to the health, safety and welfare of the public in the entire Bay Area.

Environmental Assessment

There were no public or Commissioner comments received on the environmental assessment during the 30-day review period or during the public hearing.

Summary of Comments Received

Two written comments were received following the distribution of the descriptive notice on July 2, 2009. David Lewis from Save the Bay requested that the amendment be expanded to include a comprehensive update to the SAP, rather than the narrow approach to address only the issue of the fill removal requirement at Piers 15 and 17. Jennifer Clary from San Francisco Tomorrow requested that key stakeholders be included in shaping the amendment, particularly the issue of fill removal credits and that this amendment should identify an alternate and equivalent site for fill removal to meet the terms of the 2000 SAP amendment. The preliminary recommendation was mailed on October 1, 2009. The Commission received no comments on staff's preliminary recommendation on the proposed amendment during the 30-day public review period.

The Commission held a public hearing on November 5, 2009 and three people spoke at the hearing on the proposed amendment.

Public Comment	Staff Response
Jennifer Clary of San Francisco Tomorrow spoke in favor of the amendment as proposed, but stated that she was concerned that the SAP was being amended to accommodate a project.	It is accurate that this proposed amendment is in response to an application for the Exploratorium project. However, the plan provides a framework to allow amendments to be approved by the Commission and the proposed amendment is consistent with the framework provided in the plan. Additionally, the language of the proposed amendment ensures that any project on Pier 15 and Pier 17 will be required to either remove the non-historic fill, or provide a smaller open water area and views to and from the Bay if the project needs to retain a portion of the non-historic fill. In other words, regardless of the project that is located at Pier 15, the benefits required by the proposed amendment will occur.
Alec Bash, a member of the Port of San Francisco's Northeastern Waterfront Advisory Group spoke in favor of the amendment and the Exploratorium project.	Comment noted.
Helene Fried, public art consultant, spoke in	Comment noted.

favor of the amendment and the Exploratorium project, particularly the public art planned for the project.	
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Resolution No. 09-01

Adoption of Bay Plan Amendment No. 1-09 Concerning San Francisco Special Area Plan Fill Removal Requirement between Pier 15 and Pier 17

Whereas, Government Code Section 66652 states that “the Commission at any time may amend, repeal and adopt a new form of, all or part of the San Francisco Bay Plan” and that “such changes shall be consistent with findings and declarations of policy” contained in the McAteer-Petris Act; and

Whereas, the *San Francisco Waterfront Special Area Plan* (SAP) was amended by the Commission in 2000 relying on its authority pursuant to Government Code Section 66632(f) of the McAteer-Petris Act to protect the “health, safety and welfare of the entire Bay Area”; and

Whereas, the Legislature in 2001 found and declared in Chapter 489 that the Commission properly exercised its authority to protect the health safety and welfare of the entire Bay Area when it adopted the 2000 amendments to the SAP; and

Whereas, the SAP allows for future amendments stating “future amendments of the SAP, as adopted on July 20, 2000, affecting the Northeastern Waterfront Area (Pier 35 to China Basin), 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 the health, safety and welfare of the public in the entire Bay Area”; and

Whereas, the Commission received and filed an application from the Port of San Francisco and the Exploratorium, a California not-for-profit corporation, to amend the SAP to allow the retention of a portion of the valley and non-historic shed additions between Pier 15 and Pier 17, located and owned by the Port of San Francisco; and

Whereas, the San Francisco Bay Conservation and Development Commission: (1) on July 16, 2009, approved a Descriptive Notice of the proposed SAP amendment and set a public hearing date for October 1, 2009; (2) on July 20, 2009, distributed the Descriptive Notice and notice of the public hearing to all agencies, organizations, and individuals interested in the proposed amendment; (3) on September 25, 2009, distributed to all agencies, organizations, and individuals interested in the proposed amendment a notice to change the date for the public hearing to November 5, 2009, (4) on October 1, 2009, distributed to all agencies, organizations, and individuals interested in the proposed amendment the staff report and preliminary recommendation; (5) on November 5, 2009, held a public hearing to receive public comments on the proposed amendment and preliminary recommendation and closed the hearing at the conclusion of the public’s comments; (5) on December 3, 2009 voted on the staff’s final recommendation that did not change from the preliminary recommendation; all in accord with the requirements and procedures set out in Government Code Section 66632(f), 66652 and the California Code of Regulations, Sections 11000, 11001, 11002, and 11003; and

Whereas, the Commission has considered all written comments received and oral comments presented at the November 5, 2009 public hearing and the staff has responded to those comments; and



Making San Francisco Bay Better

Whereas, the amendment adopted by this resolution is consistent with all relevant findings and declarations of policy contained in Sections 66602 and 66632(f) of the McAteer-Petris Act in that: (a) the revisions to the SAP will ensure that projects provide maximum feasible public access because the change does not substantively alter the comprehensive public access and open space plan for the Northeastern Waterfront, or the location of new public parks and plazas and maintains the potential for expanded Bay views through the removal of selected piers; and (b) the revised public benefits and revised development entitlement are in balance and the integrated public benefits are sufficient to warrant the Commission finding that the revised balance of public and private benefits would be necessary to the health, safety and welfare of the public in the entire Bay Area; and

Whereas, the amendment adopted by this resolution is consistent with the findings and declarations of policy contained in the SAP because the revised public benefits and revised development entitlement are in balance and the public benefits are sufficient to warrant the Commission finding that the revised balance of public and private benefits would be necessary to the health, safety and welfare of the public in the entire Bay Area; and

Whereas, as noted above, the Commission adopted the 2000 SAP amendment pursuant to its authority as defined in section 66632(f) of the McAteer-Petris Act to protect the "health, safety and welfare of the entire Bay Area...;" and

Whereas, the findings that the Commission relied upon to make this determination included SAP Northeastern Waterfront Finding 14, which found that in order to achieve the objectives of the McAteer-Petris Act, such as Bay protection and public access, an amendment to the SAP would be required to relax restrictions on uses while providing a variety of public benefits. These benefits would be sufficient to warrant BCDC to exercise its authority to set aside these use limitations on new Bay fill across a portion of the northeastern waterfront in the interests of the health, safety and welfare of the public in the Bay Area; and

Whereas, SAP Northeastern Waterfront Finding 15 identified these public benefits to include the removal of deteriorating piers, the restoration of significant areas of open water, a public access network, Bay views, public plazas, historic preservation and the development of new uses to enable public enjoyment of the waterfront, including life safety and seismic improvements and repairs of existing piers; and

Whereas, SAP Northeastern Waterfront Finding 16 stated that "[t]he public benefits described above could not be attained through application of BCDC's existing regulatory regime. Restrictions limiting the repair, reconstruction or redevelopment of piers would prevent these benefits from being achieved since there is limited demand for exclusively water-oriented uses;" and

Whereas, finally, SAP Northeastern Waterfront Finding 20 states that the Commission finds that the amendments to the SAP are necessary to the health, safety and welfare of the Bay Area. The SAP also identifies the standard for adopting future amendments to the plan, stating, that "future amendments to the SAP, as adopted on July 20, 2000, may only be approved if the Commission finds that the revised public benefits and the revised development entitlement would be in balance and the public and private benefits would be necessary to the health, safety and welfare of the Bay Area; and

Whereas, the requirements included in the 2009 amendment language, that allow a portion of the fill at Piers 15-17 that is identified for removal by the SAP to be retained and requiring removal of the remaining fill at another location along the waterfront would allow the Commission to make the above finding that the revised public benefits and the revised development entitlement would be in balance. The amendment will result in new public access areas, the provision of open water by removing fill both on and off-site, new Bay views, the development of a use to enable the public to enjoy the waterfront and seismic improvements to the historic and non-historic portions of Pier 15 and Pier 17. The offsite fill removal will provide new open water, new visual and physical access to

the Bay and increased recreational opportunities, and enhanced ecological resources and navigational safety. By requiring more fill removal, if the fill is not within the northeastern waterfront and providing an incentive to remove the fill sooner, the public benefits associated with the fill removal could also possibly include more fill removed from the Bay and sooner than is currently required by the SAP; and

Whereas, the package of benefits included in this amendment supports the Commission making the finding that the revised public benefits and revised development entitlement would be in balance and the public benefits required by this amendment would be sufficient to provide that the revised balance of public and private benefits would be necessary to the health, safety and welfare of the public in the entire Bay Area; and

Whereas, the San Francisco Bay Conservation and Development Commission has evaluated the environmental impact of amending the *San Francisco Waterfront Special Area Plan* by allowing the retention of a portion of the valley and non-historic shed additions between Pier 15 and Pier 17 and requiring that the fill that is not removed at this location be offset by removal at another location along the San Francisco waterfront, with incentives for removing the fill closer to the project site and sooner than is currently required, under the Commission's functional equivalency regulations as authorized by Public Resources Code Section 21080.5, and finds that there will be no significant adverse impacts on the environment brought about by the amendment; and

Whereas, the amendments to the *San Francisco Waterfront Special Area Plan* enacted by this resolution are intended to be a routine program change of the Commission's coastal management program for the San Francisco Bay segment of the California coastal zone as approved by the U.S. Department of Commerce under the federal Coastal Zone Management Act of 1972, as amended.

Now, Therefore, Be it Resolved That, the San Francisco Bay Conservation and Development Commission hereby adopts SAP Amendment No. 1-09 which amends the SAP as follows:

1. Amends the *San Francisco Waterfront Special Area Plan* Open Water Areas Policies as follows with the underlined language added to SAP:

1. Open Water Areas are those areas of the Bay not designated as Open Water Basins. Create new Open Water Areas as follows:

d. Remove the deck and pilings that form the "valley" between Pier 17 and Pier 15, and non-historic additions to the Pier 15 and Pier 17 sheds. A project that proposes to retain a portion of the valley or non-historic additions between Pier 15 and Pier 17 still must provide an open water area and remove the maximum amount of fill consistent with the project. Any portion of the valley and non-historic additions between Pier 15 and Pier 17 that is not removed should be offset by the removal of an equal or greater amount of fill between Pier 35 and India Basin, with at least 1 to 1 consisting of pile-supported, decked structures. Additional required fill removal can include pile fields. The retention of non-historic fill between Pier 15 and Pier 17 shall include a view corridor that provides views to and from the Bay between Pier 15 and Pier 17.

2. Amends the *San Francisco Waterfront Special Area Plan* Plan Implementation Requirements as follows with the underlined language added to the SAP:

4. The Port will:

f. Upon Port issuance of a certificate of occupancy for the major reuse of Piers 27-31, or a comparable major development, in addition to that provided in implementation Requirement 4-e above, carry out the following public benefits:

iv) Remove the deck and pilings that form the “valley” between Pier 17 and Pier 15 and the non-historic shed additions. A project that proposes to retain a portion of the valley or non-historic shed additions between Pier 15 and Pier 17 still must provide an open water area and remove the maximum amount of fill consistent with the project. Any portion of the valley and non-historic shed additions between Pier 15 and Pier 17 that is not removed shall be offset by the removal of an equal or greater amount of fill, between Pier 35 and India Basin, with at least 1 to 1 consisting of pile-supported, decked structures. Additional required fill removal can include pile fields. This fill removal offset will occur within 10 years of issuance of a certificate of occupancy for a major development at Pier 15. The offset requirement for fill located within the northeastern waterfront shall be 1 to 1, consisting of the same type of pile-supported, decked structures. Fill removed outside of the northeastern waterfront shall be removed at a ratio of 2 to 1, with at least 1 to 1 consisting of decked structures. Additional fill removal can include pile fields. In order to provide an incentive to perform the fill removal sooner, the fill removal requirement for fill removed outside of the northeastern waterfront shall be reduced to 1.5 to 1 if the fill is removed within five years of issuance of a certificate of occupancy for a major development at Pier 15, with at least 1 to 1 consisting of pile-supported, decked structures. Offsite fill removal shall be conducted in consultation with BCDC, NOAA, the Regional Water Quality Control Board and the Army Corp of Engineers to ensure that offsite fill removal will not result in significant environmental impacts.

3. Amends the *San Francisco Waterfront Special Area Plan* **Figure 2 Open Water Basins, Open Water Areas and Public Plazas** to include text at that states: See map 2. (See Figure 1)

4. Amends the *San Francisco Waterfront Special Area Plan* **Special Area Plan Map 2** to include text will state: Consistent with Open Water Area Policy 1-d. (See Figure 2)

Be it Further Resolved That, the San Francisco Bay Conservation and Development Commission authorizes the Executive Director to make minor, non-substantive editorial changes to this resolution under the California Administrative Procedures Act.

We certify that this resolution was adopted by a vote of ___ “yes” votes, ___ “no” votes and ___ abstentions at the Commission meeting held on December 3, 2009 at San Francisco, California.

Executed on this _____ day of _____, 2009 at _____, California

SEAN R. RANDOLPH
Chairman

Executed on this _____ day of _____, 2009 at _____, California

WILL TRAVIS

Resolution No. 09-01
Adoption of Bay Plan Amendment No. 1-09
Page 5

Executive Director