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August 6, 2015

SAN FRANCISCO BAY CONSERVATION  
& DEVELOPMENT COMMISSION

R. Zachary Wasserman, Chair  
Anne Halsted, Vice Chair

Commissioners of the San Francisco Bay Conservation and Development Commission ("BCDC")

Re: Sinbad's Restaurant

Dear Mr. Wasserman, Ms. Halsted and Commissioners:

This office represents Sinbad's Pier 2, Inc. ("Sinbad's"), operators of the restaurant and bar at Pier 2 on San Francisco Bay ("Premises"). As you know, the City and County of San Francisco by and through its Port Commission ("Port") is Sinbad's landlord and has recently obtained a judgment to evict Sinbad's from its 40-year tenancy at the Premises.

The judgment was premised on the Port's obligation to your Commission to demolish Sinbad's so as to provide temporary access and views until construction begins on the Downtown Ferry Terminal Expansion Project ("Project") by the San Francisco Water Emergency Transportation Agency ("WETA"), now postponed until the Spring of 2016. Although 10 of 12 jurors disagreed with the one argument that we were allowed to raise, all were sympathetic to Sinbad's plight. You and your fellow Commissioners have the power to extend the time and prevent the premature destruction of Sinbad's, since the site is not required until a year from now.

Such a delay will not cause any environmental damage, will allow the Port to collect much needed revenue, and will eliminate the cost of constructing and maintaining temporary public access that will be removed as soon as WETA commences construction on the Project. BCDC has the power to postpone the demolition under the San Francisco Waterfront Special Area Plan ("SAP") that was amended in 2012 to accommodate the 34th America's Cup ("AC") race at the expense of Sinbad's.

Both the Port and WETA were very supportive of extending the date of demolition to correspond with the commencement of Project construction, as shown in an email from WETA project manager Michael Gougherty, introduced at trial (Ex. A.) It further appears that under the SAP, the BCDC can extend the deadline without reopening the SAP. (Ex. B, p. 45, §g.)

Set forth below is a brief summary of the history that shows why you should act to extend the time. The fact that an eviction judgment has been entered does not mean that all the parties cannot still work this out.

In 1974, Charles and Thomas Stinson were the only party interested in developing Pier 2 when its use as the Bay Area Rapid Transit ("BART") engineering site was finished. The Port and BCDC allowed the Stinsons, joined by their third brother, Duane, to improve the building and in the course of

those improvements, provide free public access. During this time, the Port, BCDC, WETA (or its predecessor agency the Water Transportation Authority) and others were determining how best to develop the area around the Ferry Building. Sinbad's was assured that they would be involved in this process, but in the meantime they were put on a month-to-month lease.

The 2000 SAP plan provided as follows: "Remove the northern portion of Pier 2 either as part of (1) the Agriculture Building improvement project or the Ferry Terminal Phase 2 development project, whichever comes first; or (2) any reconfiguration of the existing restaurant on Pier 2." Sinbad's has always accepted these alternatives.

In 2011, a lengthy environmental impact report ("EIR") was prepared for the AC. Nowhere in the notices or in the EIR, which is over six inches thick double sided, was Sinbad's or Pier 2 mentioned.

Nevertheless, in January of 2012 the staffs of the Port and BCDC informed Sinbad's that it would be required to close in 2012 because the Port and the AC Event Authority, LLC had agreed to the demolition of Sinbad's in exchange for BCDC's permission to allow AC temporary use of the four water basins to moor yachts for the AC. This was done without Sinbad's knowledge, participation, or consent.

The AC became a subject of the San Francisco Grand Jury's June 2014 report entitled "The Port of San Francisco: Caught Between Public Trust and Private Dollars." At page 19 of the report, a copy of which is attached as Exhibit C, the Grand Jury confirmed the substantial financial loss of approximately 11.5 million dollars to host the AC.

Upon receiving the bad news, Sinbad's President, Thomas Stinson, wrote and thereafter appeared before your Commission on February 2, 2012. As a result, your Commission ordered the staff to work with Sinbad's. A copy of the Staff's summary of the pertinent comments regarding Sinbad's was made part of Agenda Item #8 and is attached hereto as Exhibit D. The Staff's summary does not include the fact that Mr. Stinson advised your Commission that Sinbad's had no problem closing to accommodate the Project which he understood would begin in the Spring of 2015, but that Sinbad's should be demolished prior to that time. He proposed that the demolition take place in January of 2015 to accommodate the commencement of construction by WETA, which at that time was to commence in March of 2015.

Our client is not sophisticated and was not represented by counsel until our office was retained shortly before the eviction action. Our client believed that the date was tied to the WETA commencement of construction on the Project, so after negotiating with staff as directed by your Commission, Sinbad's signed documents drafted by the Port, did not reflect flexibility. Your Commission then amended the 2000 SAP to provide: "By March 2015, remove the existing shed at Pier 2 after the 34th America's Cup Event project to improve Bay views and public access. Remove the northern portion of Pier 2 as part of the Downtown Ferry Terminal Phase 2 development project." (See Ex. E, p. 7.)

Again, based on 40 years of custom and practices in dealing with the Port, BCDC and other agencies, Sinbad's believed that the date it had suggested could be extended if the Project was delayed. Indeed, the staffs of Port and BCDC, when they learned that the Project would be delayed (see Ex. A above), agreed to extend the time for Sinbad's to vacate from January 1, 2015 to March 2015 (the date in the SAP). But they would not agree to an extension beyond that date, and this short extension was conditioned on Sinbad's not exercising its right to petition BCDC to extend the time further. The Port

later advised Sinbad's that this provision was illegal, but by that time it was too late to get the matter on the BCDC agenda, although the Stinsons did provide public comment at your February 5, 2015 meeting and the Port Commission's February 10, 2015 meeting.

Since the eviction action was filed, the BCDC Design Review Board met with WETA on May 11, 2015 and confirmed that construction on the Project would not commence until late 2016. (See Ex. F, top of page 4.)

We are asking you to make this an agenda item for the next BCDC Commission meeting so you can determine the full story. Sinbad's already provides "public access" at Pier 2. In addition, it offers waterfront seating and views to both customers and non-customers. It provides a safe space for tourists and locals to enjoy the waterfront and has done so for the past 40 years. Sinbad's does not understand why anyone would insist on demolishing the Premises to provide temporary "public access" when "public access" already exists and will again be demolished when the Project begins in spring of 2016. Under the SAP, the temporary public access will cost the Port significant sums for repaving, installation of new handrails, site furnishings. (Ex. G, p. 37, §13.) This money will come from the taxpayers. (See Ex. C, p. 19.) Moreover, the Port, not Sinbad's, would be responsible for the costs and facilitation of maintenance and security. The recent tragedy at adjacent Pier 14, which provides unsupervised public access and views duplicative of what would be temporarily made available when Sinbad's is demolished, also be considered.

The amount of money and time required to demolish, build, and then again demolish the Premises and Pier 2 is huge. We ask you as a BCDC Commissioner to call for this matter to be put on the next BCDC Commission meeting agenda so that you can fully explore the ramifications of demolition and your ability to stop this travesty from occurring. If you have any questions, or would like additional information, please do not hesitate to contact this office. On behalf of Sinbad's, its owners and employees, as well as the people of San Francisco, including I believe the 12 jurors who heard this case, and those who visit San Francisco; we thank you for your consideration.

Very truly yours, /

  
ROBERT F. KANE

RFK/a  
cc Clients

*[Handwritten signature]*

From: Michael Gougherty  
Sent: Friday, July 25, 2014 11:31 AM  
To: Nina Rannells; Kevin  
Subject: Sinbad's Removal

Hi,

The Port contacted me yesterday to inform me that Sinbad's would like remain at Pier 2 until WETA begins construction on the Downtown expansion project. Per the AC34 BCDC permit issued to the Port, Sinbad's must be removed from Pier 2 no later than March 2015. WETA construction of the Downtown terminal would begin no earlier than fall 2016. The Port would like to allow Sinbad's to stay until construction begins and continue to collect its \$29,000/month in rent, but wanted to know what WETA thinks.

While we don't want to promote a situation where the ultimate removal of Sinbad's becomes uncertain or contentious, it may be unnecessary to require that Sinbad's vacate Pier 2 in March 2015 for a WETA project that is still at least 2 years from beginning construction. An option would be to encourage the Port to propose that the removal date to be extended by 1-year increments on an annual basis, subject to the condition that removal of Sinbad's occurs well advance of WETA's actual construction start date.

Let me know if you would like to discuss.

Thanks,

*[Handwritten signature]*

**EXHIBIT A**