

San Francisco Bay Conservation and Development Commission

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September 6, 2019

TO: Commissioners and Alternates

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

SUBJECT: Staff Report and Recommendation on Proposed Brief Descriptive Notice for Possible Bay Plan Amendment No. 3-17 to Update the San Francisco Waterfront Special Area Plan
(For Commission consideration on September 19, 2019)

Staff Recommendation

The staff recommends that the Commission: (1) adopt the attached Brief Descriptive Notice to initiate the process of considering a possible amendment to the *San Francisco Waterfront Special Area Plan*, an element of the *San Francisco Bay Plan*; (2) schedule a public hearing for December 3, 2020, to consider the proposed amendment; and (3) authorize the Executive Director to modify the length and scope of the existing contract with the Port of San Francisco for the cost of processing the application.

Staff Report

The Port of San Francisco (“Port”) has applied to the Commission to amend the *San Francisco Waterfront Special Area Plan* (“SFWSAP”), an element of the *San Francisco Bay Plan* (“Bay Plan”), in order to align the policies of the SFWSAP with a concurrent update to San Francisco Waterfront Plan (Waterfront Plan).

Background. The McAteer-Petris Act requires the Commission to make a continuing review of the San Francisco Bay Plan and authorizes the Commission to amend, or repeal and adopt a new form of all or any part of the Bay Plan provided the changes are consistent with the provisions of the McAteer-Petris Act. The McAteer-Petris Act provides 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, such as seaports. The Commission adopts special area plans to apply Bay Plan 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. Special area plans are intended to provide consistent policies for public and private development, and the use and enjoyment of the Bay and shoreline.



Since it was adopted in 1975, the San Francisco Waterfront SAP has applied the requirements of the McAteer-Petris Act and the provisions of the Bay Plan to the San Francisco waterfront. BCDC's SFWSAP sets forth policies for projects within BCDC's jurisdiction from Hyde Street Pier in Fisherman's Wharf to India Basin Open Space in Bayview-Hunters Point (Figure 1). The Port of San Francisco's *Waterfront Land Use Plan* ("Waterfront Plan"), first adopted in 1997, is the master land use planning document governing Port property along 7.5 miles of the San Francisco waterfront, including seawall lots that are located outside of BCDC's jurisdiction. The SFWSAP was updated in 2000, following the 1997 Waterfront Plan adoption, achieving consistency between BCDC and Port policies for the San Francisco waterfront.

The 2000 SFWSAP amendment were developed based on a comprehensive plan approach in the Port's northern waterfront, ultimately identifying locations in the Northeastern Waterfront, between Pier 35 and China Basin Channel, for fill removal and for the creation of an integrated waterfront parks and public access network that could not otherwise be achieved through BCDC's permitting authority for individual projects. Most of the fill removal and parks improvements, including the Bayside History Walk, Pier 27 Cruise Terminal Park and Brannan Street Wharf, have been implemented. These public benefits were planned in concert with policies calling for the creation of the Embarcadero National Register Historic District, and to allow uses that are consistent with the Public Trust Doctrine and the Burton Act, the state legislation that describes the Port's public trust responsibilities. By taking a plan-based approach, the SFWSAP has allowed BCDC and the Port to implement trust-consistent projects that preserve and improve several Embarcadero Historic District resources. Under the SFWSAP, the Ferry Building, Piers 1-5 and the Exploratorium have attracted the public back to the waterfront. BCDC approved the 2000 SFWSAP amendment with findings 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. BCDC's approval of each of these subsequent SFWSAP amendment also included findings determining that the changes were necessary to the health, safety and welfare of the public of the entire Bay Area.

In 2015, the Port published the *Waterfront Land Use Plan 1997-2014 Review*, a comprehensive look at the projects, partnerships, and investments made pursuant to the 1997 Waterfront Plan that have drawn people to the waterfront. That report also included an assessment of lessons learned, as well as the challenges and needs that must be addressed for the future. The review's findings and initial recommendations provided the starting point for a three-year public planning process led by a Waterfront Plan Working Group, which was charged with developing Port-wide policy recommendations for how best to update the *Waterfront Land Use Plan* ("Waterfront Plan"). In June of 2019, the Port published a Draft Waterfront Plan, which is currently under public review. The Draft Waterfront Plan continues to promote and build upon the stewardship of maritime, public access, public trust uses and historic resources that was the

foundation of the SFWSAP, along with new goals and policies to recognize and incorporate environmental sustainability practices and a resilience framework. The June 2019 Draft Waterfront Plan underscores continued importance of a comprehensive approach to managing and improving the Port's waterfront. This concept is reflected in many of the policy issues proposed in the Port's application to amend the SFWSAP.

Overview of the Proposed Amendment. The Port proposes a corresponding update to the SFWSAP to align with the Waterfront Plan. In August 2017, the Port submitted an application to amend BCDC's SFWSAP, and from August of 2018 to January of 2019, Port and BCDC staff discussed specific amendment topics to align SFWSAP policies with the Waterfront Plan update, including outstanding SFWSAP implementation requirements, updated objectives, activating the public realm, the potential for conflicts between public access and maritime uses, the future of the Embarcadero Historic District, Port-wide resilience and equity, and the substitution of the Bay Plan Replacement Fill policy for the Fill for Public Trust Uses policy at Fisherman's Wharf. In a summary of those meetings, the Port has proposed the following conceptual changes to the SFWSAP, including:

1. Considering all locations throughout the Port's 7.5-mile waterfront for the equitable distribution of public access, environmental restoration, environmental justice benefits, and for compliance with fill mitigation requirements in BCDC permits, and permitting new fill placement and corresponding removal to be 'balanced' anywhere within the San Francisco Waterfront Plan Area, at no greater than a 1:1 basis;
2. Eliminating the "geographic vicinities" in the current SFWSAP;
3. Preserving Pier 23 in its entirety and substituting the current obligation to remove Pier 23 with the creation of a new public plaza located on the bayside of the Ferry Building, a site which currently hosts the Saturday Farmer's Market;
4. Recognizing the following completed public access benefits and the future completion of the Jefferson Street Phase 2 project as a package of public benefits sufficient to substitute the use of the Replacement Fill policy with the Fill for Public Trust Uses policy at Fisherman's Wharf:
 - a. The removal of approximately 77,000 square feet of Bay Fill at Pier 43½ to create a Fisherman's Wharf Open Water Basin framed by the Pier 43 Historic Railway Arch at the east end, and Pier 45 public plaza at the west end;
 - b. The creation of Pier 43 Bay Trail Promenade between historic Piers 43 and 45, a public open space along the length the of Fisherman's Wharf Open Water Basin, which connects to public realm improvements along Taylor Street and the Pier 45 plaza, with Bay views and seating, lighting and railing amenities;

- c. The completion of the Jefferson Street Phase 1 public realm project, including removal of street parking and widened sidewalks with active edges, and connection to public realm improvements created on Taylor Street, which connects to the Pier 43 Bay Trail Promenade and Fisherman's Wharf Open Water Basin;
5. Recognizing the Public Trust Doctrine/Burton Act legislative use authority for Pier 48, consistent with provisions authorized by the State Legislature in SB 815 and AB2797;
6. Supporting continued capital investment to rehabilitate and increase the resilience of culturally significant historic pier facilities, and seeking resources and partnerships for financially feasible projects that preserve the integrity of the Embarcadero Historic District and include a mix of public-oriented, maritime, public access and revenue-generating uses to support the public trust objectives of the Port and BCDC;
7. Encouraging a broad range of publicly oriented uses, ensuring that the public is able to access, use and enjoy the rehabilitated structures for as long as possible;
8. Promoting continued collaboration among Port, State Lands and BCDC, to feasibly improve and increase the resilience of the Embarcadero Historic District and achieve other public trust objectives for the San Francisco waterfront;
9. Encouraging public benefit measures that activate existing public access areas, including active uses within or at park/plaza edges, pilot-ideas, and community programs as part of 'feasible public access' that engages with all community members and visitors;
10. Where public access is not compatible alongside maritime operations due to operational, security and safety issues, seeking opportunities to enhance views of maritime activities from a safe location as an alternative public access benefit, providing interpretive signage, benches, or similar amenities;
11. Promoting public access where it is safe and compatible with maritime operations and economically feasible for a maritime tenant to maintain, including operational features necessary for public safety and a functional maritime operation;
12. At the Pier 27 Cruise Terminal, permanently securing a portion of pier apron that includes shore power, lifts and other sensitive equipment immediately adjacent to the Terminal Building, recognizing that this select portion of the berth cannot feasibly be shared with public access while meeting public safety and federal security plan requirements;
13. Collaborating regionally to develop adaptation strategies that may include Bay fill to protect infrastructure and shoreline areas that are vulnerable to hazards and threats with particular attention to funding, financing and adaptation approaches for ports and urban waterfronts;

14. Recognizing the Port of San Francisco's Resilience Framework, coordinated with the City of San Francisco that will guide Port planning and capital improvements to increase seismic and sea level rise resiliency, organized by three elements: Strengthen, Adapt and Envision;
15. Considering the California Ocean Protection Council (OPC) 2018 Guidance recommendations for ports, that acknowledge unique characteristics and constraints associated with water-dependent infrastructure and related Public Trust uses located in a densely developed area where managed retreat from rising sea level is not feasible, and recommending an adaptation strategy to protect existing structures in place, such as the Port's culturally significant collection of historic piers and structures;
16. Pursuing an Adaptive Management Strategy for San Francisco's Embarcadero Historic District that will maximize the useful life of the Port's piers at existing elevations, including flood protection measures as required by the Chief Harbor Engineer to protect pier structure, life-safety and public access with ongoing adaptive management to protect against future flood risk from rising sea level, and lease termination provisions that become effective, when necessary;
17. Supporting coordination among the Port's Chief Harbor Engineer, BCDC and its Engineering Criteria Review Board to develop and update flood protection measures for piers, to protect life-safety and public access until such measures are no longer financially or structurally feasible;
18. Encouraging and incentivizing plan-based public access benefits that would not otherwise be gained through a development project, and a mechanism to accrue credits from such projects that may be used to satisfy in-lieu public access benefits for projects that generate demand for, but cannot provide, on-site public access; and
19. Including the financial cost of maintenance and security services of Port-managed parks and public access areas in the analysis and determination of maximum feasible public access.

After the Commission initiates the SFWSAP amendment process, Port staff will provide proposed policy language and BCDC and Port staff will continue to meet to consider the proposed policy language in relation to the Commission's laws and policies, while conducting community and stakeholder outreach and engagement, with the goal of having a draft SFWSAP amendment by May 2020. At that time, the Port will begin environmental review for the Waterfront Plan and SFWSAP, as required by the California Environmental Quality Act (CEQA), which will provide the basis of the environmental assessment in BCDC's staff report.

Consistent with the Commission's Regulations, the Port entered into an agreement with the Commission in November 2018 to pay up to \$150,000 to reimburse BCDC's cost of processing the amendment application. At the time of submittal, the application lacked proposed policy changes and the full cost of the work required could not be estimated. Therefore, the two parties agreed to begin to work through issues and further scope the Port's proposed policy amendments. Approximately \$100,000 remains in the contract, which ends in December 2019. Accordingly, staff recommends that the Commission authorize the Executive Director to amend the contract to extend the end date to June 2021 and to modify the scope to reflect the work necessary to develop the proposed policies.

Commission Procedure

Circulating a descriptive notice is only the first step in the process of amending the *San Francisco Bay Plan*. The SFWSAP is incorporated into and is part of the Bay Plan. A notice of 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 notice is approved by the Commission on September 19, 2019, it will be mailed on September 20 and a public hearing on proposed Bay Plan Amendment No. 3-17 regarding the SFWSAP will be held on December 3, 2020.

By adopting the descriptive notice, the Commission is not approving or taking a position on the proposed amendment, but is only allowing the staff to work with the applicant to analyze the potential changes in light of the Commission's laws and policies, which provide the basis of a staff report to the Commission. The staff will distribute the report on the proposed amendment with the staff's preliminary recommendation for the specific changes to the Bay Plan and the SFWSAP to all Commissioners, Alternates, and interested parties at least 30 days prior to the public hearing as required by the Commission's regulations (California Administrative Code, Title 14, Division 5, Section 11001). Upon conclusion of the public hearing, and after submission of the Executive Director's final recommendation, the Commission can vote upon the proposed plan changes. The descriptive notice must be mailed at least 30 days prior to the public hearing and the vote cannot take place sooner than 90 days from mailing the descriptive notice (Government Code Section 66652). Upon conclusion of the public hearing, and after submission of the Executive Director's final recommendation, the Commission can vote upon the proposed plan change.

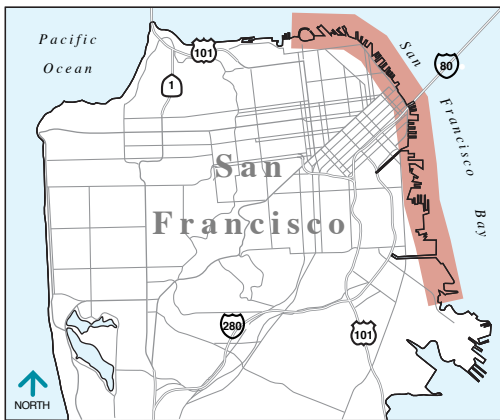
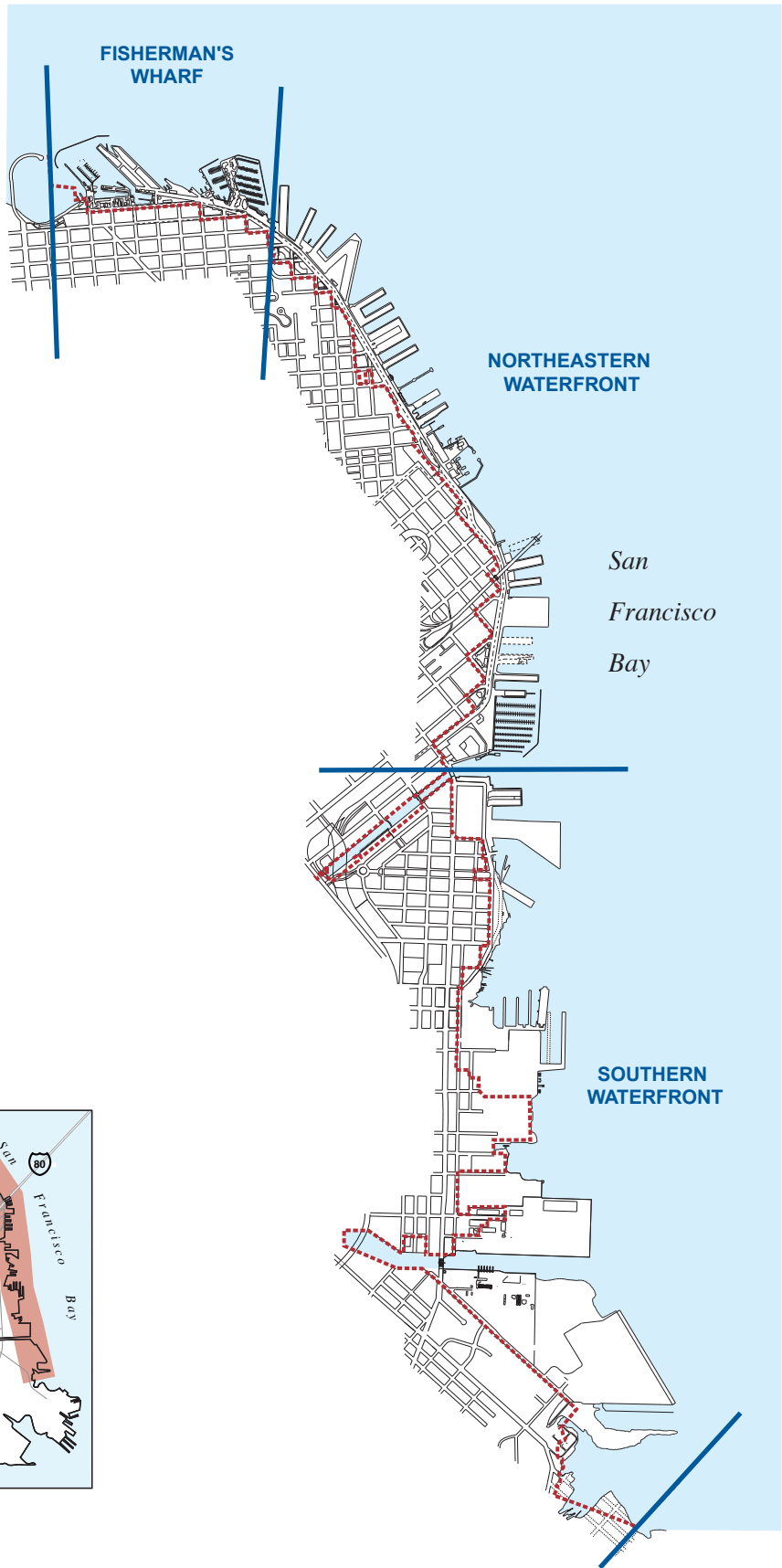


Figure 1:
Geographic Vicinities

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NORTH



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Descriptive Notice

September 20, 2019

Proposed San Francisco Bay Plan Amendment No. 3-17

Hearing Concerning Amendment of 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 Waterfront Special Area Plan* (SFWSAP), an element of the *San Francisco Bay Plan*. The purpose of this amendment is to provide uniformity between the Commission’s Special Area Plan, the Port of San Francisco’s Waterfront Plan, and the City and County of San Francisco’s General Plan and Zoning Map.

The proposed amendment would address: (1) providing guidance for safe maritime berthing and public access uses on piers to encourage shared use where feasible, and to maximize views of maritime activities; (2) supporting stewardship and rehabilitation of Embarcadero Historic District pier facilities to support maritime and water-dependent uses, public access along the shoreline and over the Bay, a diverse mix of public-oriented uses along the waterfront, and revenue uses necessary to finance historic rehabilitation projects; (3) promoting coordinated resilience planning to protect the existing waterfront from a variety of hazards and threats, including rising sea level; (4) activating existing waterfront parks and plazas to serve a broader range of users and interests; (5) incorporating policies that promote social equity, address environmental justice, and equitably deliver public benefits, including in the southern waterfront; (6) satisfying the Port’s obligation to provide a fourth open water basin in the Northeastern Waterfront; (7) substituting the Fills for Public Trust Uses policy for the Replacement Fill Policy (50% rule) in the Fisherman’s Wharf geographic area; and (8) encouraging and incentivizing plan-based public access benefits and a mechanism to accrue credits from such projects that may be used to satisfy in-lieu public access benefits for projects that generate demand for, but cannot provide, on-site public access.



A Public Hearing on the possible amendment is scheduled to be held December 3, 2020 at 375 Beale Street in San Francisco, California, starting at 1:00 P.M. At least thirty 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 present written comments on or before December 3, 2020. Oral comments may be presented at the December 3, 2020 Commission meeting 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 1980. If, after the hearing, the Commission adopts an amendment to the SFWSAP described in this notice and subsequent staff report, such amendment will be processed as a routine program change of the Commission's federally-approved coastal management program for San Francisco Bay. Any federal agency interested should, therefore, comment to the Commission. Any written comment received subsequent to the close of the public hearing and public comment period will be distributed to the Commission; however, the staff will not provide a response to the comment 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 San Francisco Waterfront Special Area 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@bcdca.gov or at the Commission's office, 375 Beale Street, Suite 510, San Francisco, California, 94105.