



Waterfront Plan Working Group

Meeting: January 13, 2016

Governance Meeting Notes

Members Present: Grant Ballard, Kirk Bennett, Reid Boggiano, Mike Buhler, Kevin Carroll, Chris Christensen, Jeffrey Congdon, Jane Connors, Aaron Hyland, Jon Golinger, Stephanie Greenburg, Carolyn Horgan, Earl James, Ellen Johnck, Ken Kelton, Janice Li, Ron Miguel, Stewart Morton, Rudy Nothenberg, Jacquelyn Omotalade, Karen Pierce, Tom Radulovich, Linda Fadeke Richardson, Alice Rogers, Cristina Rubke, Peter Summerville, John Tobias, Anne Turner, Corinne Woods, Dee Dee Workman

Absent: Michael Hamman, Frank Rescino, Jasper Rubin, Dilip Trivedi

1. Welcome to Working Group and Public

Rudy Nothenberg, Co-Chair, Working Group

- Welcomed attendees, briefly described evening's protocol, and introduced Port Commissioner Leslie Katz, and Monique Moyer, Port Director
- Click this link to the meeting video:
<https://www.youtube.com/watch?v=6YGfeze1VBc&feature=youtu.be>

Leslie Katz, Port Commissioner

- Announced the election of Willie Adams as the new Port Commission President and Kimberly Brandon as Vice President
- Expressed gratitude to Working Group members and Co-Chairs
- Acknowledged the return of many original Waterfront Plan contributors to the process, the public's willingness to serve
- Shared strong positive impression of expertise of Working Group members
- Discussed major policy issues to address including sea level rise, seismic issues, and complexities of balancing Port needs, issues with regulatory bodies
- Announced that different Commission members will be present throughout the Waterfront Plan Update process

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Rudy Nothenberg, Co-Chair, Working Group

- Asked Working Group to accept November 17, 2015 Meeting Notes, which were then accepted. Nothenberg requested that despite the fact that “Governance” was the subject of this evening’s meeting, speakers and members of the Working Group and audience refrain from arguing the merits or lack of merits of Proposition B which is in any event before the Court for adjudication. Nothenberg then introduced Supervisor Aaron Peskin, District #3.

Supervisor Aaron Peskin

- Expressed support for participating in the Waterfront Plan Update process participating.

Rudy Nothenberg, Co-Chair, Working Group

- Thanked Peskin for remarks and introduced Brad Benson, Port Director of Special Projects, to begin presentations with an overview on the Port’s governance.

2. Agency Presentations: Port Governance and Regulatory Environment

Benson provided an overview of the Port’s governance. A copy of the slide presentation and referenced Port Governance matrix is available at this Port website link: <http://sfport.com/wlup>

Benson described his role in representing the Port’s legislative work with State Lands and BCDC. Benson discussed the history of the creation of the San Francisco seawall, the Burton Act, a summary of the Waterfront Land Use Plan as well as various relevant legislation and recent major projects including Rincon restaurants, the Ferry Building, and AT&T Park. He emphasized the uniqueness of the Port’s waterfront and the shared public trust mission and described the collaboration of the Port with State Lands Commission (SLC) to evaluate the unique details of each project to assess public trust consistency, which at times required State legislation to secure confirmation from the State Legislature. He described his role in representing the Port’s legislative work with SLC and San Francisco Bay Conservation and Development Commission (BCDC). Benson mentioned that Jennifer Lucchesi would follow with a presentation on State Lands’ role.

Responses to Questions

- Do the Supervisors approve the Port budget? Yes, the Port Commission reviews the 2-year budget in February, which serves as a recommendation to the Mayor. The Mayor then takes the recommendations into consideration in the overall City budget. Then the Board of Supervisors votes on the Port’s budget as part of the whole City budget.

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- There are no City funds for the Port right? No, the Port maintains a separate Harbor Fund as part of the Burton Act; funds generated from use of Port properties stay at the Port. The Board and the Mayor may not allocate Harbor funds for nontrust uses. The voters have however approved General Obligation Bond debt for use by the Port's open space program
- What was the voter's role in the 2008 Waterfront Plan and what is the City's Administrative Code, Chapter 61's role in the process? Proposition H asked a non-specified City agency to develop a waterfront land use plan. Benson also shared that the Working Group has a copy of a Port of SF regulatory matrix to help members understand roles of the agencies and relevant ballot measures: State Lands, BCDC, SF Planning, the San Francisco Bay Regional Water Quality Control Board, and the Army Corps of Engineers. The matrix may be found here: <http://sfport.com/wlup>.
- Does the 10-year Capital Plan keep track of the status of seismic and seawall needs versus progress? The Capital Plan does include cost estimates for seismic improvements for certain facilities, but currently does not include assumptions for seawall seismic improvements. A seawall structural study is currently underway. The Port regularly pursues seismic upgrades in large development projects.
- Nothenberg added that the Working Group will have a finance orientation session later in the process.

Jennifer Lucchesi, Executive Director, California State Lands Commission, presented an overview of the State Lands jurisdiction, public trust doctrine, statutory trust grant, legislation history, and its project role. Lucchesi also discussed "use" types allowed in public trust lands and how an important Marks v. Whitney court decision recognizes that public trust uses evolve over time. A copy of the presentation can be found at <http://sfport.com/wlup>.

- Nothenberg added that the SLC has an institutional presence in the Working Group in member Reid Boggiano as a resource for questions.
- Janice Li requested that electronic and hard copies of handouts be made available to the public after this meeting.

Responses to Questions

- How does the SLC collaborate with the Port of SF but does not have the ability to approve or disprove projects? The Burton Act conveyed waterfront lands to the Port in fee title, but did not reserve SLC approval authority over the lands. This is very representative of all of the major ports. SLC and the Port have evolved a collaborative partnership to consult about public trust consistency issues. We find that this approach actually produces a stronger

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project that is more consistent with the public trust than if SLC came in later in the approval process.

- What other public trust lands exist in San Francisco and how are those governed? Treasure Island, Yerba Buena Island, the Hunter's Point Shipyard and the Marina include public trust sites. These sites are governed by 5-6 agencies, including the Office of Community Investment and Infrastructure. The Port does not have jurisdiction over these lands. Also managed by Recreation and Parks Department.
- Lucchesi added that there are two resources for further information about the SLC: (1) the SLC has provided copies of a brochure which explains its role and court cases in simple terms; and (2) the SLC website lists all of the statutes and land grants.
- Nothenberg thanked Ms. Lucchesi and introduced Brad McCrea of San Francisco Bay Conservation & Development Commission.

Brad McCrea, Director of Regulatory Division, presented an overview of the BCDC commission, jurisdiction, background on McAteer-Petris Act, SF Bay Plan, public trust uses, and public access. The link to his presentation can be found at: <http://sfport.com/wlup>.

- Nothenberg stated that BCDC will also have institutional presence in the Working Group and asked for questions.

Responses to Questions

- How does BCDC enforce public access requirements? BCDC regulatory permit staff helps applicants/permittees understand BCDC regulations, to address BCDC "maximum feasible public access" requirements. They have enforcement powers with administrative penalties, cease & desist power, and can take things to court if needed, but start with telephone calls.
- What would you challenge the Working Group to do? Inviting folks from BCDC to participate is a great start. Major issue ahead is to deal with the reality of more water in the SF Bay and the need for everyone to work together on adaptation planning.
- Nothenberg introduced Gil Kelley of the San Francisco Planning Department and expressed gratitude for seeing SF Planning involved in the Waterfront Plan Update process.

Gil Kelley, Citywide Planning Director, presented an overview of the Planning Department's role along the waterfront, which is to set citywide policy, implement zoning, planning code, historic preservation and CEQA environmental review. He commended the Port on the hard work balancing maritime, recreation and other uses, and ongoing coordination with the Planning Department. Kelley introduced Liz Watty, Ming Yeung and Diana Sokolove, also of Planning Department, as resources for answering

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questions. City and Port are now also focusing work on climate change and sea level rise planning.

- After asking for further questions. -there and receiving none, speakers were none.
- Benson presented gathered as a panel for a case study of the Exploratorium project.

Benson provided an Exploratorium case study to illustrate the project's various regulatory requirements and interaction between the agencies. He explained the historic nature of Piers 15-17, SLC trust consistency considerations, the BCDC Special Area Plan, fill removal and public access requirements. Benson then invited panelists to share agency issues and challenges in the approval process.

- What specific challenges did each agency encounter in this project? Lucchesi (SLC): The Exploratorium was a unique project as museums are not normally considered trust uses. The Exploratorium as an exception because of its public, educational and very hands-on and nature-based focus and programs. SLC worked collaboratively to ensure that public trust uses were included in the program, including maritime improvements for Bay Delta Tug & Tow. The public trust consistency also relied on the historic rehabilitation of Pier 15. The Exploratorium incorporated exhibits geared towards nature and surrounding Bay environment which support public trust objectives.
- McCrea (BCDC): The project required a two-step process: (1) a Bay Plan/Special Area Plan amendment because the Exploratorium proposed to retain some of the fill between Pier 15 and Pier 17, contrary to fill removal requirements specified in the Plan; and (2) a Major Permit to approve the development and project details. After extensive work, an alternate fill removal program was defined to offset the shortfall of fill removal in the project, and project design accommodations met public access and view requirements. The project is a success with a strong Bay-focus. He believes that the inter-agency team learned a lot during the process and that in the future, the approval process will be easier.
- Kelley (SF Planning): The project did not require Planning Commission approval, but the Planning Department was Lead Agency for the CEQA EIR. The Planning Department also participated in design review process for the project as part of the Waterfront Design Advisory Committee. The project has been successful, activating the Embarcadero while maintaining historic integrity. The project helps get people to the edge of the City and the architecture helped to activate the Pier.
- Nothenberg -added that even a highly-desired project still needed to go through the rigors of the regulatory process and -suggested that it might be interesting for the Port to present

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a case study of a project that did not negotiate the regulatory process successfully. He opened floor for questions from the Working Group and audience.

Responses to Questions

- Where in the matrix of approvals are there still challenges? Benson (Port): Arriving at the determination of what is a public trust use is a challenge. Collaboration between the agencies has matured and the iterative process has worked. However, the amount of time that the approval process takes adds risk and cost to Port projects. Lucchesi (SLC): Each public trust grantee has unique needs, with detailed and complex projects; it is a challenge for SLC to respond to all requests and reviews. McCrea (BCDC): Climate change challenges such as sea level rise are crucial challenges. BCDC is trying to incorporate resilient design for 50-year and 100-year sea level rise scenarios. Kelley (SF Planning): The most game-changing issue is sea level rise including king tides and surges. SF Planning wants to introduce imaginative design thinking, large-scale solutions. A larger conversation with all of the agencies needs to happen.
- What is Exploratorium's public trust/maritime allocation (greater than 50% of area?) and will meeting documents be available online? Benson (Port): The Exploratorium case study handout describes the program/location of trust uses including a restaurant and public access. Will publish more detail about Exploratorium floor plan on Port website
- What is the waterfront design committee and what is their role in the approval process? Benson (Port): The SF Planning Director, Port Director, and Mayor appoint members to the Waterfront Design Advisory Committee (WDAC), which reviews Port development projects. It includes architects and designers and provides review from conceptual through more schematic designs. Where Port development falls within BCDC jurisdiction, the WDAC typically meets jointly with BCDC's Design Review Board. McCrea (BCDC): the joint design committee process is an implementation requirement of the SF Special Area Plan. The two boards collaborate to streamline projects for projects from Pier 35 south to China Basin.
- Public comment from two members of audience regarding public trust, open space, commercial uses and past Warriors proposal on Piers 30-32.

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- What is fill and what are removal requirements? McCrea (BCDC): There are a variety of types of fill regulated by BCDC, which include pile-supported structures, solid fill, shadowing of the bay by above structures such as bridges, cantilevered structures, or floating fill. Most of Port of San Francisco is pile-supported structures. Because the Port's historic piers pre-date the creation of BCDC, they are treated as being part of BCDC's shoreline jurisdiction (where BCDC requires maximum feasible public access) until such time as they are undergo substantial substructure repair or seismic improvement; at that point, such improved piers are subject to BCDC's Bay jurisdiction, where BCDC regulates uses on the pier as well as public access. McCrea introduced Lindy Lowe, Senior Planner at BCDC to provide information about the BCDC Special Area Plan fill removal requirements. Lowe described how BCDC and Port developed new Special Area Plan policies between Pier 35 and China Basin that provide for designated fill removal locations and commitments to creation of Open Water Basin in exchange for more flexibility on land uses in Port developments in this area. These revised policies supplanted prior "50% rule", an earlier BCDC policy that has not been effective. Benson (Port) added that there are other agencies described on the waterfront regulations matrix handout that also ,regulate bay fill including the U.S. Army Corps of Engineers and the San Francisco Bay Regional Water Quality Control Board.
- Comment from Working Group member regarding the need for agency collaboration to ensure the public trust remains strong. Future public trust challenges will need to be carefully considered.
- Nothenberg thanked presenters for insightful presentations and audience for patience and courtesy.

3. Next Steps

- Next Working Group meeting @ February 10, 2016 6-8 pm @ Pier 1, on Maritime and Water-Dependent Uses.

Follow up/Requests of Port Staff

1. Provide link to presentation and handouts to Working Group: <http://sfport.com/wlup>.

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