



SAN FRANCISCO PLANNING DEPARTMENT

MEMO

Date: May 5, 2014
To: Honorable Mayor Edwin M. Lee
From: John Rahaim, Director of Planning
Re: Department Analysis June 2014 Ballot Initiative: Voter Approval of Waterfront Development Height Increases

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Mayoral Request on Waterfront Ballot Measure

The Department is pleased to provide an analysis of how Measure B, "Voter Approval of Waterfront Development Height Increases" initiative ("Measure") would modify current City law and practices regarding projects that are proposed to be built on Port property.

Process Change: Unpredictable Outcome

In sum, the Measure would significantly modify the City review process for projects on Port-owned land that are currently reviewed by Boards and Commissions established for this purpose.

The impact of this measure depends largely on the specific content of subsequent measures that would be proposed for development projects. For example, waterfront height and land use changes could be determined by what a developer of Port property decides to place on the ballot and what registered voters citywide approve or deny. The Board of Supervisors, Planning Commission, Port Commission, Waterfront Design Advisory Committee, and Historic Preservation Commission could have reduced roles in decision making prior to the electorate's vote on a waterfront development measure.

Current law requires that a zoning height change be subject to neighborhood notification and public hearings at the Planning Commission, Board Land Use Committee, and full Board of Supervisors, with additional hearings required in certain circumstances at the Historic Preservation, Port Commission, Waterfront Design Advisory Committee and other bodies. These hearings and resultant decisions are preceded by substantial technical and policy analyses by City staff, tested by public scrutiny.

The Measure would preclude any City Commission, the Board of Supervisors, or the Mayor from approving any height increase for any Port-controlled land. Rather, a vote of the people would be required before any height increase could occur. Once the matter is certified to appear on the ballot, City staff could present only objective and impartial information about the project and could not provide a recommendation on the project, as is our current practice. In addition, there would be no required public hearings or technical analyses that are now part of the review and approval process for conventional projects, although the Board and Commissions could conduct informational hearings.

Voters would largely be reliant on the written description in the Voter's Guide. The ballot measure changes the City's review process for alterations in height and the scope of change to the role of the Planning Department and Commission is unpredictable given that developers in many instances would determine the actual content of the ballot measure.

Port Lands Most Heavily Regulated in San Francisco

The current planning construct incorporates careful professional staff and other review of many issues to balance multiple public benefit and policy objectives, including land use density and compatibility, historic preservation, transportation, public open space, urban form and architectural design. This multi-layered review grew in response to articulated public values and the City's changing economic needs and design goals over the years and is tailored to the issues and needs raised by a particular project.

History of State Regulation. Since 1938, the State Land Commission has protected both economic interests and citizen access by prioritizing maritime commerce, water-dependent uses, public access, recreation and attractions, and natural and cultural resources on public lands. Beginning in 1961 nonprofit organization Save The Bay had correctly identified the dangers of filling in the bay to the detriment of the natural ecosystem. The state responded, and in 1965 the San Francisco Bay Conservation and Development Commission (BCDC) was established to provide a constant shoreline, ensure wise use, and public access. Permit applications on Port lands must past muster with both state bodies. Further, in 1968 the Burton Act transferred the Port's state-owned tidelands to the City while adding a layer of public trust restrictions¹.

History of Local Regulation. Locally, the first height limits affecting the waterfront were established in 1940's-50's. After WWII, the waterfront began evolving as breakbulk cargo shipping declined. A new downtown rose next to the waterfront. In 1961, the City amended zoning and heights in the Northeastern Waterfront, an area that includes Port piers and its upland seawall lots, and privately owned properties to adjust to the changing needs of industry; largely heights were set between 85' on landside and 40' on the waterside, stepping down to the water. The SF Produce Market and former maritime and industrial uses made way for Embarcadero Center, Maritime Plaza, and the Golden Gateway residential neighborhood. The City initiated studies in the 1970's and 1980's to update the City's General Plan policies for the Urban Design and the Northeastern Waterfront, promoting the conversion of railyards and maritime/industrial lands to mixed-use office, commercial and residential neighborhoods at the foot of Telegraph Hill,

¹ The Planning Department letter concentrates on the changes to review provided by city agencies. A fuller picture may be provided by asking the appropriate state agencies to also comment on how the ballot measure would affect state agency review.

Barbary Coast, and South Beach areas. In the 1980's the City approved the Downtown Plan and rezoning which directed growth to South of Market. With a jobs center firmly in place, neighborhood planning efforts created high-density residential districts close to downtown, supporting the height increases with urban and architectural design policies. These changes in planning and land use policies for the NE waterfront similarly included policies promoting the recasting of the Embarcadero from an industrial arterial to an elevated freeway and then again re-envisioning it as the multi-modal urban boulevard we enjoy today.

Within this larger context, the public approved Proposition H in 1990, calling for the creation of a Waterfront Land Use Plan to address future use types for the Port's piers. The Port conducted a public process from 1991-97 that produced a comprehensive plan for piers and all Port-owned property, integrated with the City's policies. The overarching objective of the Waterfront Plan: Reunite San Francisco with its Waterfront. A program for the urban form and height changes was not part of this process; instead height controls remained static as developed in the early 1960s without responding to the new form context surround the waterfront.

City and Accompanying Policies Evolve to Address Inevitable Change

Throughout San Francisco's history, the City and its waterfront have changed. Yesterday's waterfront cannot be expected to solve tomorrow's needs. Cities are continually evolving, and today's organizational structure involving professional analysis, public engagement, commission review, state oversight, and Board approval are tasked with responding to changed conditions, adopting policies as a result of changing public values, and working through the details of individual projects to realize those public values.

Recent Efforts. Since the Waterfront Plan, the Planning Department and City have continued to track and develop community land use plans and zoning proposals for other neighborhoods and districts along the eastern side of the City, some which are adjacent to and are integrated with waterfront planning efforts led by the Port for lands extended into the central and southern waterfront, south of China Basin Channel. Recent efforts vary from area plans like Mission Bay and Rincon Hill to Eastern Neighborhoods, to topic specific plans such as Blue Greenway, Better Streets Plan, SFMTA Waterfront Transportation Assessment and Sustainable Streets. These efforts seek to house a growing population in a full-service city with people-oriented streets and public spaces, supported by sustainable transportation choices.

What's Next? There are still other planning challenges ahead. Strategic thinking is needed to position the City for success at the water's edge. New on the horizon is the need to develop a coherent set of policies to address the demands of climate change and prepare adaptation strategies for the City. Nowhere is that more evident than along the waterfront. Keeping the water at bay is a function of the Seawall. The Seawall is not just a historic resource responsibility of the Port of San Francisco; it is one that requires priority attention of the City. The 150-year-old Seawall protects downtown San Francisco, adjacent upland neighborhoods, including the growing Mission Bay. Guaranteeing that the Seawall can withstand both a burst of seismic activity as well as the long-term changes of climate change will necessitate vast investment and may require changes to the shoreline, something unimaginable just a few years ago.

The Changing Shoreline. The appendix shows the physical evolution of the shoreline through history. In fact, the idea of a constant shoreline is relatively new—a premise of BCDC's paramount drive to stop bay fill. While stemming bay fill is a primary concern to ecologic health, recent work by BCDC and other agencies point in another direction. The idea of a constant shoreline is an unrealistic premise, largely due to sea level rise. While everything about today's values and process prevents the City from expanding into the Bay, larger ecological processes are likely to see a swelling Bay ebb into the City. Sea level rise is a slow but steady phenomenon that, as the Dutch can attest, can be planned for—but such planning demands a coordinated approach based upon thoughtful assessment of the best of current science and design, light of both public input and available financial resources. A truly coordinated response to sea level rise will demand great financial resources which would need funding from multiple projects. This need for significant financial support of comprehensive planning may demand a ballot measure that addresses multiple projects with a single vote. Such a bundling of projects into a single vote may add risks for projects which otherwise may be viewed favorably by the voters. For this reason, developers of popular projects may preempt City efforts to coordinate proposals in an effort to limit the risks of associating their project with other projects that may be more controversial. If complex challenges such as these can be accommodated by the ballot box remains to be seen.

New Process Empowers Developer to Withdraw From City Review

The effects of this ballot measure will depend on the specific content of each future ballot measure for individual sites, as will be required by this measure. Project-specific ballot measures put forward by developers could range anywhere on a spectrum from only addressing height limits to authorizing the entirety of the proposed project. The more detail about a project included in a ballot measure, the less ability the Department would have to carry out the review and approval processes conducted today. The change to the

level and extent of Planning Department review would depend on the specific content of a ballot measure related to a particular project.

Developer Crafted Height Changes. If a developer chose to craft a ballot measure that included detail specific aspects of a project in addition to height limits - such as proposed uses, amount of parking, and/or size of buildings - those aspects of the project also would be approved by voters if the measure passes. Under such a scenario, the City could be prevented from making certain modifications to the project (e.g. height of the project or the size of the project or the number of parking spaces) already approved by the voters unless the measure provided ranges, e.g., the number of parking spaces shall be no less than 100 and no more than 250, or retained City discretion over specific aspect of the project.

It is true that certain development projects requiring increased height limits, among other zoning approvals, have in the past voluntarily sought voter approval.² However, by making it mandatory that height increases go before the voters, it is very likely that a developer would place other aspects of the project on the ballot, in addition to the height limit.

Again, in instances where many aspects of the project are on the ballot, the developer could use the vote as an opportunity for an up-front authorization of those various aspects of the project (e.g. an architectural design, land use program, height limit increase and any other required approvals). This could reduce or avoid the typical analysis otherwise applicable to each aspect of a project because a detailed development proposal could be "locked-in" through voter approval such that some or all of the conventional review process would not occur. This could create a situation where the project is not reviewed in light of the City's General Plan, Planning Code or other codes, but would be allowed to proceed because the voters had approved it.

Applicability of CEQA to Future Ballot Measures. The Department's environmental review pursuant to CEQA could be similarly affected. CEQA exists to provide the public with knowledge about the development's possible environmental impacts prior to approval. The review process under CEQA can be time consuming and expensive, with various stages of City and public review. If voters are considering height and/or other aspects of projects without CEQA review, important facts about the project's effects would be unavailable prior to the vote. After passage of a measure, environmental review might be undertaken as we do today; yet, the City might be limited in addressing

² There have been at least three other measures put before San Francisco voters that involved a height change: "The Downtown Ballpark" (Proposition P) in November 1989, "Ballpark" (Proposition B) in March 1996, and "Candlestick Point Stadium Land Use" (Proposition F) in June 1997.

environmental impacts of the project that were explicitly included as part of the project approved by the voters.

The reason that CEQA would not apply to certain ballot measures is that measures placed on the ballot by any means other than a vote of the full Board are not "actions" taken by the City, and therefore they are not "projects" subject to CEQA. More precisely, placing some or all of the elements of a development project on the ballot for approval may not be subject to CEQA review depending on how the measure reaches the ballot. Subsequently, should the voters approve any project elements that appear on the ballot - and depending on the language of the particular ballot measure - it is likely that fewer discretionary approvals would come before the City. Because discretionary approvals are generally those that are subject to CEQA, ensuing CEQA review could be limited to those project elements that remain subject to City approval actions.

Nonetheless, CEQA review would be required for any follow-on discretionary City actions on elements of the project that were *not* subject to a vote. While CEQA does examine the whole of a project, and might include the crafting of project alternatives, mitigation measures, and/or other conditions, the City could be constrained in implementing some or all of these because the defining parameters of the project would presumably have already been approved by the voters.

Value-Added by Current Process

Professional planning feeds data and analysis to decision makers in a transparent and public process that provides holistic assessment of a project's contribution to the City. Beginning with CEQA review, facts and data are gathered to improve understanding of a project's potential impacts on land, water, air, noise, historic resources, living creatures, aesthetics, and resources both cultural and natural. Next, the department provides an interpretation of the data; evaluating the project against the City's adopted policies. This professional analysis guides decision makers in determining if the project meets planning goals and ensures that decisions are rooted both in adopted policies and contemporary best practices. Finally, local law requires multiple hearings with associated public noticing before public boards, commissions, and committees to make transparent the professional analysis so that the public may test both the underlying data and the conclusions. The general public and advocates can directly address decision-makers with their concerns and opinions. Fully-informed decision makers then can seek to mold the project that not only meets City laws and policies but also leverages public benefits to best meet the adopted vision for the waterfront.

As the City stands on the precipice of major change in how our waterfront is developed, it is important to appreciate what our current practice has produced. Today's waterfront is the result of decades of vigorous public discourse, planning, and action. The various plans that collectively guide the development and use of the 20-plus miles of the San Francisco waterfront sum to a clear, singular vision: Create a waterfront that is a primarily public place, that extends public access to and along all of the City's ocean and bay waterfront, that is seamlessly woven into the City, that welcomes all, and that capitalizes on the spectacular setting at the mouth of the Golden Gate. This waterfront vision has given us new public open space, strong public access to the water's edge, stronger connections between the City and the waterfront, and new activities and attractions that engage the full diversity of people who live, work, play, and visit San Francisco.

Initiative Changes Process of Reviewing Complex Land Use Decisions to a Yes/No Vote

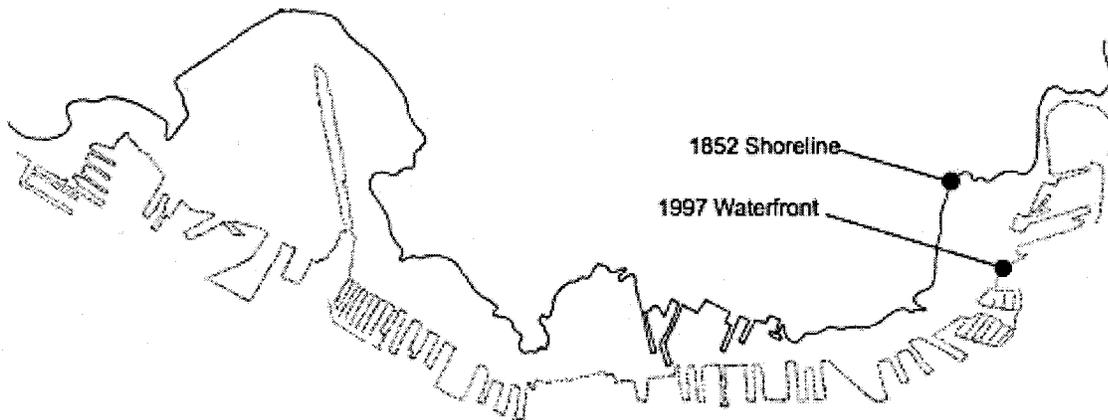
The complex analysis and weighing of alternatives for major land use development is typically lengthy and requires substantial discussion and reviews by multiple parties and technical experts. Depending on the content future ballot measures for individual projects, the project decisions may be resolved the choice of yes or no. Whereas various advisory committees, the Planning Commission, and Board of Supervisors are likely to shape the project before them to maximize the public purpose, voters have a binary choice to approve or disapprove. Without the freedom to request more or less from a project, the discussion can become reductive and will be summed up by succinct statements of good or bad. Successful campaigns are typically defined by a simple concept paired with effective advertising campaigns, an approach that may be antithetical to sound planning.

In conclusion, depending on the nature of required ballot measures that would evolve from Proposition B, such measures could enable developers to bypass otherwise mandatory environmental review, professional analysis, public response, commission hearings, and legislative review in advance of the election on the project. From a policy perspective, it is uncertain that a single citywide vote on a ballot measure concerning waterfront development that is drafted and shaped by developers, with all its planning and zoning complexities, can adequately substitute for the intense public and substantive scrutiny offered by the existing review process.

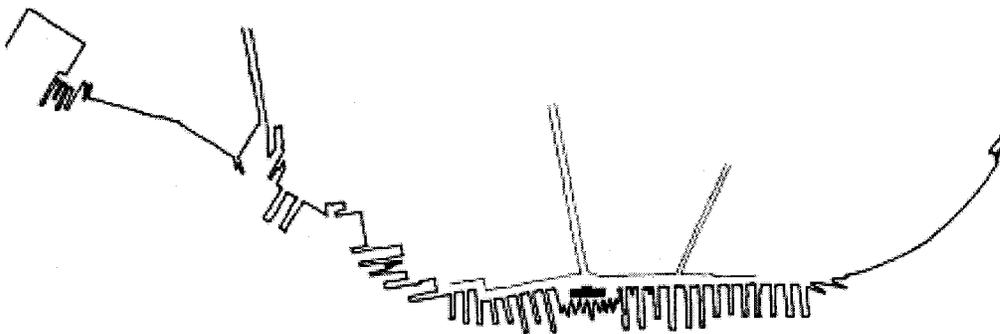
APPENDIX A: A CHANGING WATERFRONT

Under today's practice, future physical changes would be guided by the well-articulated policies that have been vetted and adopted by the City's commissions and elected officials—through a very public process where advocates and neighbors alike can be heard. If the Measure is approved future physical changes will be considered by voters who may not benefit from the same testing, modeling, questioning that today's decision-makers use to make their decisions.

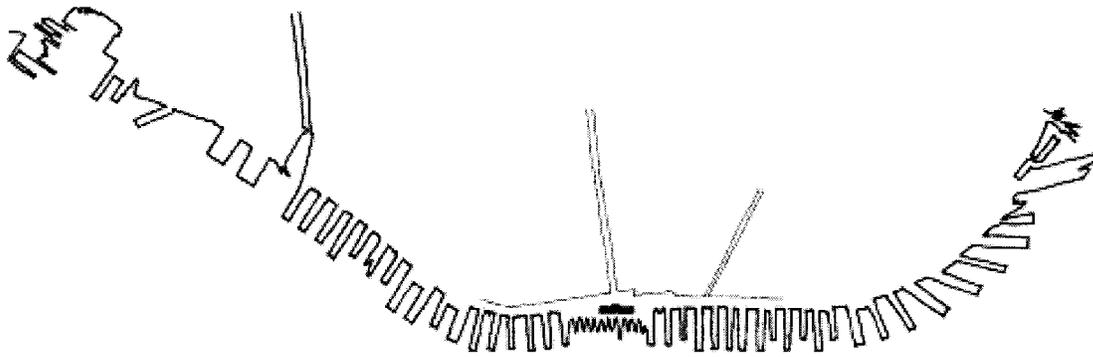
The 1852 Shoreline compared to the 1997 Shoreline as shown in the Port's Waterfront Design and Access guidelines.



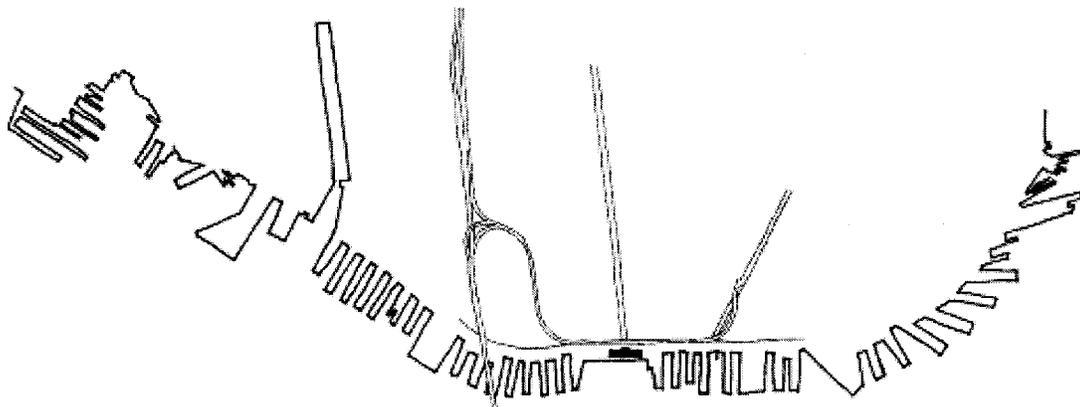
The 1908 Shoreline shows bay fill extending land into the harbor. Twenty-eight working piers support a busy maritime industry and supporting warehouse district.



The 1931 Shoreline supports forty-nine piers and twenty-one ferry slips. The SF Port is the dominant West Coast shipping Port.



The 1969 Shoreline sees the reduction of piers as finger piers were combined into larger piers to capture modern shipping needs.



The 1997 Shoreline matches today's shoreline with the northern waterfront featuring a mix of recreational and public access uses with industry, office, ferries and retail. Cargo operations have moved to the southern waterfront.

