

**From:** [Art Thompson](#)  
**To:** [Major, Erica \(BOS\)](#)  
**Subject:** Floodplain Ordinance - BOS File #200537 - Letter #2  
**Date:** Friday, October 16, 2020 12:31:20 PM  
**Attachments:** [image005.png](#)  
[image006.png](#)  
[SFBOS LUTC - Floodplain Ordinance - BOS File 200537 - 10162020.pdf](#)

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Hi Erica,

Attached please find our second informational letter on the San Francisco Floodplain Ordinance for Chair Aaron Peskin and the Land Use & Transportation Committee.

Thank you for distributing the letter to the Committee, on our behalf.

Have a nice weekend, best regards,

Art

**Art Thompson**  
Executive Director



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**EARTHRISE**

WORKS FOR OUR WORLD

October 16, 2020

*Via e-mail to Erica Major  
Clerk, Land Use & Transportation Committee  
erica.major@sfgov.org*

Chair Aaron Peskin  
Land Use & Transportation Committee  
Board of Supervisors  
City and County of San Francisco  
City Hall  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102-4689

**RE: City of San Francisco - Resiliency & Waterfront Development  
Embarcadero Historic District  
Board of Supervisors File #200537  
Floodplain Management and Flood Insurance Requirements**

Chair Aaron Peskin, Members of the SFBOS Land Use & Transportation Committee:

As a follow up to our previous correspondence of October 8th, I am sharing with you and the Committee the attached letter regarding the recent Requests for Proposals for Piers 38 & 40 and Piers 30-32/Seawall Lot 330.

As we previously shared, Earthrise, Heatherwick Studio and our entire EPX2 team have researched and developed our EPX2 Resiliency Model, a proposed platform for The Cove at Piers 30-32 and the Embarcadero Historic District. Our Model serves as a solution to the accelerating flooding, seismic, and climate change emergency in San Francisco, with resilient application potential to other global waterfronts.

Our EPX2 Model and complementary urban design solutions are research-based, grounded in data, science and facts, including the latest in prevailing USA FEMA design codes, standards, best practices, and the soon-to-be-adopted City of San Francisco FEMA FIRMs. Our complete, transparent story is available at [www.pier30.com](http://www.pier30.com).

In our opinion, and consistent with our Model, we wish to bring to your and the Committee's attention that the priorities for the development of our exquisite San Francisco waterfront appear to be out of order, inconsistent with their implementation, on a practical basis, and inconsistent with public needs and mandates, including the waterfront defense of our City.

Given the seismic and climate change emergency, and the age and condition of the existing Embarcadero Historic District infrastructure, moving forward, in our opinion, the order of priority for any waterfront development should be—(1) infrastructure first, the new seawall; immediately followed by, or in tandem with, (2) the piers second, saving and rebuilding them; and finally, (3) the landside seawall lots, dead last, which are not-at-risk and actually a non-priority item.

To reiterate, and not a surprise, the waterfront needs new, higher seawall infrastructure. It is the first priority for the development of our waterfront, and is deemed critical infrastructure, and supported by the voting public, under the Seawall Earthquake Safety Bond, Proposition A of November 2018. This critical infrastructure also serves as an interlocking platform for new higher, resilient pier substructures, too.

Saving, modernizing, and elevating the piers is the second priority for any of our Embarcadero Historic District waterfront development. The Seawall Earthquake Safety Bond, Proposition A of November 2018, deems the piers and bulkhead buildings as critical infrastructure too, confirming their priority position. Moreover, the piers and bulkhead buildings are candidates for funding under the bond.

Worth mentioning, the installation of the new seawall will be extraordinarily disruptive. Please see page 74 of our Resiliency Model for EPX2 teammate construction images of the Elliot Bay Seawall, downtown Seattle. The timing of any pier redevelopment should likely occur concurrently with the new, adjacent seawall construction to minimize waterfront disruption to a significant, one-time event and to allow for the alignment of these two components at the new, higher elevation.

Confirming their non-priority, waterfront development status, the seawall lots and coincidentally the pier sheds are not considered critical infrastructure and are not candidates for funding under the Seawall Earthquake Safety Bond.

We identified these development priorities and the pier development bond financing mechanism opportunity as part of our earlier knowledge share, as part of our Model and our solution for Piers 30-32, The Cove. Additionally, in further recognition of these priorities, we identified that \$60 million had already been earmarked for the seawall consulting agreement, which provides no economic benefit to the City. Please see the Economics section of The Cove solution, page 84.

Now, with specific respect to the potential development of Piers 30-32, and consistent with these waterfront development priorities, we wish to inform the Committee that two, standalone pier-only development solutions are available for Piers 30-32, including The Cove. These options were apparently not considered, in favor of an obtrusive, community-opposed, non-priority, Seawall Lot 330-centric solution.

That proposal is non-responsive to the RFP for Piers 30-32, specifically the City zoning and building height requirements, as further mandated under voter-approved Proposition B, San Francisco Administrative Code Section 61.5.1, Waterfront Height Limit Right to Vote Requirement.

Notably, under that proposal, the respondent highlighted its preference of developing only the non-priority Seawall Lot 330, signaling a disinterest in Piers 30-32, and even offered to double its proposed base rent from \$1.5 million annually to \$3 million to do so. This option was apparently not considered, too.

And now, with specific respect to the potential development of nearby Piers 38 and 40, that proposal is non-responsive to that RFP too, specifically the resiliency requirements, including the introduction and integration of a new, higher seawall, and the contemporary, prevailing FEMA codes, standards and best practices. The development solution for these historic piers is precedent setting for the District, overall, and will need to synchronize with the new San Francisco Floodplain Ordinance, still being drafted.

Moreover, with respect to the order of development priorities, we find it imprudent to spend \$383 million in redeveloping Piers 38 and 40 at their existing, too low elevation today, as proposed and budgeted, and in noncompliance with contemporary and prevailing FEMA codes, standards and best practices, especially when a new higher seawall, the first waterfront development priority, is still undetermined.

There has been no meaningful explanation why action has been taken to move these two, seriously non-responsive proposals forward, other than the proposals received the highest panel scores. Additional details and specific non-responsive proposal citation references are included in the attached correspondence to the San Francisco Port Commission of October 8, 2020.

We trust you will consider this information helpful, in the best interests of the City of San Francisco, and in the mutual support of our taking the critically important and appropriately strategic first step in creating a cohesive, high quality, potentially world-class, waterfront experience.

Thank you for your review and consideration of this important matter.

If you have any questions, please do not hesitate to contact me.

Best regards,

A handwritten signature in black ink, appearing to read 'Art'.

Art Thompson  
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# EARTHRISE

WORKS FOR OUR WORLD

October 8, 2020

President Kimberly Brandon  
San Francisco Port Commission  
Port of San Francisco  
Pier 1, The Embarcadero  
San Francisco, CA 94111

*Via e-mail to Carl Nicita  
Commission Secretary  
carl.nicita@sfport.com*

**RE: Port of San Francisco  
Piers 30-32, Piers 38 & 40 Requests for Proposals  
REQUEST TO RESCIND RESOLUTIONS 20-37 & 20-45**

President Brandon:

Thank you for your letter of September 30<sup>th</sup>. I appreciate you taking the time to write, on behalf of the San Francisco Port Commission. I wrote to you not only as an RFP respondent, but as a San Francisco resident, a friend of the waterfront and the Port. Hopefully, my comments are welcome, and by now, you have had the opportunity to review our EPX2 Resiliency Model, the infrastructure platform for our proposed, research-based solution at Piers 30-32, The Cove.

I think we can agree that what we, the City, need are the best visions for our waterfront, and ones that are acceptable to our community, and are financially feasible, can be underwritten. Additionally, the Commission has indicated that they are open-minded, and specifically asked that developers share their creativity and best ideas in pier visioning and partnering, which we did. What solutions are in the best interests of the City by the Bay? At the end of the day, we want the best, enduring development solution(s) for our piers and the entire Embarcadero Historic District. The other RFP respondents (potential Port customers) agree.

Candidly, and with that goal in mind, and again, as a friend of the Port, reluctantly writing to you now, and wanting to be respectful of you, your and the Port's time, the relationship and the process, we were hoping for a more substantive response to our inquiry, rather than the continued defense of the Request for Proposal process, which we already understand. Unfortunately, it is not business as usual, and embracing (climate) change in 2020 is challenging for all of us. Regardless, RFP proposal processing and compliance questions do remain, especially with respect to the objective judgment and equitable determination of responsive vs. non-responsive proposals and Port of San Francisco and San Francisco Port Commission authority.

Importantly, based on our findings, the two Port-selected proposals, one for Piers 38 & 40 and the other for Piers 30-32, are not in compliance with RFP requirements, each in one, significant and material,

fundamental way. They were non-responsive, yet these two proposals advanced in the RFP process, for unknown reasons, and were ultimately recommended by Port staff and then selected by the Commission.

Each selected proposal includes a serious RFP design deficiency, which trigger substantially negative and material financial proposal consequences. We deemed that the selected proposal for Piers 38 & 40 is nonresponsive with respect to the RFP resiliency requirements. The proposal for Piers 30-32 is non-responsive with respect to the RFP zoning and building height requirements.

Again, these findings are material. The proposals missed on these key RFP fundamentals and are non-starters for the beginning of an honest and productive process, as the Port staff suggest. Decisions relative to these piers are precedent setting, with respect to the Embarcadero Historic District and the resilient waterfront defense of our City. We need to set the course right, and now. We have no time to waste, in our race against climate change and earthquake exposure.

These two fundamental deficiencies underpin the visions for each Port-selected proposal and unfairly skew the corresponding financial metrics and feasibility at a cost of tens, if not hundreds, of millions of dollars, much to the detriment of the City of San Francisco, Port of San Francisco, and South Beach community. Setting aside a myriad of other questionable RFP processing details, especially the hurry-up offense to approve and advance the two selected proposals, without ample community engagement or consideration, we share these two fundamental findings, in detail, for the Port's and the community's benefit below.

We trust you will consider our two major "fundamental non-responsive proposal findings" helpful, in the mutual support of creating a potentially high quality, world-class waterfront experience of iconic urban pier designs, as suggested by Commissioner Woo Ho.

## **PIERS 38 & 40**

### **FUNDAMENTAL NON-RESPONSIVE PROPOSAL FINDING--RESILIENCY**

Action Item 9.A. Port Commission Meeting, August 11, 2020. Resolution 20-37. Passed 4-0.

*Why did the Port of San Francisco and the Port Commission take action to enter negotiations on Piers 38 & 40 when the selected proposal is clearly non-responsive and does not comply with the RFP resiliency requirements, which require an adaptation design, including a strategy that can accommodate the integration of a new, higher seawall?*

The Port-selected proposal is non-responsive to the following specific and critical Request for Proposal resiliency requirements, excerpted below. The proposal does not comply with these requirements and cannot financially feasibly support these requirements, without major revisions, to the detriment of an equitable RFP process, the City, the Port, other respondents, interested developers and potential customers.

#### Request for Proposal, p. 10

The Flood Resiliency Study will examine flooding on a range of expected sea level rise curves. The Tentatively Selected Plan, if approved by Army Corps and funded by Congress, is expected to provide flood protection throughout its design life (i.e., until 2080) and to be adaptable to subsequent sea level rise. To achieve this performance, the Tentatively Selected Plan will require installation of flood management measures at a higher elevation (still to be determined) than the current Seawall. The potential location(s)

of these measures is still being studied; options that are being analyzed include locations bay-ward of the piers, in the near shore area, at the shoreline or along The Embarcadero.

Request for Proposal, p. 18

*Seismic and Resilience*

Managing risks for seismic events and climate change are among Port's highest priorities. The following factors, criteria and guidance may be helpful in understanding such risks and the Port's approach and will become required provisions of any project. The following criteria and guidance should be used in analyzing project feasibility. Guidance and potential tools that may help Respondents are included on the South Beach Piers website.

- *Seismic Performance* — Compliance with the Port's Building Code requires a demonstration that the marginal wharf substructure and bulkhead building will be designed to withstand anticipated lateral spreading and other seismic forces.
- *Adaptive Flood Management* — An adaptive management strategy for flood protection through the expected life of the project based on a range of sea level rise curves will be required in consultation with permitting agencies including BCDC and will be memorialized in the Lease. Flood elevations and design criteria guidance are provided at the South Beach Piers website.

Through the Flood Resiliency Study or the Port or the City's own flood management policies and plans, the Port and City may select a line of defense for urban flood protection that intersects with proposed project sites, which may result in design changes to proposed projects (or parts of projects), including changes in elevations.

- *Future Flood Protection Funding* — Consistent with other significant shoreline development projects approved by the Port Commission, the Port maintains the right to negotiate with lessees for ongoing funding to fund adaptive management for flood control, including a potential special tax.

Capital and ongoing maintenance and operations cost must be addressed in each Respondent's proposed project proforma.

Request for Proposal – ENA, LDDA & Form Lease, Various Pages

*FEMA Disclosure Notice, As-Is with All Faults Condition, Pier Flood Protection Measures (Summary Below)*

The Port requires proposal respondents to acknowledge the FEMA Disclosure Notice and first-time City of San Francisco FEMA Flood Insurance Rate Maps, accept the Piers in their "as is with all faults" condition, and assume all associated risks and costs to meet FEMA pier design and San Francisco Floodplain Ordinance requirements.

For additional information on resilient pier adaptation solutions, please see our EPX2 Resiliency Model. Governing and prevailing FEMA codes, standards, and best practices are the foundation of our practical EPX2 Resiliency Model and our Earthprise | EPX2 team proposal for The Cove at Piers 30-32. Section 16 of the Model specifically addresses the nonadaptational solution of the non-responsive, Port-selected proposal for Piers 38 & 40.

## PIERS 30-32

### FUNDAMENTAL NON-RESPONSIVE PROPOSAL FINDING—ZONING & BUILDING HEIGHTS

Action Item 11.B. Port Commission Meeting, September 22, 2020. Resolution 20-45. Passed 3-0.

*Why did the Port of San Francisco and the Port Commission take action to enter negotiations on Piers 30-32 when the selected proposal is clearly non-responsive and does not comply with the RFP zoning and building height limit requirements, which requires a building height limit maximum of 105' on SWL 330. The selected proposal has a building height of 218' on SWL 330, over twice the allowable building height.*

The Port-selected proposal is non-responsive to the following specific and critical Request for Proposal zoning and building height requirements, excerpted below. The proposal does not comply with these requirements and cannot financially feasibly support these requirements, without major revisions, to the detriment of an equitable RFP process, the City, the Port, other respondents, interested developers and potential customers.

#### Request for Proposal, p 6

Recognizing the extensive community process and the Port Commission endorsements of the Draft Waterfront Plan policies, this Request for Proposal calls for a response consistent with the Draft Waterfront Plan.

#### Request for Proposal, p 12

SWL 330 is within the South Beach Downtown Residential Mixed-Use District (SB-DTR) and is subject to the 65-105R height/bulk district. High-density residential uses and supporting commercial and institutional uses are allowed within certain density controls and allowances for other use consideration through the conditional use process. The height and bulk controls for this site include a podium (base) height limit of 65 feet that is generally unrestricted in bulk, with any tower(s) rising above the podium limited to 105 feet and restricted in bulk by plan and diagonal dimensions.

#### Draft Waterfront Plan, p 29

##### *Zoning and Land Use Controls*

The Port works in close coordination with the San Francisco Planning Department to align policy and design reviews, so that new Port projects and improvements enhance and create positive additions to the city and its urban setting. The San Francisco Planning Code and City Zoning Map define zoning classifications and building height and bulk limit requirements for Port properties and new proposals.

#### San Francisco Administrative Code

More important than the Request for Proposal requirements, the San Francisco Administrative Code prohibits the Port of San Francisco or the Port Commission to take action, ***any action and any other action***, on a project that exceeds the waterfront height limits, unless approved by the San Francisco voters. The Port-selected proposal did not include this required voter approval to enable the Port of San Francisco or the Port Commission to take action on it, which they (mistakenly) did on September 22, 2020. This action is especially troubling when all other proposals complied with the waterfront height limits, and two of the proposals even offered standalone, pier-only solutions. Specific Administrative Code citations follow.

#### Sec. 61.5.1. Waterfront Height Limit Right to Vote Requirement. (Proposition B)

- (a) No city agency or officer may take, or permit to be taken, any action to permit development located in whole or in part on the waterfront to exceed at any point the building and structure height limits in effect as of January 1, 2014, which are set forth in San Francisco Planning Code Article 2.5, unless a



height limit increase for the development has been approved by a vote of the electors of the City and County of San Francisco.

Sec. 61.6. Definitions.

- (a) "City agency or officer" means the Board of Supervisors, and all other city commissions, boards, officers, employees, departments or entities whose exercise of powers can be affected by initiative.
- (b) "Action" includes, but is not limited to:
  - (1) Amendments to the Planning Code and General Plan;
  - (2) Issuance of permits or entitlements for use by any City agency or officer;
  - (3) Approval, modification or reversal of decisions or actions by subordinate City agencies or officers;
  - (4) Approval of sales or leases pursuant to Sections 7.402 and 7.402-1 of the Charter of the City and County of San Francisco;
  - (5) Approval of or amendments to Redevelopment Plans; and
  - (6) Any other action, including but not limited to projects as defined in Public Resources Code Section 21065.

Public Resources Code

Division 13. Environmental Quality

Chapter 2.5 Definitions

Section 21065

"Project" means an activity which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, and which is any of the following:

- (a) An activity directly undertaken by any public agency.
- (b) An activity undertaken by a person which is supported, in whole or in part, through contracts, grants, subsidies, loans, or other forms of assistance from one or more public agencies.
- (c) An activity that involves the issuance to a person of a lease, permit, license, certificate, or other entitlement for use by one or more public agencies.

For Piers 30-32 and SWL 330, tall, massive, large-scale "commodity" real estate development on our waterfront is not the priority, nor what the citizens of San Francisco and the South Beach community have indicated that they want. They have indicated and they have directed the Port to enforce the building height limits. As Port Commissioner Adams declared, "I heard the public. We're in for a fight. This is going to be a fight." We agree, and it should not even start. The Port has already learned this painful zoning and building height lesson, more than once. Why repeat it, especially when the Port has limited resources and an infrastructure-first priority?

Moreover, if you were keeping score at the recent Commission meeting, a small preview of any potential main fight event, the public opposed the selected proposal 11 to 1. Meanwhile, given her preexisting consulting relationship with the respondent for the Port-selected proposal, Port Commissioner Gilman recused herself from the selection process, which should have occurred months earlier. She had already commented on the RFP strategy and the informational session for the selected proposal at previous Commission meetings.

**REQUEST FOR SAN FRANCISCO PORT COMMISSION TO RESCIND RESOLUTIONS 20-37 & 20-45**

In summary, with respect to both RFPs, any subsequent revisions to the Port-selected proposals to comply with the original RFP requirements, resiliency for Piers 38 & 40 and zoning & building heights for Piers 30-32, would be inconsistent with a fair and equitable RFP process, and a clear indication that the proposals

were indeed, originally non-responsive. Moreover, in the case of the Piers 30-32 and SWL 330 RFP, the Port of San Francisco and the San Francisco Port Commission already (mistakenly) took action on the selected proposal in direct violation of the San Francisco Administrative Code.

Respectfully, given these significant and material non-responsive findings for the Port-selected proposals, as enumerated herein, we request that the Port Commission rescind the previously adopted Resolutions 20-37 and 20-45. These proposals do not deliver positive and complete redevelopment solutions for the piers and seawall lot, do not authentically benefit the South Beach community, the Port of San Francisco, and the City of San Francisco, and do not comply with the Request for Proposals, Draft Waterfront Plan, and San Francisco Administrative Code.

Thank you for the opportunity to share these significant findings and our perspective with you and for your timely attention and consideration of this important matter. Our locally based, EPX2 expert team continues to look forward to building our relationship and partnering with you and the Port, while having the opportunity to enhance our urban waterfront built environment together, while preventing natural disasters to our beloved Embarcadero Historic District and our City.

Additional detailed information is available on our website for The Cove at [www.pier30.com](http://www.pier30.com), including complete and transparent, downloadable files of our Resiliency Model and Vision. Let's get down to earth at The Cove. 🌍

If you have any questions, please do not hesitate to contact me.

Best regards,

A handwritten signature in black ink, appearing to read 'Art'.

Art Thompson  
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