PORT COMMISSION CITY AND COUNTY OF SAN FRANCISCO

RESOLUTION NO. 12-35

- WHEREAS, Charter Section B3.581 empowers the Port Commission with the authority and duty to use, conduct, operate, maintain, manage, regulate and control the lands within the Port of San Francisco ("Port") jurisdiction; and
- WHEREAS, In February 2010, BMW Oracle Racing, sailing for the Golden Gate Yacht Club (together, the "Team"), won the 33rd America's Cup in Valencia, Spain; and
- WHEREAS, The Team, as Defenders of the America's Cup, has the right and duty to organize and hold the 34th America's Cup sailing regatta, and has created the America's Cup Event Authority LLC (the "Authority") for such purpose; and
- WHEREAS, Over the course of 2010, the Authority on behalf of the Team and the City and the Port negotiated the terms of a bid for the City and County of San Francisco (the "City") to be the host city for the 34th America's Cup (the "Match"), the Louis Vuitton Cup, and certain related regattas in 2012 and 2013 (together, the "Event"); and
- WHEREAS, In furtherance of those negotiations, supporters of bringing the Event to San Francisco established the America's Cup Organizing Committee (the "ACOC"), a nonprofit public benefit corporation which includes civic and corporate leaders from throughout the Bay Area, California and the nation, as well as a bipartisan honorary committee including elected and appointed representatives from our local, state and federal governments; and
- WHEREAS, On December 14, 2010, by its Resolution No. 585-10, the Board of Supervisors approved the terms of a 34th America's Cup Host and Venue Agreement (subject to further addition, amendment or modification under certain conditions) and other aspects of the City's bid to host the Event (the "Host Agreement"); and
- WHEREAS, In addition to approving the terms of a Host Agreement, in adopting Resolution No. 585-10 the Board of Supervisors made the following findings:
 - (a) In response to identified negative financial impacts to the Port that could result from hosting the Event, Resolution No. 585-10 referenced a range of potential solutions, including using Charter Section B7.320 to offset race-related, net short-term rent reductions to the Port, financing certain City costs to prepare venues for the Event with City certificates of participation, and City financing for

waterfront improvements to offset reductions in the Port's revenue bond capacity, subject to the review and approval of the City's Capital Planning Committee, the Mayor and the San Francisco Board of Supervisors, as applicable;

- (b) In Resolution No. 585-10 the Board of Supervisors found that hosting the 34th America's Cup in San Francisco would generate significant public benefits for the City including: (1) the repair, improvement and productive reuse of certain City piers along the City's waterfront that are currently in a state of disrepair; (2) the generation of significant new jobs and economic development in a very short period of time; and (3) new opportunities for people to access, view and enjoy the San Francisco Bay as part of an extraordinary showcase for the Bay to the world; and
- (c) In Resolution No. 585-10 the Board of Supervisors found that the plan to undertake and implement the Event is fiscally feasible and responsible under San Francisco Administrative Code Chapter 29; and
- WHEREAS, On December 31, 2010 the Team selected San Francisco as the host city for the Event, subject to execution of the Host Agreement by the City, the Event Authority and ACOC, reflecting the terms negotiated by the parties within the authorization provided by Resolution No. 585-10; and
- WHEREAS, The executed Host Agreement is on file with the Clerk of the Board in File No.101259; and
- WHEREAS, The Port has participated with the City in negotiations with the Authority in furtherance of Host Agreement; and
- WHEREAS, As contemplated by the Host Agreement, the City completed a planning and environmental review process for the 34th America's Cup races and related activities (the "Event") and prepared Final Environmental Impact Report ("Final EIR") and provided for appropriate public hearings before the Planning Commission, the Port Commission and other City commissions with an Event implementation role; and
- WHEREAS, On December 15, 2011, the Planning Commission by Motion 18514 certified the completion of the Final EIR in compliance with CEQA and the CEQA Guidelines; and
- WHEREAS, On December 16, 2011, the Port Commission adopted CEQA Findings, and a Mitigation Measure Reporting Program by Port Commission Resolution No. 11-79, and approved the 34th America's Cup Project as described in the Final EIR, involving the Authority's use of Piers 26, 28, 30-32, 19, 19½, 23, 27-29, 29½, Seawall Lot 330, a portion of Pier 80, and certain water areas by Resolution No. 11-80 for the Event, and the Port

grant to the Authority of certain long-term development rights to the Authority in consideration of capital improvements to Port property by the Authority; and

- WHEREAS, Since the Port Commission's action, Port and City staff have negotiated a more consolidated plan for the Authority's use of Port venues for the Event, including Port construction of Event-related improvements to City property without a City obligation to provide long-term development rights to the Authority, and have proposed to the Authority indemnification and insurance obligations and limitations of each party's liability to the other under the new plan, all as set forth in a Lease Disposition Agreement between the City, through its Port, and the Authority (the "LDA"); and
- WHEREAS, The LDA sets forth terms under which the Port will permit the Authority to use Piers 30-32, 9 (South apron), 19, 19½, 23, 27-29, and 29½, and adjacent water areas, 200 square feet of Pier 45 roof space, Brannan Street Wharf, water areas between Pier 32 South and Pier 36 and along Pier 14 North, all located along The Embarcadero waterfront; and a portion of Pier 80, located along the north side of Islais Creek, east of Illinois Street (each a "Venue") for Event-related purposes, as further described in the accompanying Staff Memorandum for Agenda Item 9A ("LDA Staff Memorandum"); and
- WHEREAS, Pursuant to the LDA, the Port will deliver each Venue rent-free to the Authority under a Venue Lease or Venue License using the form venue lease and venue license as further described in the LDA Staff Memorandum and Exhibit C thereto, with each Venue Lease or Venue License subject to existing Port Commission and City policies as described therein, including the Port's Environmental Risk Management Policy (Resolution No. 07-81), except that the Authority shall not be required to replenish the Letter of Credit required pursuant to the policy if the Port draws upon the Letter of Credit; and
- WHEREAS, If the Port cannot deliver a Venue, and the Authority so elects, the Port will deliver any functionally-equivalent space required pursuant to the LDA rent-free under a Venue Lease or Venue License, subject to any required approvals including analysis pursuant to CEQA; and
- WHEREAS, All of the Venues are subject to the common law public trust for commerce, navigation, and fisheries and the statutory trust imposed by the Burton Act, Chapter 1333 of the Statutes of 1968, as amended, by which the State of California conveyed to the City the State's interest in certain tidelands, in trust and subject to certain terms, conditions and reservations (collectively, the "Public Trust"); and
- WHEREAS, The proposed LDA replaces Sections 5, 6, 15, 17.4 and 17.5 of the Host Agreement in their entirety, deletes Section 7, and adds Section 2.5, incorporating into the Host Agreement a Memorandum of Agreement

regarding the City's and the Authority's respective obligations for "Project Sponsor" mitigation measures in the MMRP (the "Mitigation Measure MOA"); and

- WHEREAS, The proposed LDA amends the Host Agreement's financial structure, creating a new structure where the Port finances and performs Event-related infrastructure improvements to its property, and the Authority installs temporary improvements such as floating docks, moorings and tents, and eliminating any long-term development rights; and
- WHEREAS, After reviewing these modifications, the Environmental Planning Division of the Planning Department issued a Note to File regarding Changes to the Final EIR, dated March 20, 2012, describing the potential environmental effects of the proposed Event modifications compared to the impacts identified in the Final EIR, and demonstrating that the proposed Event modifications would not result in any new significant environmental impacts or a substantial increase in the severity of previously identified environmental effects or require any new mitigation measures; and
- WHEREAS, Under Section 9.3 of the Host Agreement, the ACOC agreed to provide to the Event Authority an irrevocable letter of credit, or other financial guarantee issued by a surety, in form and by an issuer acceptable to the Authority in the amount of \$32 million to provide compensation to the Authority if either the City or the ACOC fails to perform its obligations under the Host Agreement; and
- WHEREAS, Section 2 of the Host Agreement includes a number of termination rights for the parties, and the proposed LDA includes as a condition precedent that all termination rights under Article 2 of the Host Agreement have expired or been waived; and
- WHEREAS, On March 27, 21012, by its Resolution No. 109-12, the Board of Supervisors:
 - (a) upon review and consideration of the information contained in the Final EIR, the Note to File, all written and oral information provided by the Planning Department, the public, relevant public agencies, and the administrative files for the AC34 Project and the Final EIR, found that no changes had occurred or new information arisen with respect to the Project that would require changes or additions to the Final EIR, and adopted CEQA Findings, including a Statement of Overriding Considerations and a Mitigation Measure and Reporting Program;
 - (b) approved the proposed LDA as an amendment to the Host Agreement;

- (c) reaffirmed and approved the Host Agreement, including the allocation of responsibilities under the Mitigation Measure MOA;
- (d) conditioned its approval of the LDA on the following conditions:
 - The Authority must accept the form and manner by which the ACOC proposes to satisfy its obligation to provide security to the Authority under Section 9.3 of the Host Agreement and agree to revise or waive the ACOC security requirement, including any right to terminate the Host Agreement;
 - (ii)
 - The City and the Authority must agree to final crossindemnity and insurance provisions relating to all Eventrelated activities in the City, all as approved by the City's Risk Manager, that are no less protective than the following standards: (A) commercial general liability coverage for Event-related risks in an amounts deemed sufficient by the City's Risk Manager, but not less than those reflected in the LDA on file in Board of Supervisors File No. 120127, and (B) insurance coverages for the Authority's specialized activities and third-party users of City property in amounts deemed sufficient by the City's Risk Manager;
 - (iii) The Authority and the City must agree on reciprocal limitations on liability and grant releases to each other that protect the General Fund and the Port Harbor Fund from exposure under the Host Agreement, the LDA, the Venue Leases and Venue Licenses, and any other permit or contract under which the Authority will occupy and use City property, by limiting each party's liability to the other party to the amount of available proceeds of insurance plus the available proceeds under security given by either party for its obligations under the Host Agreement, including any security for Authority obligations and the ACOC security; and
 - (iv) The Authority must provide a guaranty or other security for its obligations under the Host Agreement in form and substance approved by the City's Risk Manager and the City Attorney;
- (e) approved the Project as described in the Final EIR and Note to File, the Amended Host Agreement and the Implementation Plans, and directed that the LDA as revised consistent with its resolution be returned to the Port Commission for its consideration;
 - (f) upon the Port Commission's approval the proposed LDA, if revised consistent with the Board of Supervisors' resolution, authorized and

directed the Executive Director to execute the LDA in final form (approved by the Executive Director in consultation with the City Attorney and the City's Risk Manager;

- (g) further authorized the Executive Director to enter into any additions, amendments, or other modifications to the LDA, attached exhibits. or related documents, that the Executive Director, in consultation with the City Attorney, the Controller, the Director of the City's Office of Economic and Workforce Development (the "OEWD Director"), and the City's Risk Manager, determines are in the best interests of the City, and otherwise do not materially increase the obligations or liabilities of the Port or the City or materially decrease the public benefits accruing to the Port or the City, and are necessary or advisable to complete the transactions which the LDA contemplates and to effectuate the purpose and intent of the Board of Supervisors' resolution, such determination to be conclusively evidenced by the execution and delivery of the LDA and any amendments to the LDA by the Executive Director;
- (h) directed the America's Cup Project Director and the Executive Director, as applicable, to provide the following progress reports:
 - to the Board of Supervisors on or before April 30, 2012, an update on whether and in what form the ACOC security instrument called for under Section 9.3 of the Host Agreement has been delivered and accepted by the Event Authority in full satisfaction of Section 9.3 of the Host Agreement;
 - (ii) to the City Controller and the Budget & Finance Committee of the Board of Supervisors on a quarterly basis, a report on (A) ACOC fundraising and transfers of such revenues to the City; (B) Port infrastructure expenditures in preparation for the Event; and (C) City operating expenditures for the Event; and
 - (iii) if ACOC does not contribute \$32 million to offset the City's Event costs, a proposal for cost saving measures for the City to offset any shortfall from Event-related tax and fundraising revenues;
 - (j) authorized and urged the Executive Director, the OEWD Director and any other appropriate officers, agents or employees of the City to take any and all steps (including, but not limited to, the execution and delivery of any and all certificates, agreements, permits, notices, consents and other instruments or documents), as they or any of them deems necessary or appropriate, in consultation with the City Attorney, in order to consummate the transactions in

accordance with the Board of Supervisors' resolution, or to otherwise effectuate its purpose and intent, such determination to be conclusively evidenced by the execution and delivery by any such person or persons of any such documents; and

- (k) approved, confirmed and ratified all prior actions taken by the officials, employees, and agents of the Port Commission or the City with respect to the transactions, plans and agreements described in the Board of Supervisors' resolution; and
- WHEREAS, The Board of Supervisors adopted Ordinance No. 53-12 on April 10, 2012 waiving certain City contracting requirements and authorizing the Port to enter contracts to perform the Event-related improvements, which Mayor Ed Lee signed on April 12, 2012; and
- WHEREAS, Port staff has evaluated the proposed scope and costs associated with the proposed improvements to Port property and has recommended a financing and contracting approach to deliver the improvements within the time frames contemplated by the LDA; and
- RESOLVED, That the Port Commission finds that the Event is trust-consistent in that it is short-term and promotes Public Trust objectives, including maritime activities, as described in the Charter and the Public Trust; and be it further
- RESOLVED, That the Port Commission approves the proposed LDA if revised consistent with Board of Supervisors Resolution No. 109-12 and the transactions that the LDA contemplates, incorporating the business terms set forth in the LDA Staff Memorandum; and be it further
- RESOLVED, That the Port Commission authorizes and directs the Executive Director to execute the LDA in final form approved by the Executive Director in consultation with the City Attorney and the City's Risk Manager as consistent with Board of Supervisors Resolution No. 109-12; and be it further
- RESOLVED, That the Port Commission authorizes the Executive Director to enter into any subsequent amendments, additions, or other modifications to the LDA (including the exhibits or related documents) that the Executive Director, in consultation with the City Attorney and, as appropriate for the risk and subject matter for the changes, the Director of the City's Office of Economic and Workforce Development (the "OEWD Director"), the Controller, and the City's Risk Manager, determines are in the best interests of the City, reflect the terms by which the Port Commission approved the LDA, and otherwise do not materially increase the obligations or liabilities of the Port or the City or materially decrease the public benefits accruing to the Port or the City, and are necessary or advisable to complete the transactions which the LDA contemplates and

to effectuate the purpose and intent of this resolution, such determination to be conclusively evidenced by the execution and delivery by the Executive Director of any amendments to such document; and be it further

- RESOLVED, That the Port Commission approves the form of Venue Lease described in the LDA Staff Memorandum and Exhibit C thereto and substantially in the form on file with the Commission Secretary, authorizes the Executive Director to use the form Venue Lease to create a form Venue License and authorizes the Executive Director to use such forms to prepare and execute specific Venue Leases and Venue Licenses with the Authority for each Venue or functionally equivalent space, and with respect to such Venue Leases and Venue Licenses, authorizes the Executive Director to enter into any subsequent amendments, additions, or other modifications (including the exhibits or related documents) that the Executive Director, in consultation with the City Attorney determines are in the best interests of the City, and otherwise do not materially increase the obligations or liabilities of the Port or the City or materially decrease the public benefits accruing to the Port or the City, and are necessary or advisable to complete the transactions which this Resolution, such determination to be conclusively evidenced by the execution and delivery by the Executive Director of any amendments to such documents; and be it further
- RESOLVED, That the Port Commission authorizes and urges the Executive Director, the OEWD Director, and any other appropriate officers, agents, or employees of the City to take any and all steps (including, but not limited to, the execution and delivery of any and all certificates, agreements, permits, notices, consents and other instruments or documents), as they or any of them deems necessary or appropriate, in consultation with the City Attorney, in order to consummate the transactions in accordance with this resolution, or to otherwise effectuate the purpose and intent of this resolution, such determination to be conclusively evidenced by the execution and delivery by any such person or persons of any such documents; and be it further
- RESOLVED, That the Port Commission directs the Executor Director to coordinate with the America's Cup Project Director in providing to the Board of Supervisors the progress reports required by Resolution No. 109-12; and
- RESOLVED, That the Port Commission authorizes the Executive Director or her designee to represent and bind the Port by representations and information submitted as part of securing authorization to perform the required permanent and temporary installations on Port property, subject to approval by the U.S. Army Corps of Engineers, National Oceanic and Atmospheric Agency Fisheries Service, the California Department of Fish & Game, the San Francisco Bay Regional Water Quality Control Board and the San Francisco Bay Conservation and Development Commission and any other agency with jurisdiction over planned improvements to Port property; and be it further

RESOLVED, That the Port Commission approves, confirms and ratifies all prior actions taken by the officials, employees, and agents of the Port Commission or the City on behalf of the Port Commission with respect to the transactions, plans, and agreements described in this resolution, except Port Commission Resolution No. 11-80, which is superseded by this resolution.

I hereby certify that the foregoing resolution was adopted by the Port Commission at its meeting of April 24, 2012.

Julius and Secretary



Policy Context

state that provides special maritime, and historical benefits to the people navigational, recreational, cultural, The San Francisco waterfront is a valuable public trust asset of the of the region and the state.



Policy Context

- Establish San Francisco Bay's identity as a world-class venue for sailing.
- Improve waterfront public access.
- Upgrade Port venues, including Piers 30-32.
- Emphasize Bay and natural resource stewardship.
- Generate new demand for Port retail and maritime tenants.
- Facilitate the James R. Herman Cruise Terminal and Northeast Wharf Plaza projects.
- Generate substantial local employment during the Event.

Port Commission Requested Actions

- Adopt revised CEQA Findings and a Mitigation Monitoring and Reporting Program
- Authorize the Port Director to enter a Lease Disposition Agreement (LDA)
- Authorize the Port Director to enter Venue Leases pursuant to the LDA at the following locations:
- Piers 27, 29 & 291/2
- Piers 19, 19½ & 23
- Pier 9 (south apron)*
 - Pier 14 north**

- Pier 45 roof space
 - Piers 30-32
 - Pier 80
- * Subject to renegotiation w/existing tenants, and only if needed

** Only if needed

Findings: As described in the EIR and CEQA Findings, the Project Changes: Changes were made in response to: 34th America's Cup Project has been refined. **Changes through CEQA**

- Adjustments learned from race events
- Authority and America's Cup Race Management commitments to clean vessels and equipment
 - Other Project refinements
- DEIR information about environmental effects
- regulatory agencies, and through the City interagency Comments from the public, organizations, and Elimination of long-term development rights coordination

>

Lease Disposition and Development Agreement

- Specifies Port obligations to improve Port property for the Event;
- delivery (starting as early as May 1, 2012) and return Governs the conditions for delivery of the Venues to the Authority under Venue Leases and the dates for (ending as late as March 15, 2014); and
- Sets forth provisions to protect the City's General Fund and the Port Harbor Fund from liability.

Port Infrastructure Work

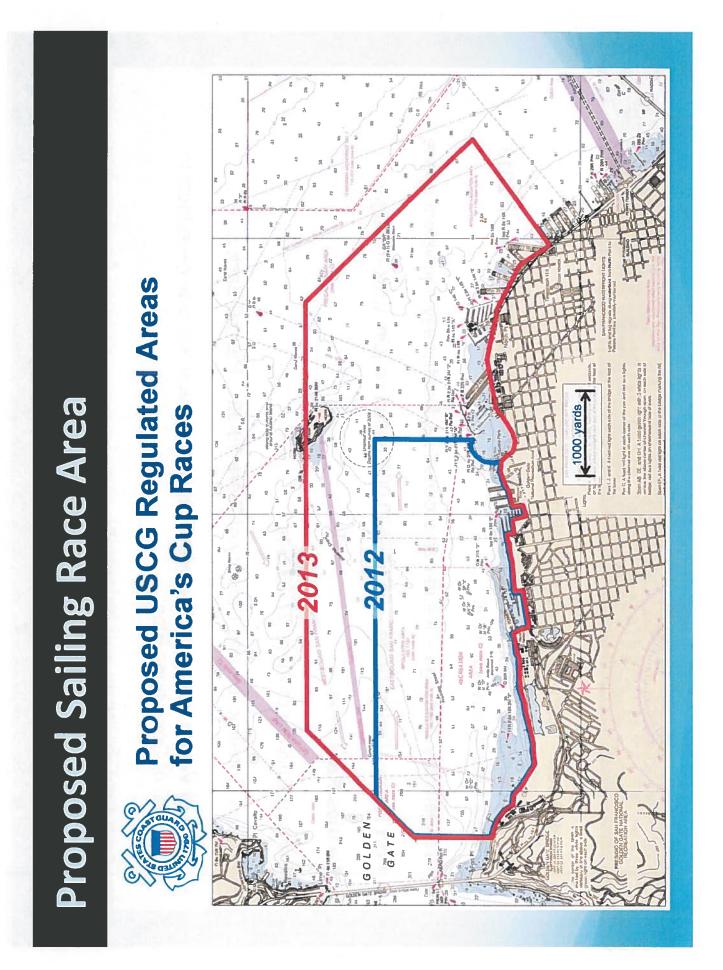
Location	Required Improvement	Delivery Date
Pier 27	Cruise Terminal Phase I	3/1/13
	Relocate shoreside power	2
Pier 36	· Demolition/removal	1/1/13
Brannan Street Wharf	Complete park construction	6/30/13
	Marginal wharf repairs	
	· H15 driveway to center of piers	Phased
	. Tower crane pad	delivery to
•	 Structural improvements to 90,000 sf of Pier 32 (H10 loading) 	date the
Piers 30-32	Slurry seal or patch 190,000 sf of Pier 32 deck	2012
	· 25,000 lbs of container leveling beams	World
•	 Electrical transformer, if feasible 	Series
	Water/sewer repair or capping	1/15/13
	Stormwater improvements	
•	Demolish Pier 27 Shed	
	Demolish Pier 27 Annex Building	
Piers 27-29	Stormwater improvements	3/1/13
· · · · · · · · · · · · · · · · · · ·	Pier 29 substructure/pile repairs	Station of the
•	Demolish a small portion of Pier 29 and reconstruct end wall	

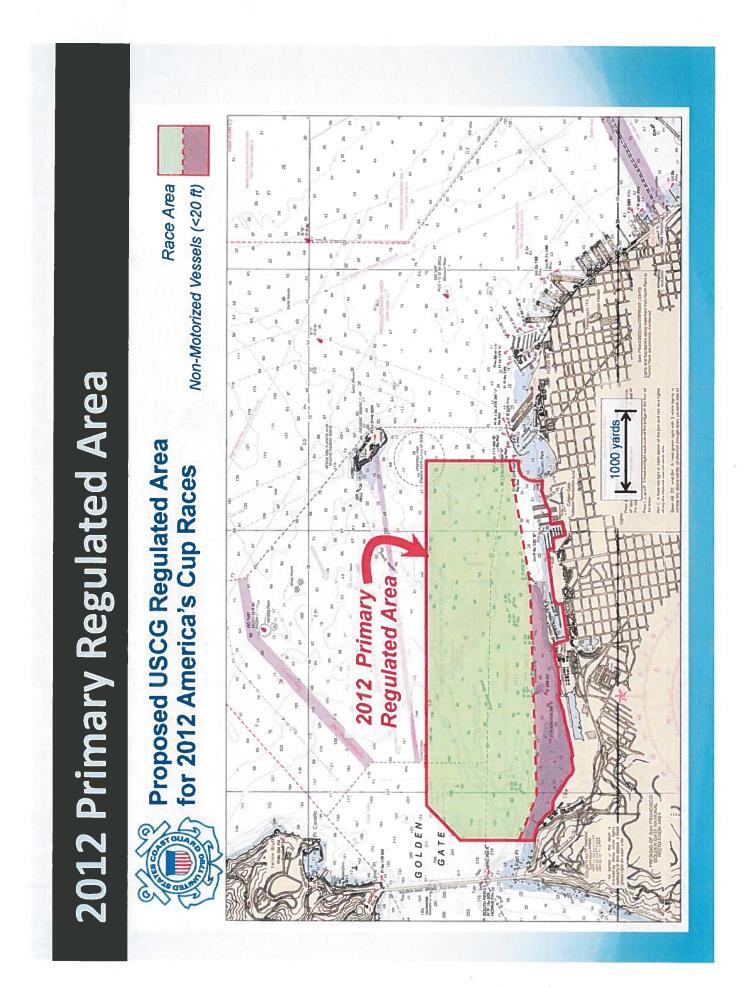
Port Infrastructure Work

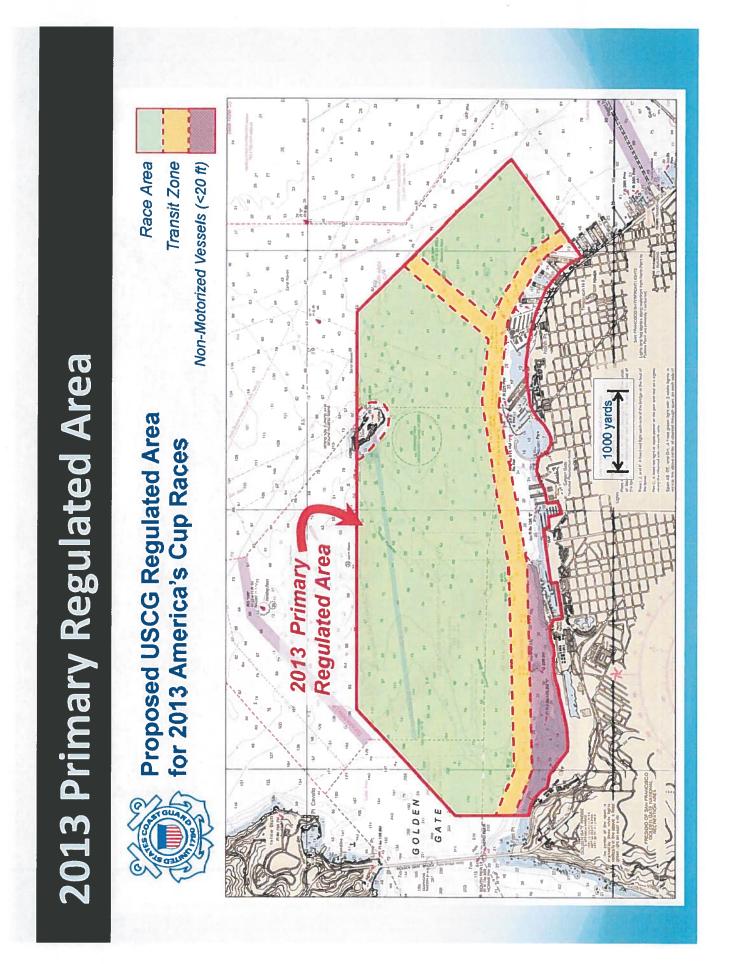
Dior 10	Table 1 (cont): Port Infrastructure and Dredging Obligations Under the LDA	
	South apron repair	3/31/13
Pier 23	Electrical upgrades	3/31/13
Pier 64	Pile removal and nesting platform	3/31/14
Pier ½	Demolition/removal	3/31/13
Dredge Location Dre	Dredge quantity	Delivery Date
Piers 32-36 Brannan St. Open Water Basin	3,210 cy	11/30/12
Pier 9 South 9,8	839 cy (only if needed, subject to renegotiation)	7/1/13*
Pier 14 North 9,9	900 cy (only if needed)	7/1/13*

Lease Disposition Agreement

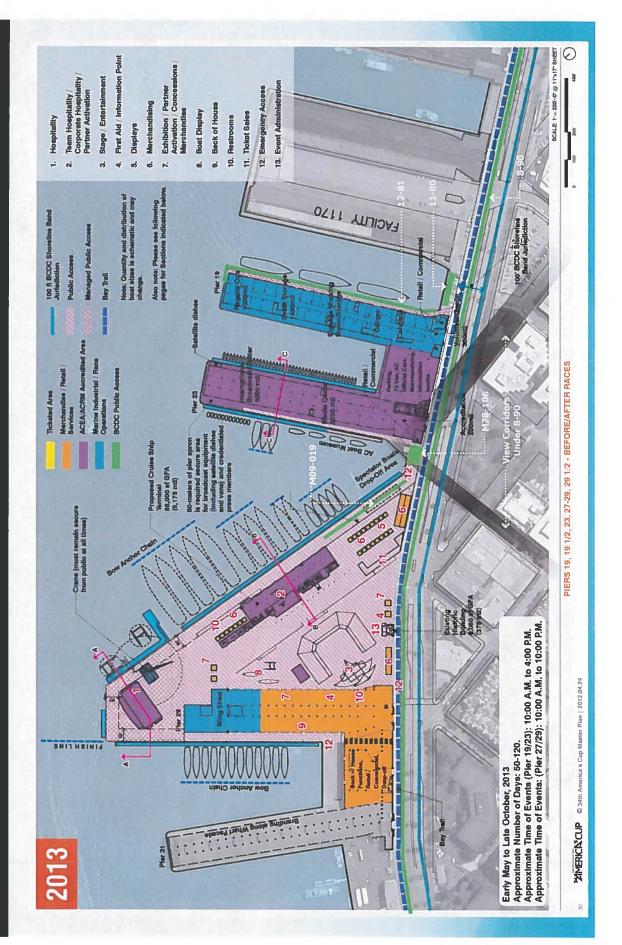
- Fleet Week Piers 30-32 coordination
- Cruise Berthing 5 authorized dates at Piers 30-32 in 2012, dates in 2013 subject to Authority approval
- Pre-Delivery Damage insurance proceeds & functionally equivalent space
- Port Repair Obligations up to \$500,000 based on joint walk-throughs
- Venues Rent Free
- · Phased Delivery of Piers 27-29 Site
- Phased Construction and Delivery of Piers 30-32 Pier 80 Backup
- Form of Venue Lease on File with Port Commission Secretary subject to approval of Operations Plan
- Insurance, Security and Indemnity

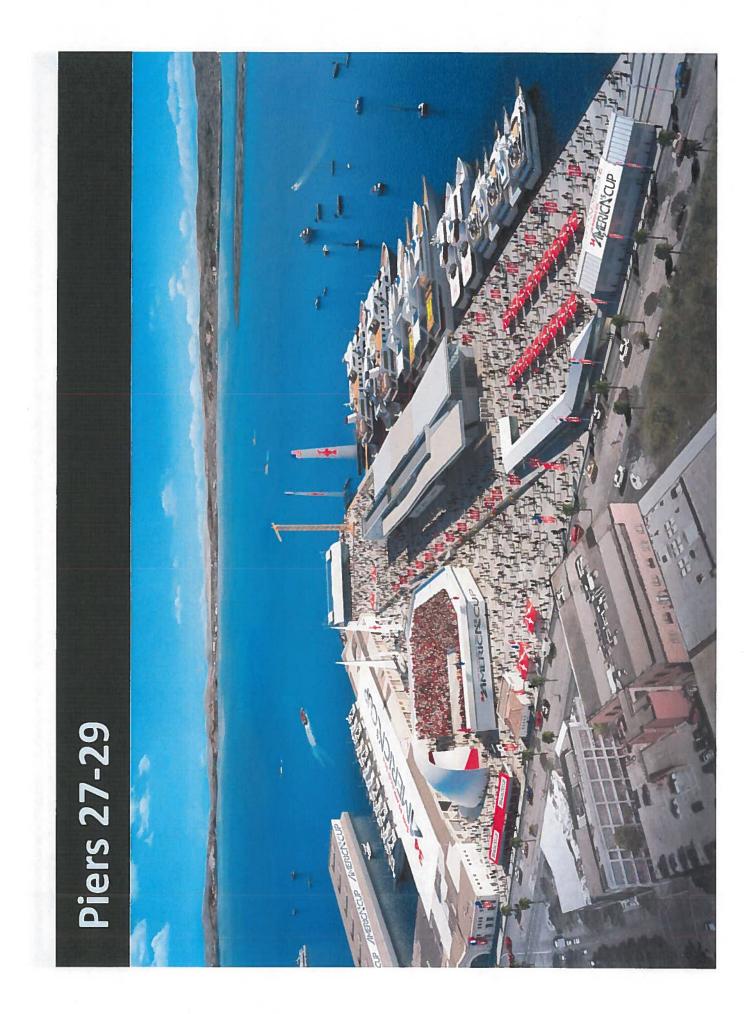




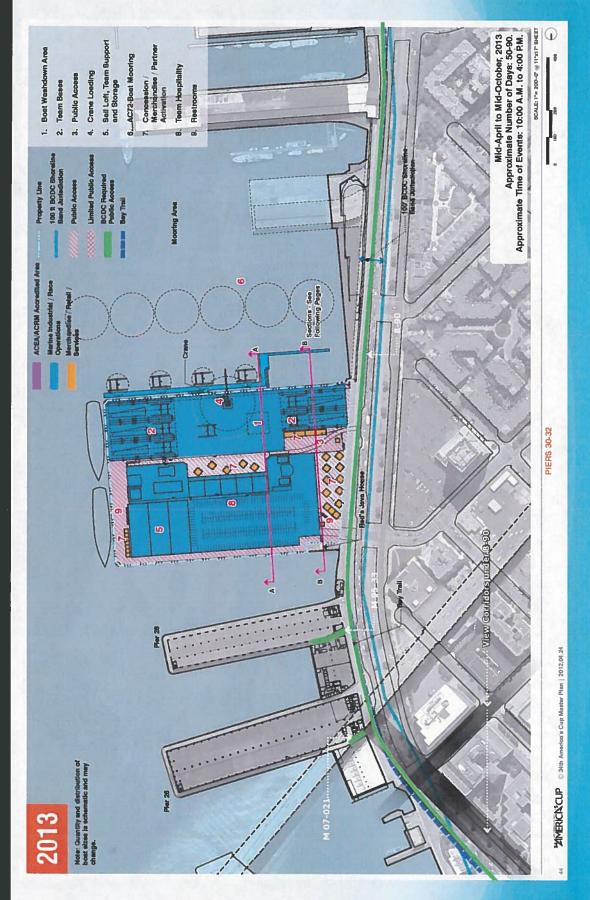


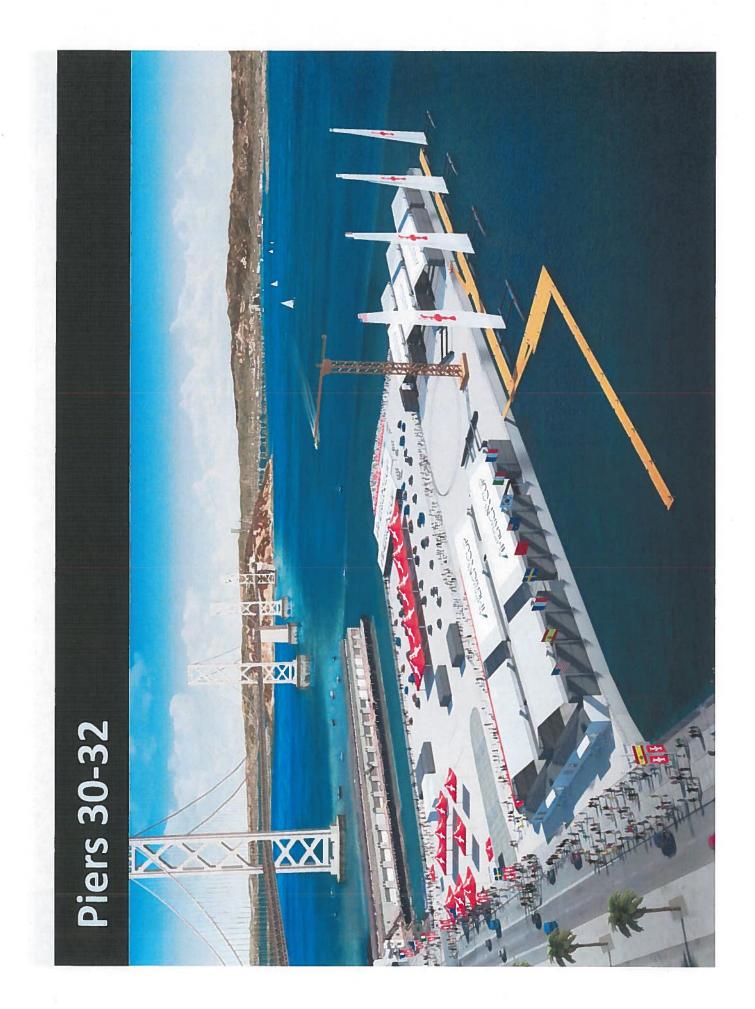


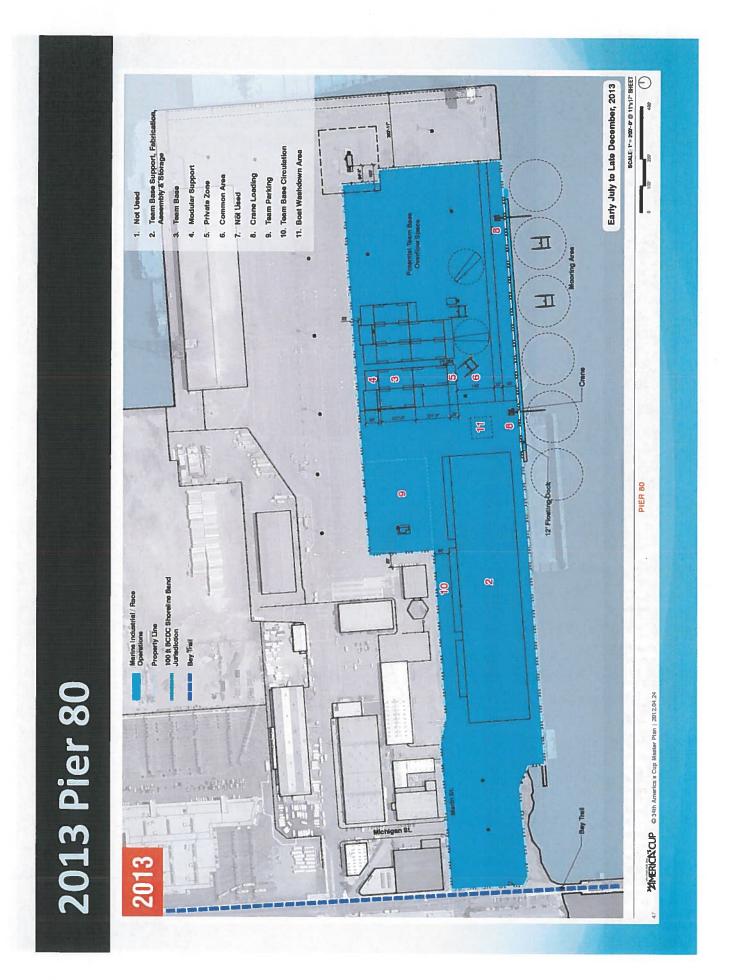




2013 Piers 30-32







	and Proposed LDA	Proposed LDA	\$25.1 M	COP proceeds repaid by retained rents	\$0	
'sis	Table 2: Comparison of Former DDA and Proposed LDA	Prior DDA	\$111.3 M	Private funds, 11% interest	\$3.9 M per year	
Financial Analysis	Table 2: Compar		Estimated Capital Costs	Source of Funding	Lost Long Term Rent	

Recommendations

- Approve the Project, as modified through negotiation and the CEQA process and adopt a Mitigation, Monitoring and Reporting Program.
- Approve the LDA: Authorize the Port Executive Director to enter the LDA on behalf of the Port.
- consistent with the Form of Venue Lease on file with the Port Approve the Form of Venue Lease: Authorize the Port Executive Director to enter the Venue Lease in a form Commission Secretary.

Appreciation

Race Management for their help, state and federal agency staff, and the America's Cup Event Port staff wishes to thank the Authority and America's Cup Port Commission, City staff, commitment, and expertise.