May 2015

Creating Middle Harbor Shoreline Park

Jim McGrath
San Francisco Bay Regional Water Quality Control Board

Follow this and additional works at: http://digitalcommons.law.ggu.edu/gguelj

Part of the Environmental Law Commons

Recommended Citation
http://digitalcommons.law.ggu.edu/gguelj/vol8/iss1/6

This Article is brought to you for free and open access by the Academic Journals at GGU Law Digital Commons. It has been accepted for inclusion in Golden Gate University Environmental Law Journal by an authorized administrator of GGU Law Digital Commons. For more information, please contact jscherr@ggu.edu.
I. INTRODUCTION

The Port of Oakland in California created Middle Harbor Shoreline Park as part of an effort to modernize the Port to accommodate a new generation of wider, longer, and deeper container ships. Although the Port is the fifth busiest container port in the United States, it had limited depth, no longer provided efficient rail service, and was nearing its maximum shipping capacity. By the mid 1990s every large container port on the West Coast offered ships an industry-standard channel depth of fifty feet. At a depth of only forty-two feet, the Port of Oakland was the lone exception. Failure to increase the channel depth and capacity at the Port meant that cargo destined for Oakland was instead shipped to Southern California or the Pacific Northwest and then delivered to the San Francisco Bay Area by truck or train.

The Port took several steps to increase shipping capability, including the acquisition of the former United States Navy Fleet Industrial Supply Center, Oakland ("FISCO"). As modernization plans were

---

*Jim McGrath spent sixteen years as an Environmental Manager at the Port of Oakland before retiring in 2005. Mr. McGrath worked in the environmental field for more than thirty years, starting with the United States Environmental Protection Agency in 1972, followed by the California Coastal Commission. Mr. McGrath is currently a Vice-Chair of the San Francisco Bay Regional Water Quality Control Board and spends more than 120 days each year on San Francisco Bay.


2 2 U.S. ARMY CORPS OF ENG'RS, PORT OF OAKLAND, OAKLAND HARBOR NAVIGATION IMPROVEMENT (-50 Foot) PROJECT, DRAFT ENVIRONMENTAL IMPACT STATEMENT/ENVIRONMENTAL IMPACT REPORT 1-6 (1998).

3 Id. at 1-3.

4 Id.

5 Id. at 1-7.

developed, the Port’s Environmental Department (“Port Staff”) convinced Port management that improved access to the Oakland waterfront and restoration of natural marine habitat would be necessary to accelerate planned growth. To achieve a modern shipping facility, waterfront access, and habitat restoration, the Port had to meet federal and state requirements while negotiating the competing interests of local citizen groups and environmentalists. The Port understood that going above and beyond minimum legal requirements would allow the project to gather support from necessary stakeholders and minimize delay. By finding common ground through cooperative planning, the Port was able to efficiently move complex projects through legislative and social barriers to completion.

This Article is a remembrance of the collaborative planning efforts that led to the creation of Middle Harbor Shoreline Park in Oakland. As the Article proceeds, it will shift between a third-person account and a first-person narrative recorded by the author, who served as manager of the Port of Oakland’s Environmental Department and led the planning efforts that resulted in the creation of Middle Harbor Shoreline Park. The author believes that to tell the story of the park’s creation, it is necessary to explain the controversies that surrounded its creation and to discuss the values and techniques that led to cooperation between the various parties interested in its development. Understanding these lessons offers an important model that will better ensure the efficient completion of future large projects along the San Francisco Bay waterfront.

II. THE PORT OF OAKLAND’S VISION 2000 REDEVELOPMENT

The Port of Oakland lies on the eastern side of the San Francisco Bay and consists of nineteen miles of waterfront property including “an Outer Harbor, a Middle Harbor, and an Inner Harbor.” The Port expanded its limited land-based operations in 1995, when 143 acres of former FISCO land were designated for closure under the Defense Base Closure and Realignment Act of 1990 (“BRAC”). The City of Oakland had deeded FISCO to the United States Navy in 1940 with a reversionary clause stating that the land would revert back to the Port if no longer needed for defense purposes. The Port reacquired the FISCO property, aided by the support of Congressman Ron Dellums and the intervention

---

8 2 U.S. ARMY CORPS OF ENG’RS, PORT OF OAKLAND, supra note 2, at 1-1.
10 2 U.S. ARMY CORPS OF ENG’RS, PORT OF OAKLAND, supra note 2, at 1-3.
Reacquiring the PISCO land was the first step toward developing a new intermodal terminal and construction of Middle Harbor Shoreline Park.

Redevelopment of FISCO was called “Vision 2000,” which the Port presented as an “Opportunity for the Next Century.” Vision 2000 was the umbrella name for a series of independent, but related, projects undertaken in cooperation between the State of California and the federal government. The Port served as the lead state agency and partnered with the United States Army Corps of Engineers (“Corps”), which served as the lead federal agency.

Vision 2000 consisted of three main projects: (1) the Oakland Harbor Navigation Improvement Project (“the -50 Foot Project”), which sought to deepen the Oakland harbor from forty-two feet to fifty feet; (2) the construction of a Joint Intermodal Terminal to increase rail efficiency; and (3) the development of a new marine terminal with the Berths 55 through 58 project (“marine terminal”). Under the marine terminal project, the Port developed five new berths for container ships and “create[d] public access and recreational facilities in the Middle Harbor area” on former FISCO lands. Although dredging of the -50 Foot Project was conducted by the Corps, and the Port was responsible for dredging the new marine terminal berths, reuse of the dredged material was handled as a joint project. Further, while each Vision 2000 project was independent of the others, the benefits the Port sought were maximized by cooperative implementation among all of the related projects.

Middle Harbor Shoreline Park opened shortly after completion of the -50 Foot Project and the new marine terminal in 2004. The Port transferred and redeveloped FISCO faster than any of the other San Francisco Bay Area military bases contemporaneously shuttered by BRAC, including Hamilton Army Airfield, Alameda Naval Air Station, Hunters Point Naval Shipyard, and Naval Station Treasure Island. The swift implementation of Vision 2000 was aided by a number of critical steps that ensured a broad base of support for the redevelopment.

12 Intermodal terminals use multiple modes of transportation to transfer freight between locations.
14 2 U.S. ARMY CORPS OF ENGR’RS, PORT OF OAKLAND, supra note 2, at 1-6.
15 Id. at 1-1.
16 Id.
17 Id. at 1-7.
18 Id.
First, the Port developed Vision 2000 with plans to both redevelop the FISCO lands and deepen Oakland’s Harbor. Second, the Port worked directly with stakeholders who wanted to restore marine habitat, provide public access to Oakland’s shoreline, decrease diesel emissions, and preserve FISCO’s historical and cultural resources. To accommodate these stakeholders, the Port created forums and listened to public concerns. Third, the Port worked closely with the Regional Water Quality Control Board to remediate contaminants and reuse soil during construction. Fourth, the Port made the strategic choice to be proactive in developing recreational facilities.¹⁹

Under the MacAteer-Petris Act, administered by the San Francisco Bay Conservation and Development Commission (“BCDC”), the Port’s redevelopment was required to include public access facilities.²⁰ The BCDC “may deny an application for a permit for a proposed project only on the grounds that the project fails to provide maximum feasible public access, consistent with the proposed project, to the bay and its shoreline.”²¹ When the Port’s engineering staff first laid out a footprint for the FISCO redevelopment it was clear that the land could accommodate five new container terminal berths along the Inner Harbor with sufficient land behind each berth for the necessary support equipment. This plan left portions of FISCO available for a new rail terminal, and a small area of land around the Port’s Middle Harbor for potential public access facilities.

To receive BCDC permits for the new berths, the Port needed to create public access to the shoreline, either by setting aside its own land for such access or by making funds available to provide access at other venues.²² Oakland citizens and the Waterfront Action Group lobbied the Port to choose better access to the Oakland shoreline, which would help complete the San Francisco Bay Trail.²³ It was clear that a portion of the FISCO shoreline would not be needed to support shipping facilities, and thus could be made available for public access.

¹⁹ The italicized passages in this Article are first-hand personal reminiscences of the author, who, during his tenure as manager of the Environmental Department at the Port of Oakland, was directly responsible for the planning of Middle Harbor Shoreline Park.


The high cost of Vision 2000, about $700 million, meant that a substantial public access project would be needed to satisfy the MacAteer-Petris Act. Determined to redevelop the base quickly, the Port decided not to engage in multiple rounds of negotiation regarding the public access requirements. Instead, Port Staff worked with local citizens to provide a substantial new park that would generously exceed the minimum area required. The BCDC found:

As part of the original project . . . a total of 40.4 acres of waterfront park will be provided at the M[iddle] H[arbor] S[horeline] Park. This very generous waterfront park will provide significant public access benefits that could easily constitute the maximum feasible public access consistent with the project.24

The Port started planning efforts for the park by hosting a community event, a design fair called “Envision a Park.” About 1,500 members of the local community attended and placed red dots on a board that listed the kinds of recreational facilities that they wanted to see at the new park. Following this, a Citizens’ Advisory Committee began to hold meetings about the park and public access. These efforts succeeded as the local community supported the redevelopment project. However, a number of other issues had to be resolved in order to create the park, including navigation of the BRAC process, and addressing the environmental impacts of the -50 Foot Project and the new marine terminals at FISCO.

III. PLANNING FRAMEWORK AND CHALLENGES

Normally, planning for a federal navigation project or a military base closure is a lengthy and cumbersome process, overseen by the responsible federal agency or agencies under complex regulations.25 Implementing plans to undertake federal projects is equally cumbersome, as even approved hazardous material cleanup projects rely on federal funding, which is subject to interruption. For example, the ongoing cleanup at

Naval Station Treasure Island is a contemporaneous BRAC closure that has no definite end in sight.26

Unlike other former military bases in the San Francisco Bay Area, FISCO was leased, and ultimately transferred to the Port, without going through the traditional BRAC process.27 Normally:

The [BRAC] and the Federal Property and Administrative Services Act of 1949 provide the basic framework for the transfer and disposal of military installations closed during the base realignment and closure . . . process. In general, property at BRAC installations is first subjected to screening for use by the Department of Defense and by other federal agencies. If no federal use for the property can be found or if an application for transfer is rejected, the property is deemed “surplus” to the needs of the federal government and made available for disposal through other mechanisms.

At this point, BRAC property is subjected to two simultaneous evaluation processes: the redevelopment planning process performed by a local redevelopment authority comprised of various interested representatives of the community affected by the BRAC action; and a Department of Defense analysis prepared under the aegis of the National Environmental Policy Act and, eventually, informed by the local redevelopment plan.

As a part of this process, screening of the property must be performed to determine if a homeless assistance use would be appropriate. There are also a variety of “public benefit transfers,” under which the property may be conveyed for various specified public purposes at reduced cost. It is also possible to dispose of BRAC property through the use of a public auction or negotiated sale, for which fair market value or a proxy for fair market value must generally be obtained. Finally the law governing the BRAC process authorizes economic development conveyances, through which a local redevelopment authority may obtain the property for specified purposes, sometimes for no consideration.28

Congressman Dellums knew that most of FISCO would ultimately be returned to the Port, so he requested that land be conveyed quickly in

27President Clinton, supra note 11; Dep’t of Toxic Substances Control, supra note 6 at 13–14.
order to generate local construction and shipping jobs. President Clinton agreed with Congressman Dellums, arranging an initial lease of FISCO to the Port, and the land was eventually transferred without going through the normal BRAC process.

FISCO did not go through the normal planning procedures that applied to nearby closure projects at the Oakland Army Base and the Alameda Naval Air Station. Unlike Vision 2000, the Oakland Base Reuse Authority had to establish the West Oakland Community Advisory Group in 1996 as part of its closure of the Oakland Army Base. No similar group was set up to review Vision 2000 because it was exempt from the BRAC process. However, the Group Chairman, George Bolton, and other members offered valuable input that helped plan Middle Harbor Shoreline Park, even as the Port faced several challenges to redevelopment.

Port Staff faced a number of distinct challenges when planning for reuse of FISCO. First, Port Staff had to convince management to proactively plan for a park along the waterfront rather than have it exacted as part of BCDC permit negotiations. Second, Port management sought an ambitious schedule for both the -50 Foot Project and the new marine terminal. Third, Vision 2000 needed to be financially feasible, which required the Port to go to the bond market in order to finance the entire project, which included all mitigation measures, and needed to fit within the necessary bond coverage margin. Fourth, with the Port looking to create habitat at Middle Harbor as part of the dredging project, it had to resolve concerns that public access would compromise newly created marine habitat.

The Port provided funds to plan the dredging project and took the lead studying the environmental impacts of the three Vision 2000 projects. The Port and the Corps set up a number of studies to deal with the most difficult issues, including (1) reuse or disposal of dredged material; (2) impacts on air quality; (3) public access needs as part of the marine terminals; (4) documentation, preservation, and mitigation of historic resources; and (5) characterization and reuse of contaminated sediments at the old base and rail yard.

---


30 See President Clinton, supra note 11.

IV. PORT OF OAKLAND REDEVELOPMENT ISSUES

A. PLANNING FOR REUSE OF DREDGED MATERIAL

Although the federal dredging project and the development of the marine terminals were planned together, they were separate projects governed by different legal standards and procedural requirements. The Port bore sole responsibility for dredging the marine terminal berths, while the Corps was responsible for dredging the harbor channels.32 Dredging in the San Francisco Bay is governed by many federal laws, including Corps Regulations,33 the Water Resources Planning Act,34 and the National Environmental Policy Act of 1969.35 Implementation of Corps Regulations was guided by Economic and Environmental Principles and Guidelines for Water and Related Land Resources Implementation Studies, as promulgated by the Water Resource Council.36 Under that guidance, the Corps had to select the project alternative that provided the greatest contribution to national economic development, while maintaining consistency with environmental protection principles.37 Further, the Fish and Wildlife Coordination Act required the Corps to give federal wildlife agencies a special continuing role throughout the planning process.38

Dredging of the marine terminal berths was expected to generate approximately five million cubic yards of marine sediments. An even larger amount of soil was to be removed from the shoreline to clean up contaminants and create an engineered fill base39 for the new marine terminal. Although the marine terminal was not a federal project, it was still subject to many of the same federal permit requirements as the -50 Foot Project, so executing both projects together facilitated a more efficient process.38

37 See id.
39 Engineered fill is a material, often soil or crushed stone, that is compacted and used to raise ground to a desired level before construction of surface structures.
Ideally, Port Staff wanted to reuse dredged material to create marine habitat. They also knew that material reuse also held the potential to break political logjams over dredging, because the Port had successfully worked with the California State Coastal Conservancy to restore wetlands at Sonoma Baylands during an earlier dredging project. However, most of the sediment dredged from the berths and harbor channels was fine-grained sand, which is not as effective as silt and clay for the creation or restoration of wetland plains. Sand is also more expensive to pump than silt and clay. The Port and the Corps embarked on a feasibility study to identify and evaluate alternative disposal sites for the sand. To get congressional approval for the project, the study had to meet the environmental standards of permitting agencies, as well as the minimum feasibility standards under Corps regulations.

When Port Staff began planning studies, one option suggested placing some of the dredged sandy material at the Middle Harbor. Historic photos and charts showed that Middle Harbor had been a mixture of shallow water and intertidal habitat until it was dredged and the material used to construct FISCO. Representatives for the National Marine Fisheries Service, the United States Fish and Wildlife Service, the Sierra Club, and the Audubon Society were also interested in restoring habitat at Middle Harbor because of its proximity to the Alameda Naval Air Station (“NAS”). A portion of the NAS is a designated wildlife refuge for a colony of California Least Terns, a species that is on the federal list of endangered species.

The sandy material that dominated the thirteen million cubic yards of potential dredge material from the berths and channel was an ideal substrate for eelgrass. A tiny area of eelgrass already existed in the Port adjacent to Middle Harbor. A habitat Technical Advisory Committee


41 Copies of historic National Oceanic and Atmospheric Administration charts from the late nineteenth century through 1990 were used to determine historic dredging in the Middle Harbor Basin. Aerial photographs from the late 1930s archived by the Port of Oakland show mudflats in the Basin.


"Habitat TAC") developed the necessary studies to evaluate the merits of habitat restoration at Middle Harbor. Port Staff worked with members of the Habitat TAC to craft the numerous studies needed to evaluate the technical merit of the habitat restoration and whether it would support the wildlife refuge and nearby Least Tern colony.

Coordinating with California's Coastal Management Agency for the Bay and developing BCDC support for restoring Middle Harbor's habitat was particularly challenging, because the MacAteer-Petris Act generally prohibits placing fill in San Francisco Bay. At the time, the BCDC was deeply involved in wetland restoration planning at the former Hamilton Army Airfield in Marin County ("Hamilton Project"). Some BCDC staff wanted all of the dredged material from the Oakland Harbor to go to Hamilton Project and opposed reusing the material for restoration of habitat at Middle Harbor. Port Staff was concerned that the Hamilton project would not be ready early enough to meet the Vision 2000 schedule and that the cost of sending the materials to Marin County would be prohibitive. While BCDC staff participated in the Habitat TAC, communication on these issues was difficult because of the disagreements over the reuse of dredged material.

The Habitat TAC met about twenty-five times between December 1996 and July 2002. It primarily dealt with methodologies for baseline studies, adaptive management, and tidal circulation issues. Habitat TAC members were assigned or appointed from both regulatory and wildlife agencies, and organizations including the Sierra Club and the Audubon Society. One Habitat TAC member, Bob Hoffman of the National Marine Fisheries Service, had previously worked on successful eelgrass restoration in Southern California. Another, Steve Schoenberg, a United States Fish and Wildlife Service biologist assigned to the project, was responsible for coordinating with the Corps under the Fish and Wildlife Coordination Act. Other members included Keith Merkel, who provided consulting services on restoring eelgrass; David Nesmith of the Sierra Club; Art Feinstein of the Audubon Society; and Jody Zaitlin, a Port biologist and leader of the Habitat TAC.

Eighteen alternatives were analyzed to determine where dredged materials from the -50 Foot Project and the marine terminal berths would be placed in 1998. Although the BCDC wanted to use all the materials for wetland restoration plans at the Hamilton Project and the Montezuma Slough in Solano County, material delivery to just those two locations was prohibitively expensive at a cost of $375 million. Regulators realized that using some or all of the dredged material to create Middle
Harbor Shoreline Park would offset the cost of the other projects. To develop the -50 Foot Project, the Corps had to enforce the local policies of approved state management agencies responsible for California’s coastal zone.45 Balancing economic costs with environmental policy goals, the Corps and Port, with BCDC approval, narrowed consideration to four primary alternatives by the time the Environmental Impact Review (“EIR”) was finalized.46 Three primary alternatives included sending the dredged materials to (1) the ocean and Middle Harbor Shoreline Park;47 (2) Middle Harbor Shoreline Park, the Hamilton Project, and the Port’s marine terminal project;48 and (3) the ocean beyond the Farallon Islands.49 The final EIR preferred a fourth alternative that split the material between Middle Harbor Shoreline Park and the Hamilton Project, which balanced environmental and economic policy considerations at a cost of about $185 million.50 The preferred alternative was modified a year later to dividing the material reuse at the Hamilton Project with the Montezuma Slough project to “maximize potential habitat benefits.”51

The preferred alternative was selected because regulatory agencies realized that reuse of the material for wetland restoration, at a cost of more than $20 per cubic yard, would not be possible without pairing it with reuse at the nearby Middle Harbor Shoreline Park, which was estimated at about $5 per cubic yard. Unfortunately dredge reuse at the Hamilton Project was delayed until 2007.52 The Hamilton and Montezuma projects ended up costing nearly $30 per cubic yard, well above estimates, because of the costs associated with delivery of -50 Foot Project material at those sites following such a significant delay. The materials delivered to nearby Middle Harbor defied estimates at only $4 per cubic foot, which effectively offset more of the Hamilton project cost overruns than expected.

The presence and work of the Fish and Wildlife Service staff were extraordinarily important to the ultimate success of the project. Their advisory role guided development of the Corps’ navigation projects and helped protect and enhance habitat for endangered species. Ultimately, the Fish and Wildlife Service, National Marine Fisheries Service, Sierra

46 See id.
48 Id.
49 Id.
50 Id. at ES-8 to ES-11.
51 PORT OF OAKLAND, OAKLAND HARBOR NAVIGATION IMPROVEMENT (-50 FOOT) PROJECT: REVISIONS TO THE ENVIRONMENTAL IMPACT REPORT 6 (1999).
Club, and Audubon Society were able to convince the BCDC that Middle Harbor merited restoration. Dredged materials were completely reused to restore and enhance Middle Harbor, Hamilton Army Airfield, and Montezuma Slough wetlands without the monetary and environmental waste of dumping in the ocean.

B. AIR QUALITY PLANNING

The Port dredging project and FISCO expansion were expected to significantly increase air pollution, as more ships, trucks, trains, and yard equipment would be necessary to transport the increased volume of containers.\(^{53}\) Emissions from the Port were of particularly grave concern to the residents, businesses, and organizations of West Oakland, because most Port equipment is diesel-powered.\(^{54}\) Breathing diesel emissions and associated particulate matter can result in serious health effects, including cancer.\(^{55}\) The Port and the Corps noted that “[t]he impacts of increased traffic, and resulting impacts on air quality . . . may fall disproportionately on the West Oakland Community. The West Oakland community is a socially and economically disadvantaged community; thus the construction of the proposed project may raise environmental justice concerns.”\(^{56}\)

The finalized Environmental Impact Report/Environmental Impact Statement for the -50 Foot Project identified significant air quality impacts from FISCO’s redevelopment.\(^{57}\) However, the report concluded that mitigating the air quality impacts would be difficult because the Port did not own the equipment emitting the contaminants.\(^{58}\) Instead, the report laid out recommended mitigation measures that “[e]ncouraged Port tenants to retrofit and operate low- or zero-emissions off-road light and medium duty vehicles[, and s]upport regional programs to retrofit and operate low- or zero-emissions on-road light and medium duty vehicles.”\(^{59}\)

\(^{53}\) See 8 U.S. ARMY CORPS OF ENG’RS, PORT OF OAKLAND, supra note 2, at W-665 to -667.


\(^{56}\) See 1 PORT OF OAKLAND, OAKLAND HARBOR NAVIGATION IMPROVEMENT PROJECT, DRAFT FEASIBILITY STUDY 3-2 (1998).

\(^{57}\) See 8 U.S. ARMY CORPS OF ENG’RS, PORT OF OAKLAND, supra note 2, at ES-8.

\(^{58}\) See id. at ES-25.

\(^{59}\) Id.
A group of citizens formed West Oakland Neighbors ("WON") and sued the Port for inadequate air quality planning. The Port settled the lawsuit with WON and embarked on an EIR for the redevelopment project that looked at mitigation in far greater detail. In the course of the suit, the court held the Port had authority to subsidize modifications to the diesel-emitting equipment and had to determine whether such reduction measures were feasible. The settlement with WON included two innovative actions that were critical to the eventual resolution of the air quality dispute. First, the Port agreed to hire a consultant to advise WON on technical and feasibility issues, an important agreement that ensured local citizens were not overwhelmed by technical jargon and complex topics. Second, the Port made the administrative draft of the air quality sections of the EIR available to WON and its representatives before general publication. After a series of meetings, the Port committed to spending $9 million on a series of air quality mitigation measures.

WON’s highest priority was cleaning up the trucks that drove through residential areas near the Port. To manage this concern, the Port set aside $1.6 million to provide funding for retrofitting 200 trucks serving the Port with diesel particulate filters. The Port implemented this retrofit program in cooperation with the Bay Area Air Quality Management District, which eventually augmented Port funding with money from the Carl Moyer Program to retrofit a total of 1,500 trucks. The Environmental Protection Agency and the Air Resources Board also provided additional funding to reduce other emission sources.

Besides the truck retrofit program, the Port found only some of the measures feasible, but it determined that all feasible measures were necessary to establish a "good neighbor" relationship with WON. In return for implementing the air quality mitigation measures, WON supported the Vision 2000 projects. Since implementation of the air quality measures, diesel particulate emissions at the Port have dropped by 70%.

---

62 Id.
C. CULTURAL RESOURCES PLANNING

The Inner Harbor is home to one of the oldest coastal engineering structures in the United States. Two rubble-stone jetties, also known as training walls, were built between 1874 and 1875 to stabilize the navigational entrance to the Port. The training walls were intended to concentrate the tidal flow of the San Antonio Estuary into a smaller area, creating a safer shipping channel.65 Although some training-wall sections had been damaged and rebuilt over the years, portions were eligible for inclusion on the National Register of Historic Properties under the National Historic Preservation Act of 1966.66

Much of FISCO remained unchanged since World War II, although some portions had been demolished or altered over time. The California Historical Preservation Office determined that portions of FISCO qualified as a “district” eligible for inclusion in the National Register of Historic Properties.67 Celia McCarthy, a lead planner at the Port, negotiated an agreement with the State and the Oakland Landmarks Preservation Advisory Board that removed most of the training walls and allowed redevelopment of the entire property for shipping purposes.68 In exchange, a portion of the training walls were salvaged as a part of the marine habitat, and other wall elements were incorporated into Middle Harbor Shoreline Park.69 Funding was set aside to document the historical contribution of the training walls, which was permanently archived at the Port.70 As a result of preservation efforts by the Port, local historical advocate groups, including the Oakland Heritage Alliance and the City of Oakland’s Landmarks Preservation Advisory Commission, supported the Middle Harbor Shoreline Park project.

D. WATER QUALITY AND TOXIC SUBSTANCES PLANNING

For the purpose of studying the environmental contamination of soil, the FISCO property was divided into on- and offshore parcels. The study found substantial amounts of hydrocarbon, pesticides, and other contamination in offshore sediments.71 The plan developed by Port Staff

---

65 1 Port of Oakland, supra note 56 at 2-7.
66 See Bd. of Port Comm’rs of the City of Oakland, supra note 61, at 15; see also 16 U.S.C.S. § 470 et seq. (LEXIS 2014).
67 Bd. of Port Comm’rs of the City of Oakland, supra note 61, at 15.
68 Id.
69 Id. at 16.
70 Id.
called for excavation of much of the site, including the contaminated offshore sediments for the marine terminal berths and harbor channel. It was clear that much of the FISCO land would have to be graded to create engineered fill suitable for the heavy Port equipment, so Port Staff implemented combined soil grading for both the engineered fill development and toxic remediation of the offshore sediments to save costs.

Under the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”), Congress requires federal military bases to remediate contamination before transfer to civilian use. Remediation funds are dependent on congressional appropriations, which often leads to long delays, but under certain circumstances, CERCLA allows for early land transfers that can fast-track a program, providing that:

The Administrator, with the concurrence of the Governor of the State in which the facility is located . . . may defer the requirement of [remediation before transfer] with respect to the property if the Administrator or the Governor, as the case may be, determines that the property is suitable for transfer, based on a finding that—

(I) the property is suitable for transfer for the use intended by the transferee, and the intended use is consistent with protection of human health and the environment;

(II) the deed or other agreement proposed to govern the transfer between the United States and the transferee of the property contains the assurances set forth in clause (ii);

(III) the Federal agency requesting deferral has provided notice . . . ; and

(IV) the deferral and the transfer of the property will not substantially delay any necessary response action at the property.

The Port successfully sought a Finding of Suitability for Early Transfer and implemented the agreement through a memorandum of understanding with the California Department of Toxic Substances Control. The Port negotiated control over the FISCO remediation schedule so it could begin development of the new marine terminals and Middle Harbor Shoreline Park without extensive delay.
Cleanup activities had to meet the Regional Water Quality Control Board and the State Department of Toxic Substances Control standards. Reusing soil onsite is cheaper than taking it to a landfill. The clay soils that made up the site were ideal for the creation of an engineered containment area that would support the new marine terminal, despite some moderately contaminated soil. Grading plans were used by the Port to test the chemical contamination and structural properties of the soil. Suspect soils were removed and tested in a holding area with controlled water runoff. The study determined that most of the soil could be reused onsite, with the more contaminated soil placed farthest from the water. By April 2006, all except a small portion of the soil was reused as planned at the new marine terminal and Middle Harbor Shoreline Park.78

E. RESOLVING HABITAT AND PUBLIC ACCESS CONCERNS

When the Port began planning habitat restoration at Middle Harbor, it was apparent that some stakeholders had different priorities. While public access was a key component of the park, some of the Habitat TAC members planning restoration of Middle Harbor opposed public access trails near what they considered sensitive areas. At least two pitched battles over public access had occurred between environmental groups and supporters of the Bay Trail. One such battle occurred over a proposal that BCDC approved in the mid-90s that extended the San Francisco Bay Trail along the marsh adjacent to Interstate-580 in Richmond. The other resulted in the closure of some trails along Redwood Shores by the United States Fish and Wildlife Service in 1998.79

A Public Access Technical Advisory Committee ("Public Access TAC") was also formed to advise the Middle Harbor Shoreline Park planning process. Having separate TACs for habitat and public access was intended to address potential conflicts, but it also exacerbated them in some ways. The opportunity to restore habitat at Middle Harbor represented an interesting challenge for biologists at the Port, who were not eager to see public access efforts undermine potential habitat rehabilitation. Likewise, planners and advocates for improved access to the Oakland shoreline were suspicious of the separate habitat restoration effort, fearing it would foreclose opportunities to create an exciting new recreational area.

Ultimately, the redevelopment benefited from the competing interests because there was no baseline for public access or habitat. The historic mudflats had been degraded by World War II dredging, and the public never had prior access to the site. The competing interests eventually realized an opportunity to create a net increase for both access and habitat, because neither interest took away from the baseline status of the other. The Port was also blessed with cooperative leadership between the two TACs.

I asked George Bolton, who was the head of the Public Access TAC and who had fished the waters of Middle Harbor as a child, to join a Habitat TAC meeting to begin the process of bringing the two perspectives together. The biologists working on habitat restoration were not happy. For a time, several members of the Port Staff tried to talk me out of such joint meetings, but I held firm. My favorite story from my tenure at the Port emerged from that meeting. The Port biologists and partnering agencies were aware that George was attending, and tensions were high when he walked into the Board Room. When George sat down, he spoke about the importance of stewardship that benefits both communities and habitat, because children need recreation that promotes exposure to wildlife. George argued that both habitat restoration and public access would benefit from creating the park, and he introduced the idea of education programs for West Oakland children. The concept of joint stewardship resonated with Arthur Feinstein, an Audubon Society advocate who served on the Habitat TAC, who immediately realized that he had met a kindred spirit in George. The planning process benefited from people of good faith like Arthur and George, who found common ground on shared stewardship principles.

V. Conclusion

The Port of Oakland’s Vision 2000 plan faced numerous obstacles, from technical and engineering challenges, to concerns from community stakeholders over public access, cultural preservation, habitat restoration, and pollution. The success of Vision 2000 largely depended on the cooperation of all the interested parties, which included agencies, advocacy groups, and individual citizens. The Port overcame foreseeable hurdles by listening to the concerns of competing interests through a transparent public process, and it efficiently moved complex projects through legislative and social barriers to complete Middle Harbor Shoreline Park. Further, leaders like George Bolton and Arthur Feinstein helped bridge the gap between those interests and worked together to achieve common goals that ensured new shoreline habitat, public access to the Oakland
waterfront, and improved air quality. Ultimately the Port’s investment in proactive community outreach and plans that exceeded legally required minimums serves as a model for the efficient approval of future projects along the San Francisco Bay.