

MEMORANDUM

March 6, 2014

TO: MEMBERS, PORT COMMISSION
Hon. Leslie Katz, President
Hon. Willie Adams, Vice President
Hon. Kimberly Brandon
Hon. Mel Murphy
Hon. Doreen Woo Ho

FROM: Monique Moyer
Executive Director

SUBJECT: Request approval of a Memorandum of Understanding between the Port and the San Francisco Mayor's Office of Housing and Community Development regarding development of affordable housing on Seawall Lot 322-1 (located at Broadway and Front Streets) (Resolution No. 14-16)

Director's Recommendation: Approved Attached Resolution

EXECUTIVE SUMMARY

The Port and the San Francisco Mayor's Office of Housing and Community Development ("Housing Office") propose jointly to pursue the feasibility of improving Seawall Lot 322- 1 ("Site") with an affordable housing development. State Assembly Bill 2649 permits lifting public trust use restrictions from the Site to allow development of affordable housing. San Francisco Board of Supervisors' Ordinance No. 232-12 authorizes the Port to lease the Site and receive Jobs-Housing Linkage Program credits (Jobs/Housing Credits) for its fair market value. On October 22, 2013, Port staff apprised the Port Commission of our work with the Housing Office on the terms and conditions of a Memorandum of Understanding ("MOU") under which the Port will allow the Housing Office to solicit a non-profit development partner to enter into a lease with the Port toward building the proposed affordable housing. The Port Commission reviewed the proposed affordable housing concept and MOU terms at its October 22, 2013 meeting. At the Port Commission's direction, Port and Housing Office staffs have conducted additional outreach and received feedback from community representatives and stakeholders leading to refinement of the proposed terms and conditions for the MOU.

THIS PRINT COVERS CALENDAR ITEM NO. 11C

The MOU key terms/conditions remains as presented to the Port Commission in October 2013. They include: (i) a three-year term with a one-year extension; (ii) Port's receipt of Jobs/Housing credits for the Site's fair market value; (iii) delegation of developer-solicitation to the Housing Office; and (iv) the Housing Office funding of all project costs except the public parking garage cost if required, appraisal and certain attorney costs. A proposed new term is the provision that the Port will look for a strategy that addresses affordable housing use at the Site in response to the Housing Office's mandate to maintain permanent affordable housing stock.

The remainder of this staff report provides more details on the proposed concept, Site information and analysis, and MOU recommended terms and conditions. Port staff recommends the MOU approval.

BACKGROUND

The Port of San Francisco owns and manages 7½ miles of bayfront lands in trust for the State of California. Use of these Trust lands excludes the development of housing. Nevertheless, in connection with the Rincon Point South Beach redevelopment project area that included Port property master leased to the former San Francisco Redevelopment Agency, the California Legislature lifted the public trust from two Port sites in the South Beach neighborhood for affordable housing. (Stats. 1987, ch. 310). This legislation permitted the development of the Delancey Street Foundation's mixed-use development on Seawall Lot 332 with 177 affordable residential units and Bridge Housing's Steamboat Point mixed-use development on Seawall Lot 333 with 106 affordable residential units and provided financing for the development of the Port's South Beach marina.

The Port faces many challenges in developing its properties, including Pier 70 to their highest and best use. These challenges include expensive piles to support buildings on tidelands, high historic building rehabilitation costs, high building costs in an historic district, environmental remediation cost, complex regulatory compliance cost including development impact fees, and shoreline park/open space (public access) cost. In November 2011, staff informed the Port Commission about staff's effort to pursue strategies to address these challenges facing Pier 70. One proposed strategy involves leasing Port inland sites in the Northeastern Waterfront, no longer needed for trust purposes, for affordable housing use to offset the high costs of redeveloping Pier 70.

During the November 2011 meeting, staff also discussed options for meeting the City's affordable housing requirements, particularly for the anticipated commercial developments in Pier 70 that trigger significant obligations under the Jobs-Housing Linkage Program (Planning Code §§ 413-413.11. The program imposes exactions to offset the new demand for affordable housing generated by certain types of new commercial development. With between 2,200,000 to 3,000,000 square feet of commercial development proposed at Pier 70, Job/Housing obligations for the Port's development partners are projected to be several millions of dollars.

Senate Bill 815 (2007, Migden) ("SB 815") authorizes, among other things, the Port to lease designated seawall lots in the central waterfront (most notably Seawall Lot 337

and Seawall Lot 330) for non-trust purposes, including housing, for up to 75 years at fair market value to generate revenues to preserve and rehabilitate the Port's historic structures, construction and maintenance of waterfront plazas and open space required by the San Francisco Waterfront Special Area Plan of the Bay Conservation and Development Commission, and other trust consistent uses. In 2011, after consulting with the Port Commission and neighborhood stakeholders, Port staff pursued legislation which led to the adoption of Assembly Bill 2649 (2012, Ammiano) ("AB 2649"), which added the Site to designated seawall lots that may be leased for nontrust uses under SB 815. Under AB 2649, the Port is authorized to provide a rent credit or the waiver or deferral of rent in connection with a nontrust lease of Seawall Lot 322-1 at an effective rent that is below fair market value if the California State Lands Commission finds that: (1) the nontrust lease is for affordable housing, and, if the affordable housing is within a mixed-use project, no part of the rent credit, waiver, or deferral is applied to the rent for the other uses; and (2) the Port is entitled to apply the value of the rent credit, waiver, or deferral that it provides for the nontrust lease of the seawall Lot 322-1 as an offset against fees or other exactions or obligations that would otherwise be levied or imposed on development projects at Pier 70.

The Board of Supervisors ("Board") adopted Ordinance No. 232-12 adding section 61.12 to the Administrative Code. Section 61.12 implements AB2649 by authorizing the Port to enter into below-market leases with the Housing Office for affordable housing development on seawall lots that are not subject to trust land use restrictions. The Port and the Housing Office are authorized to enter into an MOU providing for the Port to receive Jobs/Housing credits equal to the difference between the below-market and the fair market rental value of the leased land.

These two pieces of legislation create the authority to develop affordable housing on Seawall Lot 322-1 through the Housing Office and for the Port to receive the Site's fair market rental value through the combination of rent payments and Jobs/Housing credits. The Port can use these Jobs/Housing credits to offset Jobs-Housing Linkage Program fees that would be charged against commercial developments in Pier 70. The specific project(s) and budget line-items benefiting from this offset will be determined through negotiations with Port's private development partners at the appropriate time. This mechanism allows the development of a long vacant parking lot at Seawall Lot 322-1 into a new structure that will help address one of the City's pressing needs - affordable housing.

The Port Commission reviewed the proposed affordable housing concept and the MOU during its October 22, 2013 meeting through a staff informational presentation. Since that time, Port and Housing Office staffs have jointly presented this concept to, and received feedback from, the Northeastern Waterfront Advisory Group ("NEWAG"), and a joint meeting of the Barbary Coast Neighborhood Association (BCNA) and the Telegraph Hill Dwellers ("THD"). Additionally staff has met with representatives of BCNA, THD and the Southern Telegraph Hill Neighborhood Association ("SoTel").

SITE INFORMATION AND ANALYSIS

The Site is bounded by Broadway, Front and Vallejo Streets and buildings to the east as shown in the attached Exhibit “A.” The Site is a paved, flat, rectangular land parcel, approximately 37,810 square feet in area; and it is currently being used as surface parking under lease to Priority Parking. The site is approximately 500 feet from the shoreline and under current estimates of sea level rise would not be affected in 2050 and only small portions of the site are identified as inundated under current estimates of 2100 sea levels. Anticipated impacts of climate change will be addressed during site and building design phases.

Current zoning for the Site is C-2 (Community Business), which allows residential as a permitted use. Ground floor retail and podium or underground parking may be appropriate companion uses subject to being found feasible during the entitlement process. The Site is in the City’s Northeast Waterfront Historic District and a 65-foot height limit is set for the Site. Given the Site’s development potential, and its location upland, away from the water, it appears to offer the greatest affordable housing development opportunity among the Port’s seawall lots in the northeastern waterfront. Staff will request the City’s Director of Real Estate to procure updated appraisal to determine the Site’s fair market value – a factor in the overall project financial feasibility.

Currently the Site generates about \$585,600 annually or \$48,800 per month in rental revenue to the Port. Because of the revenue significance to the Port’s Harbor Fund, Port staff explored how this development can continue to generate a revenue stream. One way, is to include public parking in the project. The Port will have to pay for the creation of any on-site parking facility as no City’s housing funds may be used for parking. The inclusion of public parking in the project will accommodate nearby businesses that currently rely on the 151 self-park spaces (or 225 valet parking spaces) available at the Site.

Preliminarily, this affordable housing project is anticipated to include three uses at about the density indicated in the following Table:

	Number of Units or Square footage	Parking Spaces
Housing	170 to 200 for seniors or 80 to 115 for families	None required
Commercial space	2,000 to 5,000 sq. ft.	None required
Public Parking		100 to 120

PROPOSED MOU

Port and Housing Office staffs have been collaborating to implement the provisions of the above-noted legislations. The Housing Office will manage a solicitation process to secure an affordable housing developer and lead development negotiations with the selected developer. During the negotiation period, Port staff will work with the Housing Office and the developer to test the feasibility of including public parking in the project. The Housing Office and the selected developer are responsible for funding the project's predevelopment, construction, and operation phases, except for the public parking garage incremental construction cost if Port determines, at its sole discretion, that the garage is feasible. Ground floor retail is anticipated as a design solution to screen parking and activate the street. Feasibility of the retail space and how to fund it will be addressed during the design development phase. A summary of the proposed MOU key-terms are as follows:

1. Housing Office's Role and Responsibilities: The Housing Office will solicit and select the developer; address the project's overall financing needs, and its potential funding sources; cover developer solicitation cost; negotiate development transaction documents; and plan and manage project delivery, including the project timeline for attaining performance benchmarks. It will lead public outreach and will follow the Port's and City's public offering process that typically requires competitive bidding, ample public notice to make the public aware of the offering opportunity, local business participation requirements, public hearings, etc. Architectural design is subject to the review process applicable to the Site (review by City Planning Department, Waterfront Design Advisory Committee, Office of Historic Preservation, and State Lands Commission).
2. Port's Role and Responsibilities: The Port will assist the Housing Office in its negotiations with the developer regarding the garage and lease terms and in seeking stakeholders' support and State Lands Commission's approval.
3. MOU Term. A three-year term is proposed because entitlement and project approval usually take more than two years. The Port's or the Housing Office's Executive Directors would be authorized to extend for up to six months any of the benchmark dates set for developer's performance schedule and for up to 12 months the term's outside date. Any extension beyond these 12 months will be subject to Port Commission approval. Staff will provide the Port Commission with updates about the MOU and project progress about two to three times a year depending on milestones achieved.
4. Project Description: The proposed project will be a new affordable housing building with between 170 to 200 senior housing units or between 80 to 115 family housing units located above a mix of ground level uses, possibly a 2,000 to 5,000 square foot retail space and a public parking garage with approximately 100 stalls. The type and amount of public parking and retail space will be determined by the design and entitlement requirements of the project. Based on community feedback, underground parking will be explored to allow for better activation of the Site's street frontage. The

type of affordable housing units and the level of affordability are to be determined by the Housing Office and the developer with appropriate public input.

5. Basic Deal Structure:

a. The Site's fair market value: This will be determined by an appraisal completed and updated within 90 days before the execution of the lease. The amount of Jobs Housing Linkage Credits the Port will receive will be derived from the value allocated to the housing parcel based on development density less (i) agreed upon due diligence cost and (ii) the cost of review of required SLC's findings. Currently, the amount of land value allocated to the housing component is projected to be between \$7 to \$8 million.

b. Public parking garage cost: The selected developer, Housing Office, and the Port will collaborate to determine the incremental construction cost of including a public parking garage in the Project. If the garage is financially feasible, the Port will consider paying the garage cost either with the Site's sale proceeds or other funding sources. The Housing Office or developer will incorporate the cost of exploring public parking in their schematic design cost for the Project. At the schematic design phase, the Port will decide if it wants to fund a public parking facility. If the Port decides at a later date not to proceed with a public parking facility, the Port will be responsible for any additional design revision costs after the schematic design phase.

c. Developer solicitation process: To promote community participation and to ensure openness and transparency in the development process, the Port and Housing Office will consult with NEWAG and other neighborhood groups in the planning of the Project, including forming a working group to review and comment on the goals and objectives of the proposed request for proposals ("RFP"). The Housing Office RFP selection process will allow one voting-member from the working group to be part of the selection panel that will help review, evaluate, and rank proposals from respondents to the RFP. The Housing Office will make the final decision selecting a non-profit developer. It may choose to use an exclusive negotiation agreement ("ENA") or a predevelopment loan agreement to set the terms and conditions for its exclusive negotiations with the developer selected. No "term sheet" is required for Housing Office developments.

d. Lease: The Housing Office will require the selected developer to enter into a 75-year lease with the Port to build the project. The lease will include the delegation of the day-to-day lease management to the Housing Office to enable monitoring of compliance with applicable affordable housing regulatory requirements. Housing Office development projects are exempt from making findings of fiscal responsibility and feasibility.

e. Approval process and entitlements: The project is subject to a process of thorough public review and input and all necessary and appropriate approvals. These include environmental review under CEQA and required

discretionary approvals by applicable government bodies after public hearings and environmental review. Nothing in the MOU would commit the Port, the Housing Office, or the City, or any other public agency to approve or implement the project until its CEQA review is completed.

f. Financial terms: The Housing Office and the selected developer are responsible for funding the predevelopment, construction, and operation phases of the housing and retail elements of the Project; the Port will fund the incremental construction cost of the public parking garage if it determines, at its sole discretion, that the garage is feasible. Neither Housing Office nor the selected developer shall pay more than \$1 a year to Port for the lease in addition to Port's receipt of land sale proceeds.

g. Overall project feasibility: Housing Office and the selected developer are responsible for determining the overall project feasibility.

h. Compensation for improvements if affordability terminates: Port acknowledges that under current State law a lease of the Site for affordable housing would end in 2094 with no provision for nontrust uses including affordable housing after that date. During the term of this MOU, Port and Housing Office will negotiate in good faith to develop a strategy to extend the use of affordable housing past the lease expiration.

i. Other Required Transaction Documents: The Housing Office is responsible for negotiating and drafting the transaction documents required for the development including a separate MOU to track Jobs-Housing Credits. Port will review and provide comments on the drafts in a reasonable timely manner.

j. Port Commission and Board's approval of the Lease. Port staff will work with the Housing Office and the selected developer in seeking Port Commission and Board's approvals of the transaction documents, including the lease.

k. Miscellaneous Terms and Conditions: The MOU contains all other standard contract terms and conditions; i.e., insurance, indemnity, disclaimers, etc., to protect the Port from legal and financial liabilities.

COMMUNITY OUTREACH

In 2011, when pursuing State and Board legislation, Port staff presented to the Port Commission, NEWAG, and community groups the concept of developing affordable housing on the Site in collaboration with the Housing Office and a nonprofit development partner. After approval of the enabling legislation and consultation with the Housing Office staff, Port staff commenced public outreach. On August 28, 2013, Port and the Housing Office staff presented the proposed Project to NEWAG, which expressed support for the affordable housing. On October 22, 2013, staff made a presentation to the Port Commission about the proposal to improve the Site with affordable housing, and proposed additional community outreach.

On November 20, 2013, BCNA and THD hosted a joint meeting inviting Port and Housing Office staffs to present the proposed concept and answer questions. Staff also met with representatives of BCNA, THD and SoTel. These organizations sent a letter of support for this process raising issues to be addressed about the community involvement process and ultimate development plans on SWL 322-1. At a February 5, 2014 NEWAG meeting, Port and Housing Office staffs responded to the groups' comments outlined in the above noted letter to the Port and Housing Office. To respond to concerns raised about public involvement, Port and Housing Office staffs included in the MOU provisions for a community working group to assist with the developer solicitation process. The MOU will allow the working group to review and comment on the RFP's goals and objectives. Additionally, per the Housing Office's customary practice, one member from the working group will be invited to participate as a full voting member in the developer-selection panel that will help review, evaluate, and rank proposals from RFP respondents that will inform Housing Office's decision about which proposal to recommend for approval.

As part of a community review process common to all Housing Office developments, the MOU requires the non-profit developer and the Housing Office staff to convene a public meeting for neighbors to seek public input as the project evolves. The Housing Office considers BCNA, THD, and SoTel as neighbors to the Site.

NEXT STEPS

If the Port Commission approves the attached resolution, the Port and Housing Office will execute the MOU with the approval of the Housing Office Director. Thereafter, the Housing Office will proceed with community outreach to develop the RFP. Port staff will apprise the Port Commission of the developer selected. After a developer is selected, the Housing Office will present the Project's funding need to the City-Wide Affordable Housing Loan Committee ("Loan Committee") for its review and recommendation of a predevelopment loan for the selected developer. This recommendation will then be forwarded by the Housing Office Director to the Mayor for approval. The subsequent funding for land acquisition, construction and permanent loans are subject to the review and recommendation of the Loan Committee.

The MOU anticipates completion of a developer solicitation process within one year followed by a two-year feasibility testing period. This period will cover the design review, CEQA review, State Lands Commission, and other regulatory reviews with opportunities for stakeholders' input. Review by the Loan Committee will run parallel to these reviews. Port staff will provide updates at key milestones to the Port Commission during the feasibility testing and entitlement periods. Following project entitlements, staff will present the refined development proposal and the proposed ground lease to the Port Commission for its consideration and approval. Escrow closing and construction start would occur immediately thereafter, currently anticipated for 2016-17.

RECOMMENDATION

Port staff recommends that the Port Commission approve the attached Resolution approving the Memorandum of Understanding with the Housing Office as described in this report. A copy of the draft MOU is available on the Port's website.

Prepared by: Ricky Tijani, Manager
Planning & Development

Through: Jonathan Stern, Assistant Deputy Director
Waterfront Development

For: Byron Rhett, Deputy Director
Planning and Development

Attachments: Exhibit "A" Site Map

**PORT COMMISSION
CITY AND COUNTY OF SAN FRANCISCO**

RESOLUTION NO. 14-16

- WHEREAS, Charter Section B3.581 empowers the Port Commission (the “Port”) of the City and County of San Francisco (the “City”) with the authority and duty to use, conduct, operate, maintain, manage, regulate and control the lands within Port jurisdiction subject to the common law public trust for commerce, navigation, and fisheries and the Burton Act trust; and
- WHEREAS, Senate Bill 815 (2007, Migden) (“SB 815”) authorizes, among other things, the Port to lease certain designated seawall lots for non-trust purposes, for of up to 75 years at fair market value to generate revenues for preservation of the Port’s historic structures, construction and maintenance of waterfront plazas and open space required by the San Francisco Waterfront Special Area Plan of the Bay Conservation and Development Commission, and other trust-consistent uses; and
- WHEREAS, Assembly Bill 2649 (2012, Ammiano) (AB “2649”) adds Seawall Lot 322-1, an approximately 37,810 square foot land parcel bounded by Broadway, Front, and Vallejo Streets and buildings to the east, Assessor’s Parcel No. 0140-007 (the “Site”), to SB 815 to the designated seawall lots that may be leased for nontrust uses under SB 815; and
- WHEREAS, AB 2649 authorizes the Port to provide a rent credit or other waiver or deferral of rent in connection with the nontrust lease of Seawall Lot 322-1 for an affordable housing development at an effective rent that is below fair market value if the State Lands Commission (“SLC”) finds that: (1) the nontrust lease is for affordable housing and, if the affordable housing is within a mixed-use project, no part of the rent credit, waiver, or deferral is applied to the rent for the other uses; and (2) the Port is entitled to apply the value of the rent credit, waiver, or deferral that it provides for the nontrust lease of Seawall Lot 322-1 as an offset against fees or other exactions or obligations that would otherwise be levied or imposed on development projects at Pier 70; and
- WHEREAS, The San Francisco Mayor’s Office of Housing and Community Development (“Housing Office”) is responsible for the production and management of affordable housing citywide and the City’s Housing Trust Fund under the Jobs-Housing Linkage Program (“JHLP”); and

- WHEREAS, Developers of large-scale entertainment, hotel, office, research and development, and retail developments in San Francisco are required to mitigate the demand for affordable housing created by their development projects by either contributing land or money to an affordable housing developer or paying an in-lieu fee to the Housing Trust Fund; and
- WHEREAS, The Housing Office periodically publishes the rates for calculating the in-lieu fee, and proposed projects at Pier 70 and other anticipated developments on Port land will be subject to significant JHLP fees; and
- WHEREAS, The Board of Supervisors (the “Board”) adopted Ordinance No. 232-12 to implement AB 2649, which Ordinance authorizes the Port to enter into below-market leases with the Housing Office for the Port land from which trust use restrictions have been lifted for development of affordable housing; and
- WHEREAS, The above-noted Ordinance authorized the Port and the Housing Office to enter into a memorandum of understanding (“MOU”) providing for the Port to receive JHLP credits that it may apply to JHLP obligations that would otherwise be payable for future development on Port land in amounts equal to the difference between the below-market rental value and the fair market rental value of the leased land; and
- WHEREAS, Two key benefits of the MOU are the Port’s ability to offer Port land that would otherwise not be available for affordable housing to the Housing Office and the offset against JHLP fees that the Port may apply to offset the costs of development projects on Port property, including those on Pier 70; and
- WHEREAS, The Port and the Housing Office have negotiated the MOU, which includes terms and conditions informed by community and stakeholder’s input on the approval process for the scope of development of an affordable housing project at Seawall Lot 322-1; now, therefore, be it
- RESOLVED, That the Port Commission approves the MOU between the Port and Housing Office as described in Port staff’s report on this matter and authorizes the Executive Director or her designee to execute the MOU; and be it further

RESOLVED, That the Port Commission authorizes the Executive Director or her designee to enter into any additions or modifications, including granting time extensions as provided in the MOU that the Executive Director, in consultation with the City Attorney, determines are in the best interest of the Port, do not materially increase the obligations or liabilities of the City or the Port, and are necessary or advisable to complete the transactions that the MOU contemplates or effectuates the purpose and intent of this resolution, such determination to be conclusively evidenced by the execution and delivery by the Executive Director of the MOU, and any additions or modifications to it.

I hereby certify that the foregoing resolution was adopted by the Port Commission at its meeting of March 11, 2014.

Secretary

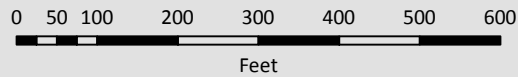
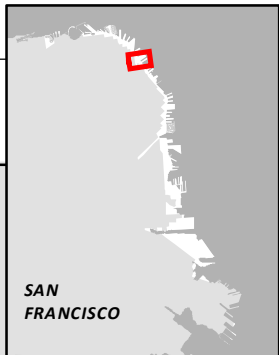
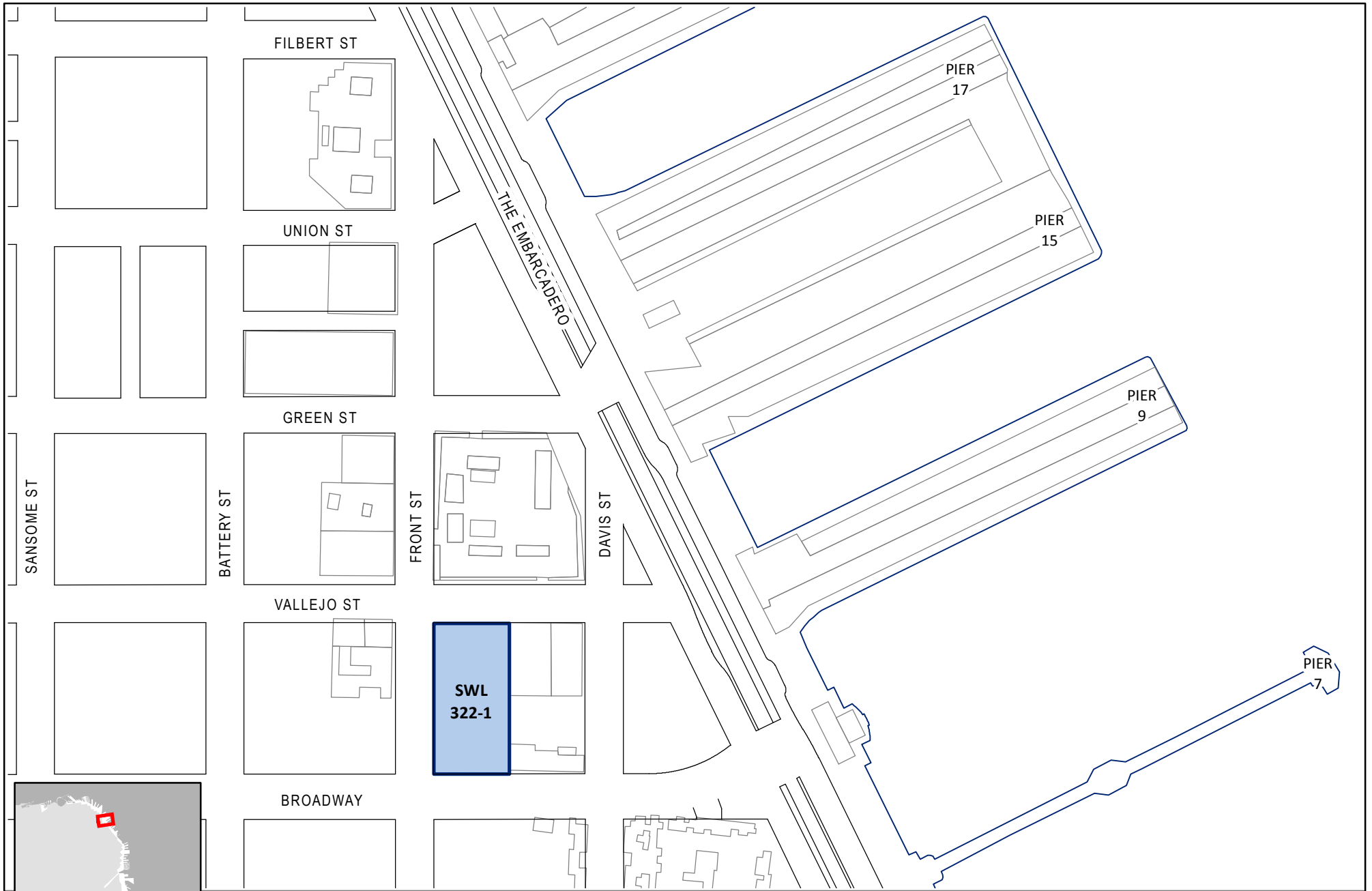


EXHIBIT A: SWL 322-1

SITE LOCATION

PORT OF SAN FRANCISCO

