

MEMORANDUM

June 8, 2018

TO: MEMBERS, PORT COMMISSION
Hon. Kimberly Brandon, President
Hon. Willie Adams, Vice President
Hon. Gail Gilman
Hon. Victor Makras
Hon. Doreen Woo Ho

FROM: Elaine Forbes
Executive Director

SUBJECT: Informational presentation on the proposed transaction documents related to Seawall Lot 322-1 (the "Site") located at Broadway and Front Streets: (1) an Option to Lease Agreement between the Port and 88 Broadway Family LP (the "Developer"); (2) a form ground lease with an initial 57-year term and an 18-year extension option (the "Lease") with the Developer to develop up to 125 affordable housing units and ancillary ground level uses on the Site (the "Project" or the "Family Project"); and (3) a new Memorandum of Understanding (the "Development MOU") between the Port and the Mayor's Office of Housing and Community Development (the "Housing Office") with a term that is coterminous with the Ground Lease

Director's Recommendation: Informational Only – No Action Required

EXECUTIVE SUMMARY

State Assembly Bill 2649 (2012, Ammiano), as amended, permits the lifting of public trust use restrictions from Seawall Lot 322-1 to allow development of affordable housing for up to 75 years, subject to State Lands Commission's concurrence that the Site is no longer necessary for public trust or Burton Act purposes and that lifting the use requirements of the public trust, Burton Act and transfer agreement until January 1, 2105 is in the best interest of the people of the State of California. On March 11, 2014, by Resolution No. 14-16¹, the Port Commission approved a Memorandum of Understanding (the "Predevelopment MOU") between the Port and the Housing Office to explore the feasibility of developing the Site with affordable housing.

THIS PRINT COVERS CALENDAR ITEM NO. 12C

¹ <http://sfport.com/ftp/meetingarchive/commission/38.106.4.220/modules/Item%2011C%20SWL%20322-1%20MOU-documentid=7738.pdf>

Most of the key feasibility tasks to be completed under the Predevelopment MOU have been completed. These include the competitive solicitation and selection of a developer team led by Bridge Housing (“Bridge”) and the John Stewart Company (“JSCo”) which formed 88 Broadway Family LP (the “Developer”) to undertake the proposed development; extensive community outreach to gather input and keep community members informed; and the procurement of land use entitlements including completion of the required California Environmental Quality Act (“CEQA”) evaluation for the proposed development. The Site is proposed to be developed with the adjacent land parcel (the “City Parcel”), owned by the City and County of San Francisco (the “City”) through the San Francisco Department of Public Works; the two projects being collectively referred to herein as the “Development”. A map showing these sites is attached as **Exhibit “A,” Site Map**.

The Development is summarized in the table below.

Development Summary

	88 Broadway Family Project	735 Davis Senior Project	Total
Location	SWL 322-1	SFDPW Site	
Housing Units	125	53	178 Units
Affordability	30% to 120% AMI	20% to 70% AMI	
Other Uses	<u>Incidental/Ancillary Uses</u> Restaurant: 4,300 nsf Childcare: 3,900 nsf Community Room: 1,500 nsf		
		Café: 1,100 nsf Community Room: 700 nsf	
Public Parking	None	None	None
Residential/Childcare	\$88,677,000	\$36,863,000	\$125,540,000
Retail	\$ 2,053,000	\$ 697,000	\$ 2,750,000
Total Development Cost	\$90,730,000	\$37,560,000	\$128,290,000
Funding Sources			
Developer	\$53,565,000	\$16,044,000	\$69,609,000
Housing Office	\$37,165,000	\$21,516,000	\$58,681,000
Port	\$0	\$0	\$0
Total Sources	\$90,730,000	\$37,560,000	\$128,290,000

The key goals of this Development for the Port are: (a) the leasing of the Site, which is no longer needed for trust purposes, for development of affordable housing and using the funds generated from its leasing to address a portion of the Port’s capital funding needs and (b) contributing to City and State affordable housing objectives. Port, Housing Office, and Developer staff are nearing completion of entitlement and feasibility

requirements that will clear the way for agreements intended to achieve these twin goals, including three **key transaction documents** to implement the Development.

The proposed Transaction Documents include:

Option to Lease Agreement (the “Option Agreement”) between the Port and the Developer. Its purpose is to provide the Developer with evidence of site control to support its application for an allocation of tax credits from the California Credit Allocation Committee (“TCAC”). This agreement provides, among other things: (i) the preconditions the Developer must meet to exercise the option to lease and (ii) the form ground lease governing use of the premises. The preconditions are detailed under the discussion section of this staff report. When approved by the Port Commission, and State Lands Commission (“SLC”), this agreement will be effective for approximately two years or until replaced by the ground lease. A form of the Lease will be attached to the Option Agreement and if approved, it will become effective after it has been duly executed, the Developer has received all required financing and closed escrow, and the Lease is recorded.

Ground Lease (the “Lease”), between the Port and the Developer. The Lease’s purpose is to convey property rights subject to the negotiated terms and conditions under which the Site is being leased to the Developer. Proposed key terms include: (a) a 57-year initial term with an 18-year extension option; (b) rent to include (i) \$1 per year for the residential portion, in recognition of that fact that the Port will be receiving a prepayment of the Site’s fair market value; (ii) 20% of the annual residual receipts collected by the Developer for the proposed restaurant sublease; (iii) 50% of excess rent from other subleases; and (iv) a mechanism for the Port to participate in the increase in market value over the life of the Lease (still under negotiation) and (c) Port’s standard lease provisions, including insurance, indemnity, sea level rise and flooding provisions, and prior consent for transfers and assignments, among others. The lease is subject to approval by the Port Commission, City’s Board of Supervisors (“Board of Supervisors”) and SLC as to provisions regarding rent payments and provisions required in order to lift the trust restrictions. In addition, because of its role in administering the Lease, the Lease will be subject to the Housing Office’s consent.

Development MOU between the Port and the Housing Office. Its purpose is to document Port’s and Housing Office’s respective roles and responsibilities in moving forward with the Development. Its key terms include how and when the Housing Office will pay Port for the Site’s FMV, interest accrual on the outstanding land payment (if any) and rights of the Housing Office to cure a Developer default, to protect the City affordable housing funds invested in the Project. The Development MOU is subject to approval by the Port Commission and the Board of Supervisors, with endorsement by SLC as to provisions regarding the FMV payment.

The remainder of this staff report provides background information and discusses the Site, state and local legislation providing the impetus for the proposed development, accomplishments to date, and elaboration of the key terms proposed for the Transaction Documents. At the next Port Commission meeting, Port staff intends to request the Port Commission’s consideration and approval of the Transaction Documents, the

Development's schematic design, findings that the Project is consistent with applicable regulations, and authorization for the Executive Director to seek necessary approvals for the Transaction Documents from the Board of Supervisors and SLC.

BACKGROUND

Site Description and Allowed Use

The Site is bounded by Broadway, Front, and Vallejo Streets and buildings to the east, as shown in the attached **Exhibit "B," Development Schematic Design**. The Site is a paved, flat, rectangular land parcel, approximately 37,810 square feet in area, currently being used as surface parking under lease to SP Plus – Hyde Parking Joint Venture. Current zoning for the Site is C-2 (Community Business), which allows residential as a permitted use. Ground floor retail and commercial are appropriate ancillary uses which were found acceptable during the entitlement process. The Site is in the City's Northeast Waterfront Historic District ("Historic District") and a 65-foot height limit applies to the Site. Currently the Site generates approximately \$465,065 annually or \$38,755 per month in rental revenue to the Port.

Legislative Efforts/MOU

The Port faces some challenges in developing its properties because of expensive piles to support buildings on tidelands, high historic building rehabilitation costs, potential environmental remediation cost, complex regulatory compliance requirements including development impact fees, and shoreline park/open space (public access) development and cost obligations. Among the strategies for addressing these financial challenges is leasing Port properties no longer needed for trust purposes because they are cut off from the Bay, and using the funds generated by such leasing for Port capital funding needs.

To implement this strategy and to address affordable housing needs, Senate Bill 815 (Migden, 2007); Assembly Bill 2649 (Ammiano, 2012); and Assembly Bill 2797 (Chiu, 2016) (collectively, the "State Legislation") were adopted to permit the lifting of Public Trust use restrictions from a number of Port properties on specific conditions. Seawall Lot 322-1 was identified in the State Legislation as a site to be considered for affordable housing development under a lease with term of up to 75 years, provided the development proposal is feasible.

In November 2012, the Board of Supervisors adopted Ordinance No. 232-12 which allow the Port and Housing Office to enter into the Pre-Development MOU. This MOU provides, among other things, a mechanism for the Port to receive fair market value if it enters into a below-market lease with Housing Office for affordable housing on the Site. This payment mechanism has evolved from using Jobs-Housing Linkage Program ("JHLP") credits (which is not the exclusive mechanism for compensating the Port) to using Affordable Housing In Lieu Fee as described under the "Analysis of Proposed Project Terms and Conditions" below. This MOU also provided that the Port would contribute no funding to the project, unless a public parking garage were deemed feasible and included in the Development. This Predevelopment MOU provided for a term of three years to complete all feasibility tasks required to close escrow, and a delegation to the Port Executive Director to extend the term by up to twelve months.

Accomplishments to Date

Between April 2014 and May 2018, the Port and Housing Office completed most of the feasibility tasks enumerated in the Predevelopment MOU, including (i) Housing Office's competitive solicitation and selection of the Developer; (ii) the Port's consent to the Developer selection; (iii) the Developer's submission of its initial development proposal; (iv) the Port's determination to exclude the public parking garage from the development due to financial infeasibility; (v) Housing Office provision of predevelopment funding for the Development; (vi) Port, Housing Office, and the Developer negotiating and drafting required transaction documents for execution; and (vii) the Developer's completion of a number of entitlement tasks, including completion of CEQA through a Final Mitigated Negative Declaration and other land use authorizations required for the Development.

Major Tasks to be Completed Prior to Construction

Other major tasks which must be completed to begin construction of the Project include: (a) approval of the transaction documents by Port Commission, the Board of Supervisors, and SLC; (b) the Developer securing required site control (achieved through the proposed transaction documents) to complete submission of funding applications to public and private funding sources; and (c) confirming overall project feasibility including financing plan.

Public Outreach

During completion of the tasks noted above staff of the Port, Housing Office and the Developer have also conducted a more extensive community outreach program than had been anticipated under the Predevelopment MOU, to better inform the public and generate community support for the Development. As such, the three-year Predevelopment MOU term was extended for the maximum time extension allowed without further Port Commission authorization. On April 29, 2018, the Predevelopment MOU expired. Port staff proposes to request an extension of the Predevelopment MOU to complete the remaining tasks as part of its request to approve the transaction documents.

The Proposed Development

The Developer's initial proposed development had included up to 130 affordable, rental family housing units with ground level spaces for retail, commercial, other ancillary uses, and two mid-block open spaces on the Site (the "Family Project"). In response to the community's desire for seniors to benefit from the development as well, the Housing Office sought and received City's consent to add the adjacent City property located at 735 Davis Street ("City Parcel") to the proposal to provide up to 50 to 55 senior housing units (the "Senior Project").

The two existing surface parking lots at the Site and the City Parcel will be demolished and then improved with two new six-story, mixed-use residential buildings for family and senior housing, respectively. The Family and Senior projects will be connected by open mid-block passageways as shown on the attached **Exhibit "B," Development Schematic Design**.

The Family Project

The Family Project will include approximately 125 affordable units totaling approximately 137,100 gross square feet (gsf) of residential dwelling space and approximately 8,700 gsf of nonresidential space. Residents would have access to a common, community room on the ground floor, an open podium courtyard on the second floor, two open decks on the fifth and sixth floors, and a rooftop terrace and community garden. Ancillary ground-level uses could include retail/commercial, a childcare center with an outdoor play area, and a childcare arcade.

Unit Type	Studio	1 Bedroom	2 Bedroom	3 Bedroom	Manager Unit	Total
No. of Units	16	37	48	23	1	125
Square Footage	430	590	900	1,240	1,240	

The Senior Project

The Senior Project will include approximately 53 affordable units totaling approximately 44,136 gsf of residential dwelling space and approximately 1,260 gsf of non-residential space. Seniors in this project will have access to a community room, an open courtyard on the first floor, and a roof deck on the fifth floor. Ground-level uses would include retail/commercial, and a community room.

Unit Type	Studio	1 Bedroom	Manager Unit	Total
No. of Units	23	29	5	53
Square Footage	430	590	623	

Each building will be approximately 65-feet tall (with an additional 10 feet for the elevator penthouse with variations in height between four and six stories at the streetwall to break up the massing on Front Street and “stepping down” as the Projects get closer to Davis Street to the east. The first floor would provide ground floor units, commercial space, bike parking, common space and social services for residential use, as well as property management space. Floors two through six would consist primarily of residential dwelling units, shared laundry rooms, mechanical spaces, and common spaces for residential use. A variety of open spaces is proposed on the roof and terrace levels. Both projects would include solar panels and green roofs on the roof level. In addition, heating, ventilation, and air conditioning equipment, and an emergency back-up diesel generator would be located on the rooftop of each building. Pedestrian bulb-outs are proposed on Front Street and Broadway. No off-street parking is proposed. Approximately 120 class 1 bicycle parking spaces and 20 class 2 bicycle parking spaces are proposed. Combined, both projects would contain approximately 178 affordable family and senior housing units and approximately 9,260 square feet of restaurant and child care space resulting in an approximately 190,496-square-foot Development.

The buildings generally extend to the property line. Setbacks away from the streetwall exist at the upper levels of the buildings. Along Front Street, a substantial setback of the upper level is approximately 30 feet, making the upper floors minimally perceptible from the pedestrian's perspective. Project renderings show the proposed two six-story buildings having a contemporary architectural style.

The Project's architecture and urban design have been reviewed by the Architectural Review Committee ("ARC") of the Historic Preservation Commission ("HPC") and the Waterfront Design Advisory Committee ("WDAC") for compatibility with the Historic District and both ARC² and WDAC³ found the overall design acceptable and provided a few comments. On April 4, 2018, HPC adopted Motion No. 0335⁴ recommending the combined projects for a Certificate of Appropriateness.

Environmental Review under California Environmental Quality Act

On November 15, 2017, the Developer filed Building Permit Applications with the City Department of Building Inspection ("DBI"). The Planning Department prepared a Draft Initial Study/Preliminary Mitigated Negative Declaration ("IS/PMND") for the Development and published the Draft IS/PMND for public review on October 25, 2017. The Draft was available for public comment until November 27, 2017. On November 27, 2017, an appeal of the IS/PMND was filed.

At a duly noticed public hearing held on March 8, 2018, the Planning Commission reviewed and considered the Preliminary Mitigated Negative Declaration ("PMND") and the appeal, upheld the PMND, and approved the issuance of the Final Mitigated Negative Declaration (FMND) as prepared by the Planning Department in compliance with CEQA, CEQA Guidelines (Title 14 California Code of Regulations Sections 15000 et seq.), and San Francisco Administrative Code Chapter 31 ("Chapter 31").

The Planning Department, after reviewing and considering the FMND and Initial Study, found that the contents of said report and the procedures through which the FMND and Initial Study were prepared, publicized, and reviewed in compliance with CEQA, the State CEQA Guidelines, and Chapter 31 and that the FMND and Initial Study are adequate, accurate and objective, reflect the independent analysis and judgment of the Department and the Planning Commission. Planning Department staff prepared a Mitigation Monitoring and Reporting program ("MMRP"), which was made available to the public and the Planning Director for review, consideration, and action. The MMRP will be incorporated into the Lease.

On March 9, 2018, under Planning Code Section 315, the Planning Director adopted the FMND and authorized the Affordable Housing Project Authorization requested by the

² http://commissions.sfplanning.org/hpcpackets/88%20Broadway_2016-007850COA_ARC031517.pdf

³ https://sfport.com/sites/default/files/Planning/WDAC%20Meeting%20Documents/Staff_Report-1_1-29-18.pdf

⁴ http://commissions.sfplanning.org/hpcpackets/20180404_hpc_min.pdf

Developer to be in general conformance with plans on file with the Planning Department.

STRATEGIC OBJECTIVE

The proposed Development is expected to contribute in a substantial way to meeting the *livability, sustainability, and economic vitality objectives* of the Port's Strategic Plan.

- *Livability Objectives:* The Development will provide much needed housing in premium location to serve a wide a range of households at various affordability levels and create living wage jobs and provide business opportunities for local businesses.
- *Sustainability Objectives:* The Development is expected to incorporate a variety of sustainable practices including environmentally sensitive construction techniques, recycling of construction waste, installation of high-efficiency building systems, storm water management, and green building standards.
- *Economic Vitality Objectives:* The proposed Development is anticipated to contribute to the Port's capital fund to support other projects.

To achieve these strategic objectives, Port, Housing Office, and the Developer staff will be working on completing the Transaction Documents discussed earlier in this Memorandum. The following provide more details on each transaction document.

DISCUSSION

THE PROPOSED TRANSACTION DOCUMENTS

The transaction documents' key terms are summarized below.

I. The New Development MOU

Parties to Document: the Port and the Housing Office

The proposed new Development MOU documents the terms and conditions Port and Housing Office staff have negotiated regarding the agencies' respective roles and responsibilities prior to closing of escrow on the Lease and during the term of the Lease. The key terms and conditions include:

A. Economic Terms

1. **Term:** The term will run from the date the MOU is executed and terminate or expire conterminously with the Lease. The Lease term is 57 years with one 18-year option for up to a total of 75 years.
2. **Payment of FMV to Port:** Immediately upon the Developer's close of escrow on the Lease, a Fair Market Value ("FMV") payment will be due from the Housing Office to Port, and interest may accrue from that date to the date of payment (if full payment

is not made at the close of escrow). The FMV will be determined by an appraisal, jointly ordered by the Housing Office and Port through the City's Department of Real Estate.

3. Payment Source: While the MOU does not restrict the Housing Office from using a particular source to pay the FMV to Port, the parties understand that the likely, first available source will be affordable in lieu fees paid to the Housing Office from the development of Pier 70 Parcel K North site.
4. Payment Due: The Housing Office will pay Port the FMV of the site as soon as fees are paid to it from the Pier 70 Parcel K North development and within not more than three years from the close of escrow (this period is projected to be between February 2019 and February 2022). If Parcel K North fees are not paid within three years, the Housing Office may extend this payment period for up to two additional years to secure other funding sources.

B. Roles and Responsibilities:

5. The Housing Office will:
 - a. Assist Port in negotiating, reviewing and approving mortgage documents, and other financing related to the affordable housing.
 - b. Monitor, administer and help enforce the terms of the Lease relating to the residential component, including affirmative marketing, tenant selection for residential unit leasing.
 - c. Monitor the Tenant's compliance with applicable requirements, including affordability restrictions.
 - d. Help resolve issues relating to affordable housing operation and management, including management performance and compliance with the applicable Good Neighbor Policies.
 - e. Have the right to cure any monetary or non-monetary default by Tenant under the Lease, including the payment of taxes, at Housing Office's option.
 - f. Work with Port regarding Tenant's plan for financing, refinancing, transfer, and sale of any portion of the Project, as applicable.
6. The Port will:
 - a. Have all responsibilities as the landlord under the Lease
 - b. Work with the Housing Office to address Tenant's request for consent to a proposed transfer or a lender's loan documents.
 - c. Work with the Housing Office on efforts to cure Tenant's default under the Lease, if applicable.
 - d. Monitor the Tenant's compliance with the Lease.

II. Option to Lease Agreement

Parties to Document: Port and Developer

The Option Agreement provides the Developer an option to lease the Site subject to certain terms and conditions that have been negotiated by Port staff and the Developer, the key among which are the following:

1. The Premises or Site: The site to be leased is SWL 322-1 located at Broadway and Front Street, measuring approximately 37,810 square feet. It will be leased in "As Is" conditions.
2. Development Program: As described earlier in this Memorandum.
3. Total Development Cost and Sources of Funding: The Developer will be responsible for funding the Development currently estimated to cost approximately \$128.29 million (*Family Project: \$90.73 million; Senior Project: \$37.56 million*) It is not responsible for paying Port's transaction costs, except as otherwise provided under indemnity and insurance provisions.
4. Term: Approximately two years or until replaced by the Ground Lease.
5. Preconditions to Exercise the Option to Lease:
 - a. The Housing Office has agreed to the terms and conditions of paying Port for the Site's FMV as evidenced by entering into the new Development MOU
 - b. Developer has completed all required predevelopment tasks and is ready to close escrow.
 - c. Port and Housing Office staff have reviewed and approved the Developer's financing plan, including lenders' commitment letters, and balanced sources and uses of funds.
 - d. Port and Housing Office staff have reviewed and approved the Developer's updated scope of development and schedule of performance.
 - e. A favorable Trust Consistency Determination has been made by the Port and accepted by SLC.
 - f. Developer has received all required approvals required to start construction.
 - g. Developer is not in default under the Option Agreement.
6. City and Other Standard Lease Requirements: The Option Agreement will include all applicable Port and City requirements for option agreements (e.g. insurance requirements, non-discrimination requirements, etc.).
7. Key Exhibits to the Option Agreement
 - a. *Scope of Development*. The Scope of Development sets forth the improvements that are to be constructed on the Site by the Developer.
 - b. *Schedule of Performance*. The Schedule of Performance sets forth the deadlines by which the parties are required to submit or approve

documents prior to close of escrow. All deadlines are subject to force majeure.

- c. *Schematic Drawings*. Schematic Drawings consisting of site plans and elevations subject to Port Commission approval
- d. *Development Budget*. The Development Budget for the Project, showing a total development cost of \$128,289,000 million.
- e. *Form of ground lease*. The form of the Lease includes the terms described in the next section.

III. The Lease

Parties to the Document: Port and Developer

In addition to the Premises, Development Program and Development Cost specifics set forth above in the Option to Lease, the key business terms and conditions described below have been negotiated by staff of the Port and the Developer.

1. Lease Term: 57 years initial term, plus one 18-year extension option. The 18-year extension is subject to the Developer remaining as a “tenant in good standing” and having exercised the extension option within two years prior to the end of the initial term.
2. Conditions to Extend the Term. To extend the Term, the following conditions must be satisfied:
 - a. Developer must provide written notice to Port three years before the Initial Term is due to expire, along with the required assessment report on the property conditions.
 - b. Port Chief Harbor Engineer will review the assessment report and consider the effects of sea level rise, the condition of the Seawall, and recommend any mitigation measures required to protect public health and safety or against potential claims against Port during the Extended Term.
 - c. There is no Developer’s default under the Lease.
3. Construction Period Rent: There is no construction period rent since the Port is being paid a lump sum by the Housing Office.
4. Operation Period Rent for the Residential Portion of the Development: \$1 per year for the residential portion of the Project, in recognition of the fact that the Port will receive a prepayment of the FMV from the Housing Office.
5. Operation Period Rent for the Non-Residential Portions of the Development:
 - a. *Participation Rent*. Restaurant Space Rent: 20% of the net annual revenue collected by the Developer for the proposed restaurant sublease.

- b. *Participation Rent*: Other Subleases: 50% of excess rent from other subleases for microcell antenna tower, or similar sublease.
 - c. *Participation in Growth in Market Value*: The Port, Housing Office and the Developer are negotiating terms that will allow the Port to participate in the growth of the Development's market value while still complying with applicable tax credit regulations.
- 6. Minimum Base Rent: None.
- 7. Competent Management Required: The Developer has identified JSCo to be the initial management company or operator of the both the residential and retail/commercial elements of the Development.
- 8. Transfer/Sublease: Except with respect to certain pre-approved related parties, all transfers or subleases are subject to Port's prior consent (with Housing Office consent also required with respect to transfers and subleases of the residential portion). The Parties have also agreed on conditions for pre-approval of a restaurant sublease.
- 9. Leasehold Financing: The Developer and its subtenants will have the right to obtain financing from bona fide institutional lenders secured by its leasehold or subleasehold interest.
- 10. No Subordination of Port's Fee Interest: No lien may be placed on Port's fee ownership of the Site.
- 11. Public Open Space: There are two midblock passage ways that will be landscaped and made open to the public most of the day.
- 12. Sea Level Rise: The relevant transactions documents will include the Port's recommended provisions addressing sea level rise.
- 13. Reversion Interest: Tenant will own the improvements during Lease term and at the end of the term, tenant must remove or repurpose the improvements per the legislation. The Property will revert back to Port's sole ownership.
- 14. City and Other Standard Lease Requirements: The relevant transactions documents will include other standard provisions regarding indemnity and release, insurance, hazardous materials, casualty, mortgages, maintenance and repair, and all of the applicable Port and City requirements.

CLIMATE ACTION

Due to the long-term nature of the proposed Ground Lease, the Lease will provide that it may be terminated due to climate change, sea level rise, or other catastrophic events at the Site that pose a risk to public health and safety. The Developer may be required to

implement flood protection measures determined to be necessary by the Chief Harbor Engineer to protect the building and public health and safety. Such measures may include temporary public access closures and sandbagging or similar, temporary measures to minimize the risks associated with flooding or water inundation. If the Chief Harbor Engineer determines that conditions continue to pose a threat to public health and safety, Port may terminate the Ground Lease.

CONSISTENCY WITH STATE LEGISLATION

Port staff has made the Developer aware that the Site is subject to the Public Trust and State Legislation and that, as a pre-condition of Port's execution of the Transaction Documents, the Port Commission and State Lands are to make their respective determinations of consistency with the State Legislation. Port staff are working on drafting this determination which will include the necessary findings as required by the State Legislation that the Port Commission and State Lands would consider in determining that the permitted uses, consideration to the Port, and other pertinent provisions of the Ground Lease are consistent with the State Legislation and applicable statutes governing the use of SWL 322-1.

ANALYSIS OF THE PROPOSED PROJECT TERMS AND CONDITIONS

Port staff have been collaborating and negotiating with the Housing Office and the Developer since last year to bring this complex but beneficial tri-party transaction into its current form. Port staff analysis of the proposed terms and conditions of the transaction is below.

1. The nominal \$1 per year rent for the residential project is reasonable given that the Development MOU will require that the Port be paid the present value of the fair market rent the Site would command in the today's real estate market. In addition, Port is to receive 20% of the net annual cash flow that Developer will receive from the proposed restaurant sublease during the retail space operation.
2. Port staff is negotiating terms to allow the Port to participate in the growth of the Development's market value while still complying with applicable tax credit regulations. Further analysis will be provided at the July Commission meeting when the term is finalized.
3. While State Legislation provided for lifting trust restrictions from the Site for up to 75 years and not beyond 2105, Port staff is concerned with potential effects of Sea Level Rise and Climate Change. As a result, Port staff is recommending a shorter initial term of 57 years to allow for the review of conditions at that point to define what measures would be required in extending the term to the full 75 years allowed by law. In addition, affordable housing projects financed with low income housing tax credits and City's residual receipt loans usually require a long-term lease to allow the tax credit investors enough time to recapture their investment. The tax credit allocation regulations require a minimum affordability period of 50 years or more. Given these considerations, Port staff recommends

the initial 57-year term and associated option to extend as reasonable and appropriate to support prudent development and operation of the Project.

4. Port staff confirms that the Transaction Documents require no Port funding for any part of the Development; all costs incurred by the Developer in implementing the Development are to be borne by the Developer, with funding assistance from the Housing Office. Port costs are limited to Port staff costs, Port appraisal costs, and Port's City Attorney costs in support of Port activities.
5. Expected benefits of the proposed Development include, among other things, the much-needed affordable housing to be added to the City housing stock and the addition of two architecturally-fitting buildings to the Northeast Waterfront Historic District, replacing the existing surface parking lots. The Development will add to the welcoming ambiance and will help activate a gateway to North Beach and Chinatown. Other non-Port benefits include property, sales, and gross receipts taxes and other direct and indirect revenues for the City. The Development is anticipated to generate approximately 288 construction jobs, and over 75 permanent and part-time jobs.
6. The proposed transaction documents include provisions addressing or limiting potential exposure of Port to risks including development, cost, and limited revenue risks, among others (described further below).

Development Risks

The Port owns the Site unencumbered and the Site was generating approximately \$467,000 annually or \$38,916 per month, as of 2017, in net revenue to the Port. The current parking operation is an interim use not representing the Site's highest and best use. The proposed Development does pose some risks to the Port, but staff believes most of these can be mitigated through the transaction document requirements and lease provisions. The Development represents collaboration with the State and a concerted effort by Port and Housing Office to achieve multiple objectives. In particular, the Project represents a fairly unique stand-alone opportunity to advance the Port's livability objective in the face of the City's housing crisis. A more detailed review of the risks is set forth below.

Land Payment Risk

Payment to the Port by the Housing Office is likely to occur with three years after close of escrow on the Lease, but could occur within two years later if Housing Office is not able to pay within the first three years. The Port will experience the loss of existing cashflow from the surface parking lot operating during this period while it awaits the benefit of the FMV payment from the Housing Office; however Port staff believes that some portion of the displaced parking demand will accrue to the Port through its nearby parking leases. As described above, under Ordinance 232-12 the Housing Office was previously intending to pay the FMV using JHLP credits. Port and Housing Office staff have since decided that the JHLP fees generated at the Port's master planned development projects at Mission Rock and the Pier 70 Waterfront Site were best utilized for those projects' respective affordable housing programs. Instead the Housing Office anticipates utilizing affordable in lieu fees paid to it from a future

developer of Pier 70 Parcel K North, a site to be sold by the Port in connection with funding the Pier 70 project. If the sale of the site or the construction of the project is delayed or never materializes, the Housing Office will need to identify another funding source. To mitigate the timing aspect of this land payment risk, Port staff is negotiating interest rate provisions allowing for the escalation of the FMV payment relative to the time between close of escrow and full payment.

Entitlement Risk

The Developer has completed a majority of the entitlement tasks and has received Planning Department's authorization to continue proceeding with the Development. Port's exposure to this risk is considered minimal both under its proprietary status as a landowner and as a regulator.

Financing Risk

Funding for this Development is primarily from the State, TCAC, and the Housing Office with secondary funding sources more readily available once the Development has received State and local funding commitments. The Port's exposure to this risk is minimal since the Port is not providing any capital funding for the Project. The Port's parking operation at the Site will continue and the Site will not be transferred to the Developer until all financing is in place and escrow is closed.

Cost Risk

The Project is subject to expected construction cost increases if building permit review and approval and low income tax credit syndication takes longer than the Developer anticipates. Measures to mitigate this risk include cost projections that provide ample construction contingency, using guaranteed maximum pricing for the construction contract, providing for performance and payment bonds, and using competent project managers. Port's exposure to this risk is considered minimal since the Port is not providing any capital funding for the Project.

Market Risk

Competition and business cycle risks for the proposed development are considered minimal given the supply and demand conditions of housing in San Francisco. Port's exposure to this risk is considered nonexistent.

Counterparty Risk

This risk usually arises from poor project oversight brought on by lack of requisite development expertise and financial capacity. The Developer's lead-team members are Bridge Housing and JSCo; based on its participation in the Project negotiations Port staff believes the team has the requisite qualifications and the wherewithal to perform as co-developers and project managers. These co-developers have developed several projects in San Francisco with similar complexity profiles. Port's exposure to this risk is considered minimal and it is mitigated by conditions to escrow closing and the provision of construction security, such as a payment and performance bonds.

Operating Risk

This risk usually arises from inadequate budgeting, planning and project management. This risk is being mitigated by requiring competent project manager with oversight from

the Housing Office. The manager will be required to monitor compliance with the City's Good Neighbor Policy to maintain good relations with the all stakeholders at its location. Port's exposure to this risk is considered minimal and mitigated through performance standards in the Lease.

COMMUNITY OUTREACH

From 2014 to the present time, the Housing Office, Port staff and the Developer have collectively conducted extensive community outreach and solicited comments and feedback from stakeholders to form general consensus on the goals/objectives of the Development, including its architectural design, compatibility with the Historic District and its targeting of a wide spectrum of households with limited incomes. The Housing Office hired a joint venture team of Mark Cavagnero Architects and Cary Bernstein Architects to conduct site design analysis and to hold a community design workshop, where design criteria were discussed with the public for the Site, and an adjacent City Parcel was added to provide housing for seniors. These outreach efforts took over 36 months and resulted in the Development being supported by almost all stakeholders including members of the Northeastern Waterfront Advisory Group (NEWAG). The Development has been presented to NEWAG many times, the last being its April 4, 2018 meeting.

NEXT STEPS

Based on the discussion during the June 12 informational hearing, Port staff intend to request the Port Commission's consideration and approval of the Transaction Documents, the Development's schematic design, and findings that the Project is consistent with applicable State Legislation at the July 10, 2018 Port Commission meeting. The July 10 action would further authorize the Executive Director to seek necessary approvals for the Transaction Documents from the Board of Supervisors (he Board of Supervisors and the California State Lands Commission. The tentative proposed approvals schedule is set forth below:

- Introduction to Full Board of Supervisors ("Board") – June 26, 2018
- Hearing at Board Government Audit and Oversight Committee – July 18, 2018
- Board of Supervisors Approval – July 24, 2018
- Mayor Signs Resolution – August 3, 2018
- Hearing at SLC: August 23, 2018
- Port signing of Transaction Documents (assumes all approvals successful): August 27, 2018
- Developer Submission of California Debt Limit Allocation Committee ("CDLAC") application: September 12, 2018
- CDLAC Allocation meeting: November 14, 2018

CONCLUSION

Port staff welcomes further input from the Port Commission as it completes remaining negotiations in preparation for a return to the Port Commission for the actions described above at its July 10, 2018 hearing.

Prepared by: Ricky Tijani, Manager
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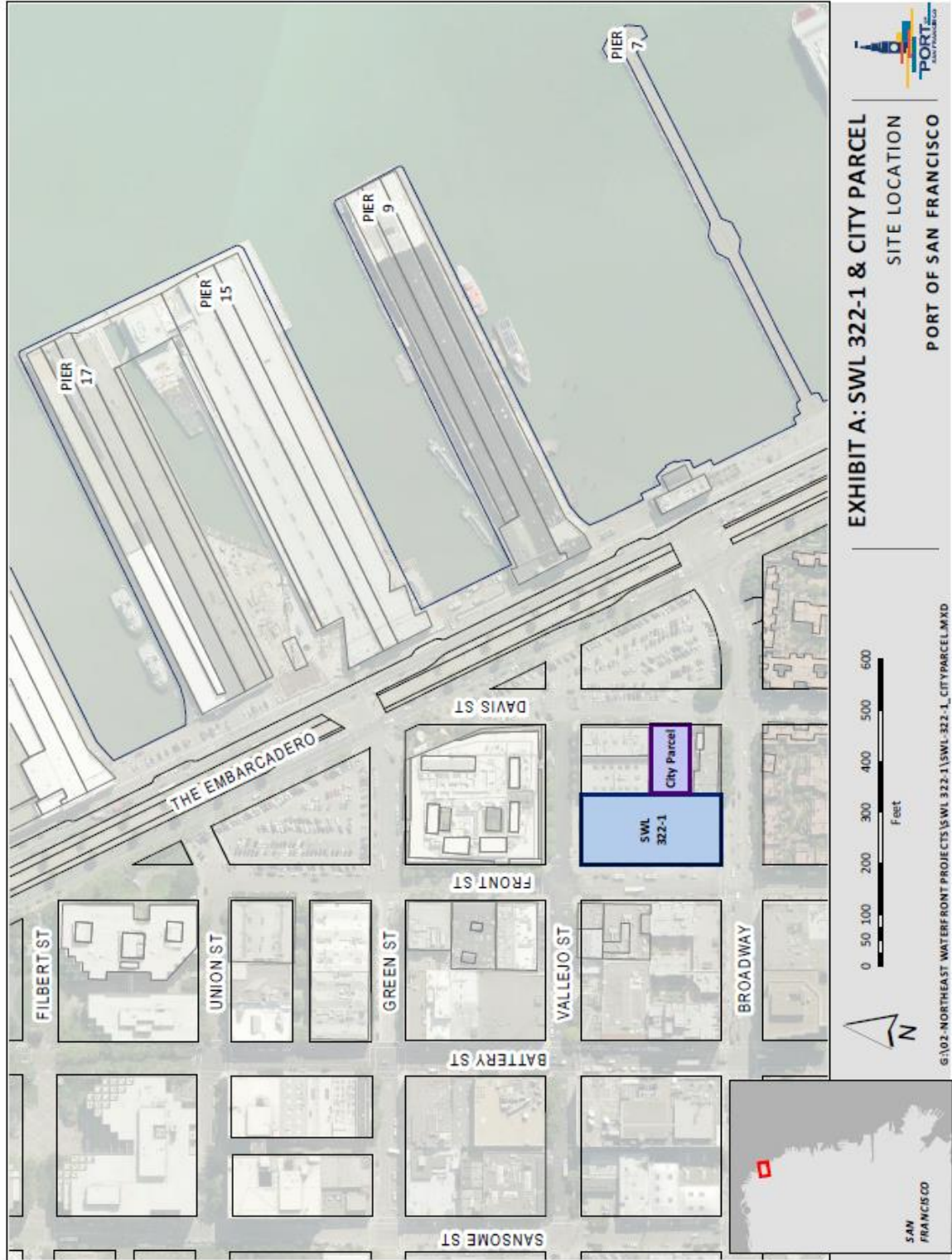
Through: Rebecca Benassini, Assistant Deputy Director
Waterfront Development

For: Michael Martin, Deputy Director
Real Estate and Development

Attachments: ***Exhibit "A" Site Map***
Exhibit "B," Development Schematic Design

Exhibit "A"

Site Map



***Exhibit "B,"
Development Schematic Design***