

MEMORANDUM

September 7, 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: Update on the San Francisco Recreation and Park Department (RecPark), Build, Inc., and the Office of Economic and Workforce Development (OEWD) India Basin project located at Innes Street between Earl and Griffith Streets; and presentation on the proposed Port-related transaction documents for the India Basin project: (1) consent to Development Agreement between the City and India Basin Investment, LLC; (2) approval of a Public Trust Exchange Agreement with the California State Lands Commission and India Basin Investment, LLC; (3) approval of an Open Space Covenant regarding the India Basin lands exchanged into the Public Trust; and (4) delegation of authority to Port's Executive Director to enter into one or more Memoranda of Understandings with various City agencies, including RecPark, the San Francisco Public Utilities Commission (SFPUC), the San Francisco Public Works Department (SFPW), and the Department of Building Inspections (DBI), relating to the roles and responsibilities for the lands subject to the Public Trust.

DIRECTOR'S RECOMMENDATION: Information Only – No Action Required

EXECUTIVE SUMMARY

On February 23, 2016, the Port Commission received an informational briefing on the India Basin Open Space Planning process, led primarily by the San Francisco Recreation and Park Department (RecPark), in coordination with the Port, Build Inc. and a related entity known as India Basin Investment, LLC (collectively, Build), Pacific Gas & Electric Company (PG&E) and the Office of Economic and Workforce Development (OEWD).¹ That briefing focused on RecPark's planning efforts at 900 Innes Avenue and

¹ A copy of the February 23, 2016 Port Commission staff report and associated exhibits is available at: <http://sfport.com/meeting/san-francisco-port-commission-february-23-2016-supporting-documents>

the Port's participation in the planning efforts to ensure that the future improvements respond to the Port and its stakeholders' needs.

On May 18, 2017, the Port Commission received a second informational briefing with an update to RecPark's open space planning at 900 Innes Avenue and two adjacent RecPark properties (India Basin Shoreline Park and India Basin Open Space), as well as a briefing on Build's proposed mixed-use development project at 700 Innes Avenue (the "India Basin Mixed-Use Project" or "Project"). That briefing provided information on Build's proposal to enter into a Public Trust Exchange Agreement (Trust Exchange Agreement) with the City and the California State Lands Commission (State Lands Commission) that would make the Port the trustee of new shoreline parcels that Build plans to develop as parks and open space as part of the Project, and the Port's involvement going forward.²

This third informational briefing provides further information on the open space planned as part of Build's India Basin Mixed-Use Project, the proposed Trust Exchange Agreement, and the various Port Commission approval actions needed for the Project. Staff anticipates returning to the Port Commission in October 2018 to seek approvals for the project as described below.

PROJECT BACKGROUND

The India Basin Shoreline is a part of the Blue Greenway and is comprised of multiple properties (listed below). These properties are in varying stages of development, and three are within the jurisdiction (in whole or in part) of RecPark. The remainder includes City property within the jurisdiction of the Port, and private property owned by PG&E, Five Point (formerly Lennar) and Build (*see Exhibit A: Site Plan*).

1. Heron's Head Park (Port, existing)
2. Hunters Point Shoreline (PG&E and Port, no submitted plans)
3. India Basin Shoreline Park (RecPark and Port, existing)
4. 900 Innes (RecPark, proposed)
5. *India Basin Mixed-Use Project - 700 Innes and Big Green (Build, proposed)*³
6. *India Basin Open Space (RecPark and Port, existing)*
7. Northside Park (Five Point, proposed)

The City, through RecPark, OEWD, and the Port has been working to ensure that all the open space on these properties eventually look, feel and operate as an integrated park system and complete a gap in the Blue Greenway system. The City intends to create a continuous 1.5-mile waterfront open space, from the new Northside Park to the Port's existing Heron's Head Park. These properties are part of the Blue Greenway system. Since 2015, the Port has been working collaboratively with RecPark and OEWD on the

² A copy of the May 23, 2017 Port Commission staff report and associated exhibits is available at: <https://sfport.com/meeting/san-francisco-port-commission-may-23-2017-supporting-documents>

³ The two italicized parks are discussed in this staff report and the subject of the informational briefing on September 11, 2018.

planning of these open space areas, resulting in the completion of a Waterfront Study, “The India Basin Waterfront Study: Parks, Trails and Open Space”, participation on the India Basin Task Force, a comprehensive signage effort, and a design competition for 900 Innes and the India Basin Shoreline Park.

As part of the India Basin Mixed-Use Project proposed by Build, the developer proposes renovations to RecPark’s India Basin Open Space and the construction of a new 5-acre park, called the Big Green, that will be seamlessly connected to the India Basin Open Space. (see *Exhibit B: The Big Green and India Basin Open Space*).

India Basin Mixed-Use Project (Build)

Build is proposing redevelopment of approximately 17.2 acres of privately-owned land plus approximately 5.94 acres of existing publicly-owned rights-of-way (ROWs) into a mixed-use community with residential, retail, commercial, office, institutional, flex space, and recreational and art uses (see *Exhibit C: India Basin Mixed-Use Project*). The proposed Project would be built in three phases and include up to 1,575 residential units, and up to 209,106 gross square feet of commercial, institutional, retail or flex spaces at select ground-floor locations. The Project would also include up to 1,800 vehicle spaces, 1,575 bicycle spaces and several transportation improvements including a transit plaza at Arelious Walker and Innes Avenue, a Class 1, grade-separated commuter bike path linking the future 900 Innes to Northside Park, and at least 2 bike share pods on the site.

The Project would provide the following public benefits:

- *Open Space*: Creation or improvement of approximately 14 acres (9.5 acres within the Port’s jurisdiction) of public open space, including improvement of RecPark’s India Basin Open Space, and the creation of the Big Green, linking the India Basin Mixed-Use Project to the shoreline and enhancing the Blue Greenway.
- *Maintenance of Public Spaces and Other Areas*: A separate services-only Community Facilities (Special Tax) District will be established to provide approximately \$1.5 million in annual revenues from the Project for the cost of long-term management and maintenance of parks, public spaces, stormwater systems, and certain portions of public rights-of-way.
- *Sea Level Rise Protection*: The Project would provide future funding sources through the formation of a Community Facilities (Special Tax) District that the City will use to implement protections along the Southern Bayfront shoreline from future sea level rise.
- *Affordable Housing*: The Project would include an affordable housing plan to facilitate development of 25% of all residential units built within the Project site as below market rate units, inclusionary units or in lieu fee units.
- *Transportation*: The Project would construct major new transportation infrastructure and would contribute toward other transportation and other

infrastructure serving India Basin through payment of a Transit Impact Fee, estimated at approximately \$10 million. The Project also includes a Transportation Demand Management Program with a requirement to reduce single occupancy vehicle trips by 20% from baseline metrics.

- *Jobs and Workforce Development Program:* The Project would implement a workforce commitment program to encourage local business participation, including an LBE participation goal of 17% as established by the City's Contract Monitoring Division as well as participation in the City's First Source Hiring Requirements. The sponsor will further provide resources to support community-based organizations that provide job readiness training for individuals within at-risk populations.
- *Community Facilities:* If requested, the Project would make available to the City up to 5,000 gsf of space at market rate for community facilities.

Improvements Within the Port's Jurisdiction

Under a proposed land exchange pursuant to the Trust Exchange Agreement described below, Build would contribute private lands to construct a new approximately 5-acre open space (the "Big Green") adjacent to RecPark's India Basin Open Space. The Big Green would include:

- Pathways in the form of boardwalks, trails and stairways;
- Children's play areas, a fitness loop, several sculptures, a dog run and several small gathering spaces; and
- Natural grasslands, wetlands, a wet meadow and a grove of trees.

Build would also redevelop and improve the existing India Basin Open Space into enhanced wetlands, a boardwalk, and an elevated beach (*see Exhibit B: The Big Green and India Basin Open Space and Exhibit C: India Basin Mixed-Use Project*). The lower edge of the shoreline would largely remain in a natural state with some enhancements for public access and ecological function. The proposed enhancements would include sand dunes, bird islands, a recreational beach area, a boat launch (directly from land), a bioengineered breakwater constructed of natural materials that would provide shoreline protection and habitat, and new wetlands and ponds. The shoreline would be adaptable to accommodate and embrace projected sea level rise of 66" plus a storm surge of 42", for a total of 108" above current Mean Higher High Water (MHHW).

The Big Green and India Basin Open Space would connect to the future 900 Innes/India Basin Shoreline Park, which includes the historic Shipwright's Cottage to the north, and to the future Northside Park in the former Hunters Point Shipyard to the south. This represents a key benefit to the Port of its proposed participation in the project -- a network of new and improved parks and open spaces within the Project area will draw visitors to the waterfront and close a gap in the Blue Greenway portion of the San Francisco Bay Trail (*see Exhibit C4: Bay Trail and Bike Access Exhibit*).

City Approvals

On July 26, 2018, the Planning Commission certified the Final Environmental Impact Report (FEIR), adopted CEQA findings, and approved General Plan amendments and findings, Planning Code and Map amendments, shadow findings, and the India Basin Design Standards and Guidelines, for the India Basin Mixed-Use Project.

On August 23, 2018, the Planning Commission approved the Development Agreement for the Project with a recommendation that the Board of Supervisors approve the transactional documents.⁴

The Project is scheduled to be presented to the Board of Supervisor's Land Use Committee on September 17, 2018, with a first reading at the full Board of Supervisors on September 25, 2018.

STRATEGIC PLAN OBJECTIVES

The proposed Project is expected to contribute to meeting the *engagement, livability, resiliency, and stability* objectives of the Port's Strategic Plan.

- *Engagement:* The planning process for the India Basin Shoreline open space involved meaningful public participation and the incorporation of community feedback. The proposed Project enhances strategic partnerships with other City agencies.
- *Livability and Resiliency:* The proposed Project will create new parks and open space designed for resiliency to sea level rise, close a gap in the Blue Greenway, and expand pedestrian and bicycle access along the shoreline.
- *Stability:* The proposed Project will result in investment to Port property and benefits to the southern waterfront community, funded and maintained by the Project developer and other City agencies.

SOUTHERN WATERFRONT COMMUNITY BENEFITS AND BEAUTIFICATION

The proposed Project would improve the India Basin shoreline and provide new open space and parks for the public to enjoy, including closing a gap in the Blue Greenway. The improvements would create new jobs and housing in the community. The Project developer would be responsible for all costs associated with the park improvements and through an MOU, RecPark would be responsible for all maintenance and liability associated with activities that occur on the land. These improvements not only provide benefits to the residents of the new community, but also close a gap in the Blue Greenway to connect the rest of the City to this community. The improvements and on-

⁴ A copy of both the July 26, 2018 and August 23, 2018 Planning Commission staff reports and associated exhibits are available at: <http://commissions.sfplanning.org/cpcpackets/2014-002541DVA.pdf>

going maintenance of these areas will be accomplished with little to no impact on the Port's budget.

PUBLIC TRUST LAND EXCHANGE

As presented at the Port Commission's last informational briefing on the Project on May 18, 2017, portions of the India Basin Mixed-Use Project site are subject to the common law public trust for commerce, navigation and fisheries and the Burton Act statutory trust (collectively, the "Trust"). Other parcels within the Project site include a patchwork of uplands, filled tide and submerged lands, accepted and unaccepted rights-of-ways (ROWs), and parcels of uncertain and potentially disputed Trust status. Large portions of the shoreline are free of the Trust or have disputed Trust status, and the majority of the submerged lands are in private ownership with disputed Trust status. The Trust lands held by the Port within the Project area consist primarily of paper street fragments within the India Basin Open Space, separated by non-Trust blocks. Several upland parcels that are cut off from the water are not useful for Trust purposes, but cannot be developed without resolution of Trust title issues (*see Exhibit D1: Pre-Trust Exchange Ownership*).

The State Lands Commission oversees Trust lands owned by the State of California and the activities of Trust grantees (such as the Port) that administer Trust lands. Use of Trust lands is generally limited to maritime commerce, navigation, fisheries, water-oriented recreation, parks and open space, environmental stewardship (natural resource protection, wildlife habitat and study), and facilities for fishing, swimming, and boating. Ancillary or incidental uses that promote Trust uses or accommodate public enjoyment of Trust lands are also permitted, such as hotels, restaurants, and visitor-serving retail. Residential and general office uses are generally not permitted uses on Trust lands.

Chapter 310 of the Statutes of 1987 ("Chapter 310") authorizes the City, subject to State Lands Commission approval, to exchange City property subject to the Trust for property not subject to the Trust if the City and the State Lands Commission determine that the land to be exchanged out of the Trust: (1) has been filled and reclaimed; (2) is cut off from access to the waters of the Bay; (3) represents a relatively small portion of the granted tide and submerged lands; (4) is no longer needed or required for the promotion of the Trust; and (5) can be removed from the Trust without causing any substantial interference with Trust uses and purposes. In addition, the land to be exchanged into the Trust must have an economic value equal to or greater than the economic value of land to be exchanged out of the Trust. Under Chapter 310, land exchanged into the Trust would be owned by the City and within the jurisdiction of the Port Commission.

Build has proposed a Trust Exchange Agreement that will place or confirm in the Trust the shoreline lands comprising the India Basin Open Space and a portion of the Big Green (approximately 9.5 acres), and that may place in the Trust an additional 17 acres of submerged land and a 5,924-square-foot (0.136 acre) area of shoreline within the Big Green currently owned by Build, following remediation of these areas. The exchange will terminate the Trust in approximately 19 acres of historic uplands and former tidelands that have been filled and reclaimed, are cut off from access to the waterfront,

and are no longer needed for Trust purposes. The Trust exchange is necessary to allow Build's development to go forward (*see Exhibit D2: Post-Exchange Trust Configuration*). Certain land currently owned (or to be acquired) by Build on which it intends to develop housing, will be freed of the Trust, while other land along the shoreline with questionable Trust status, will become subject to the Trust. After the Trust exchange, both India Basin Open Space and a portion of the Big Green will be subject to the Trust with the Port as trustee, and the housing development sites will be clear of Trust restrictions. The exchange will resolve disputed Trust uncertainties along the shoreline and rationalize the Trust within the Project site in a manner that would achieve various Trust, Port and City objectives.

As a condition to the Port becoming the trustee of any lands exchanged into the Trust, the exchange would be structured in a manner that protects the Port and the Trust from liability for hazardous materials that may be present. Closing of the exchange under the Trust Exchange Agreement will be conditioned on State Lands Commission and Port approval of the physical condition of the land exchanged into the Trust, including enforceable mitigation measures and project components described in the FEIR regarding hazardous materials. The Trust Exchange Agreement also includes an environmental indemnity from Build in favor of the State Lands Commission and the City (including the Port).

Preliminary investigation of environmental conditions in the proposed Big Green and India Basin Open Space, have been completed. The results indicate that the upland soil and groundwater contain contaminants typically found in Port waterfront fill areas, at levels acceptable for recreational purposes with appropriate management during construction, operation, and maintenance. The environmental conditions of soil within intertidal and subtidal areas were evaluated for potential use as wetland or aquatic habitat. The results suggest that additional investigation and/or design to reduce potential risk to aquatic organisms may be warranted. Any inclusion of these areas in the proposed Trust Exchange Agreement will be conditioned on testing and remediation and the Port's final acceptance of these properties into the Trust.

The Development Agreement further protects the Port from future costs and liability by requiring, as a closing condition for the land exchange, the execution of one or more Memoranda of Understandings (for ease of reference, collectively referred to herein as the MOU) with RecPark and other City departments that assigns operations, maintenance and liability responsibility (and associated costs) to RecPark and describes the roles and responsibilities of other City departments such as SFPUC, DBI and SFPW. The MOU will also include an indemnity from RecPark in favor of the Port from any claims as to the condition of the Trust lands, any permitted and unpermitted activities thereon, and hazardous materials. The MOU is described in further detail below.

The Trust Exchange Agreement requires approval of the Port and RecPark Commissions, the Board of Supervisors, and the State Lands Commission. If approved, the Port would become the trustee of approximately 9.5 additional acres of land subject to the Trust, and possibly an additional 17 acres of submerged lands and 5,924-square-

foot (0.136 acre) area of shoreline within the Big Green, if remediated to standards acceptable by the Port.

A draft Trust Exchange Agreement is currently being negotiated with the State Lands Commission.

PORT COMMISSION APPROVALS AND KEY TRANSACTION DOCUMENTS

The following approval actions by the Port Commission are needed for the India Basin Mixed-Use Project:

1. **Consent** to the **Development Agreement** between the City and India Basin Investment, LLC, including approval of infrastructure, stormwater management improvements and other public improvements planned for land under Port jurisdiction, and proposed street vacation actions within the Project site;
2. **Approval** of the **Trust Exchange Agreement** and adoption of the Trust exchange findings required under Chapter 310;
3. **Approval** of the **Declaration of Open Space Covenant** that restricts the lands exchanged into the Trust as park and open space subject to the Trust, and confirms RecPark's role as sole manager of these lands and the Port's role as trustee of these lands; and
4. **Delegation** to the Port's Executive Director to enter into one or a series of **Memoranda of Understanding** with RecPark and other City agencies, as appropriate, to delineate agency responsibilities for management, maintenance, programming and permitting authority for the Trust lands held by the Port as trustee.

Development Agreement

The Development Agreement (DA), approved by the Planning Commission on August 23, 2018, and further subject to Board of Supervisors approval, vests in India Basin Investment, LLC, master entitlement to construct the India Basin Mixed-Use Project in exchange for public benefit obligations above and beyond those provided by typical code-compliant projects. The key provisions of the DA that relate to the Port's consent include:

- *Parks and Open Space:* The DA requires Build to construct approximately 14 acres (9.5 acres of which would be located within the Port's jurisdiction as established by the Trust Exchange) of public open space, including improvement of RecPark's India Basin Open Space, and the creation of the Big Green, linking the Project to the shoreline. The parks and open space would be constructed commensurate with development, in three phases (*see Exhibit E: Phasing Plan*).
- *Vacation of Streets:* Subject to further consent of the parties, portions of Port-owned ROWs are within the proposed Project site and would require Port

consent to approve vacation of these ROWs for the Project to be constructed. The ROWs are primarily within areas proposed for the Big Green.

- *Infrastructure Plan*: The Infrastructure Plan defines the infrastructure proposed for the entire India Basin Mixed-Use Project, including infrastructure planned for Port property, the oversight, acceptance and maintenance of which will be the subject of the MOU. The Port Commission's consent of the DA will include endorsement of the Infrastructure Plan for Trust consistency.

Consent of the DA is also being required of the RecPark and SFPUC Commissions, and the SF Municipal Transportation Agency (SFMTA) and SF Fire Department (SFFD), as the DA relates to those agencies' jurisdiction.

Trust Exchange Agreement

As described above, the Trust Exchange Agreement would bring nontrust and disputed Trust properties along the shoreline into the Trust while removing any possible uncertain Trust status on upland filled areas to allow the India Basin Mixed-Use Project to go forward. The DA requires the City and the Developer to use reasonable efforts to complete the Trust exchange. Before closing on the Trust exchange, the DA requires: (1) that each party approve the condition of title and condition of the exchanged property; (2) that the Port and RecPark shall have entered into a Memorandum of Understanding that defines the roles and responsibilities of each with respect to the exchanged lands; and (3) that the Developer shall have obtained its first development phase approval. At the Trust exchange closing, the City is required to record a Declaration of Open Space Covenant (described further below) that ensures that those portions of the India Basin Open Space and Big Green to be exchanged into the Trust and placed under the Port jurisdiction for Trust purposes are operated and managed for park and open space uses by RecPark.

Declaration of Open Space Covenant

The Declaration of Open Space Covenant (Covenant) would be an exhibit to the DA and the Trust Exchange Agreement that specifies the role of the Port and RecPark regarding the future lands exchanged into the Trust. The Covenant would be signed by the City's Director of Property, the Port's Executive Director and RecPark's General Manager, and recorded as a deed restriction on the applicable Trust lands simultaneously with the Trust exchange.

The Covenant would:

- Restrict the applicable Trust lands as parks and open space, with the Port as trustee of the lands with the right to ensure that uses are consistent with the Trust.
- Confirm and establish RecPark as responsible for operation and maintenance of the parks, including the right to enter into contracts for management, landscaping, and programming.

- Confirm that any City liability and all funding for maintenance and operations of the parks would be held and managed by and through RecPark.
- Constitute a covenant that runs with the land, binding all future owners and users of the land.

Once approved, the Covenant cannot be amended or terminated without the prior consent of the Port Commission, the RecPark Commission, and the Board of Supervisors, each in their sole discretion following a duly noticed public hearing.

Memorandum of Understanding

As described above, the MOU between the Port and various City agencies, including RecPark, the SFPUC, SFPW, and DBI, will be prepared to establish the roles and responsibilities of each of these agencies with respect to the new Trust lands. The MOU would assign management, maintenance, programming and permitting authority to these agencies, with respect to their respective authority and jurisdiction and relieve the Port of financial obligations and liability for the maintenance of the Trust lands. The Port however, would retain review authority of uses within its jurisdiction for consistency with the Trust and for certain permitting and acceptance activities as required by the Chief Harbor Engineer.

Final terms for the MOU are being refined in conjunction with final project negotiations and approvals. When complete, the staff anticipates that the MOU would include the following terms with respect to each of the following agencies, the details of which will continue to be developed further by the Port and staff of the respective agencies with assistance from the City Attorney’s Office:

City Agency	Key MOU Terms
RecPark	<ul style="list-style-type: none"> • Assume all operational responsibilities for the Trust lands, including obtaining all needed environmental and regulatory permits, performing final design review and approval for improvements, and providing construction oversight and acceptance of completed improvements not accepted by other City agencies; • Obtain Port staff confirmation that final plans are consistent with the Trust and comply with reporting requirements to the State Lands Commission, if any. • Manage special event permitting and coordinate amendments to the Port Code and Park Code to implement special event permitting and enforcement, if needed; • Perform activities necessary to operate, maintain, and

	<p>complete routine repairs or rehabilitation work, including alterations or improvements to the parks and respond to enforcement matters;</p> <ul style="list-style-type: none"> • Assume liability and indemnify the Port for any claims as to the condition of the Trust lands, any permitted or unpermitted activities thereon, and hazardous materials.
SFPUC	<ul style="list-style-type: none"> • Oversee construction of any public utility infrastructure and stormwater management facilities that are or will be under the SFPUC ownership, control or oversight. • Accept, operate, and maintain the public utility infrastructure that SFPUC elects to accept.
SFPW	<ul style="list-style-type: none"> • To the extent agreed with the Chief Harbor Engineer, review applications for necessary permits for roadways, geotechnical and shoreline improvements, grading, park construction and related activities within the Trust lands and where appropriate, issue such permits; • Work with DBI on permits, inspections, and other responsibilities for the construction, alteration, improvement or removal of any structure within the Trust lands. • Accept, operate and maintain the infrastructure constructed within the Trust lands and for street vacations.
DBI	<ul style="list-style-type: none"> • In accordance with the existing as-needed MOU relationship with the Port, provide review support for permits for structures and other improvements on the Trust lands, and related oversight and inspections as requested.

SCHEDULE AND NEXT STEPS

Port anticipates returning to the Port Commission with responses to questions raised but not yet answered at its September 11th hearing and a request to approve the Port-related transaction documents outlined above in October 2018.

The actions that the Port staff will recommend to the Port Commission at its October 2018 meeting will include:

- Consent to the Development Agreement between the City and India Basin Investment, LLC, as it relates to matters under the Port’s jurisdiction;
- Approve the Trust Exchange Agreement and make required findings under Chapter 310;

- Approve an Open Space Covenant regarding the new Trust lands; and
- Approve delegation to the Port's Executive Director to enter into one or more Memoranda of Understanding with RecPark, the SFPUC, SFPW, and DBI, as needed, regarding the roles and responsibilities for management of the Trust lands.

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EXHIBITS

Exhibit A: Site Plan

Exhibit B: The Big Green and India Basin Open Space

Exhibit C: India Basin Mixed-Use Project

Exhibit D: Public Trust Exchange Maps

Exhibit E: Phasing Plan