

MEMORANDUM

October 19, 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: Request to approve the proposed Port-related transaction documents in connection with 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: (1) consent to Development Agreement between the City and India Basin Investment, LLC; (2) approval of an Open Space Covenant regarding the India Basin lands proposed to be exchanged into the Public Trust under a subsequent Trust Exchange Agreement; and (3) 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: Approve the Attached Resolution

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) 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

On September 11, 2018 a third informational briefing provided 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 is now returning to the Port Commission to seek approvals for the project as described below. This report includes all of the information presented in the staff report for the September 11, 2018 Port Commission informational hearing for the Project, as well as refinements to the description and terms of the transaction which are shown in underline or ~~strike-through~~ formatting.

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

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.

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 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~~ 10.3 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.
- *Childcare Facility and on-going Operations Endowment:* The Developer will provide a warm shell with dedicated children's play area to a qualified childcare provider and create an endowment to be used by the provider for operations, rental subsidy and/or scholarships to low income families in the community.
- *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.~~

The Project was heard in the Board of Supervisors Land Use Committee on October 1, 2018. On October 16, 2018, The Board of Supervisors took the following actions:

1. Affirmed the Final Environmental Impact Report Certification - India Basin Mixed-Use Project Motion affirming the Planning Commission’s certification of the Final Environmental Impact Report prepared for the proposed India Basin Mixed-Use Project.
2. Unanimously approved the General Plan Ordinance - amending the General Plan to revise the Bayview Hunters Point Area Plan, and the Urban Design, Commerce and Industry, and Recreation and Open Space Elements, to reflect the India Basin Mixed-Use Project; adopting findings under the California Environmental Quality Act; and making findings under Planning Code, Section 340, and findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1.

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>

3. Unanimously approved the Ordinance amending the Planning Code to establish the India Basin Special Use District, located generally at Innes Avenue between Griffith Street and Earl Street, along the India Basin shoreline, in the south-east part of San Francisco; amending the Planning Code by amending the Zoning Map to change zoning designations, height districts, and add the India Basin Special Use District; and making findings under the California Environmental Quality Act, findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1, and findings of public necessity, convenience, and welfare under Planning Code, Section 302.
4. Unanimously approved the Ordinance approving a Development Agreement – Development Agreement between the City and County of San Francisco and India Basin Investment LLC, a California limited liability company, for the India Basin Project at the approximately 28-acre site located at Innes Avenue between Griffith Street and Earl Street, with various public benefits, including 25% affordable housing and 11 acres of parks and open space; making findings under the California Environmental Quality Act and findings of conformity with the General Plan, and with the eight priority policies of Planning Code, Section 101.1(b); approving a Public Trust Exchange Agreement, making public trust findings, and authorizing the transfer and acceptance of real property and the recording of a land use covenant consistent with the Public Trust Exchange Agreement; approving specific development impact fees and waiving any conflicting provision in Planning Code, Article 4, or Administrative Code, Article 10; confirming compliance with or waiving certain provisions of Administrative Code, Chapters 14B, 23, 56, and 82, and Subdivision Code, Section 1348; and ratifying certain actions taken in connection therewith.

On October 18, 2018 the Recreation and Park Commission approved all required actions relating to the transactions described herein.

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-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 briefings on the Project on May 18, 2017 and September 11, 2018, 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").

The California State Lands Commission (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.

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*).

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~~ 10.3 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 Public 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, (1) 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, and (2) the Developer has completed its first Major Phase Approval. 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~~ 10.3 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 map showing the most recent proposal to the State Lands Commission staff regarding the lands to be exchanged into and out of the trust is attached as Exhibit D.

Final terms of a A draft Trust Exchange Agreement are currently being negotiated with the State Lands Commission. The proposed form of Trust Exchange Agreement is attached as Exhibit G.

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~~ by the Board of Supervisors on October 16, 2018, 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 Development Agreement including all exhibits is on file with the Commission Secretary. The key provisions of the DA that relate to the Port's consent include:

- *Public Trust Exchange Agreement* - As described above, the 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.
- *Parks and Open Space*: The DA requires Build to construct approximately 14 acres (~~9.5~~ 10.3 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.

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 proposed form Declaration of Open Space Covenant is attached as Exhibit F.

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 as further described in the table below.

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 complete routine repairs or rehabilitation work, including alterations or improvements to the parks and respond to enforcement matters; • 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 <u>Except for shoreline improvements, for which permit issuance and acceptance will remain the responsibility of the Chief Harbor Engineer,</u> 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 <u>any roadways on the Trust</u>

	<p><u>lands.</u></p> <ul style="list-style-type: none"> • <u>Accept the infrastructure constructed within the Trust lands and for street vacations, for operation and maintenance by RecPark as set forth above.</u>
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.

COMMUNITY OUTREACH

As noted at the September 11 hearing, representatives of the Port and Build staff presented the India Basin project and proposed land exchange at the October 11, 2018 meeting of the Southern Waterfront Advisory Committee. The SWAC and community demonstrated support for the proposed exchange, which greatly benefits the community through closure of a gap on the Blue Greenway system.

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:~~

For the reasons set forth in this staff report, Port staff recommends that the Port Commission take the following actions in furtherance of the Project:

- 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.

Prepared by: Ming Yeung
Port Waterfront Planner

For: Michael Martin
Port Deputy Director of Real
Estate and Development

Ken Rich
Office of Economic and
Workforce Development,
Director of Development

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

Exhibit F: Form Declaration of Open Space Covenant

Exhibit G: Form of Trust Exchange Agreement

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

RESOLUTION NO. 18-60

- WHEREAS, India Basin Investment LLC, a California limited liability company (the “Developer”), has proposed the India Basin Mixed-Use Project (the “Project”) for certain real property generally bounded by Innes Avenue on the southwest, the Griffith Street right-of-way on the northwest, the San Francisco Bay on the northeast and the Earl Street right-of-way on the southeast (largely excluding parcels with structures), altogether consisting of approximately 24 acres (the “Site”); and
- WHEREAS, Chapter 56 of the San Francisco Administrative Code authorizes the City to approve a development agreement with a developer of property in the City and County of San Francisco in accordance with California law; and
- WHEREAS, On October 16, 2018 the Board of Supervisors approved various entitlements for the Project, as well as a development agreement with the Developer (the “Development Agreement”) subject to consenting approvals from affected City agencies; and
- WHEREAS, The Development Agreement would vest development rights in exchange for the delivery of public benefits with respect to the development of the Site with approximately 1,575 residential units, 209,000 square feet of commercial uses, 1,800 off street parking spaces, 1,575 bicycle parking spaces, and 15.5 acres of publicly accessible open space; and
- WHEREAS, The Project also includes construction of transportation and circulation improvements, new and upgraded utilities and infrastructure, geotechnical and shoreline improvements and other green infrastructure; and
- WHEREAS, Portions of the Site are subject to the common law public trust for commerce, navigation and fisheries and the Burton Act statutory trust (collectively, the “Trust”); and
- WHEREAS, Parcels within the Site include a patchwork of uplands, filled tide and submerged lands, accepted and unaccepted rights-of-ways, and parcels of uncertain and potentially disputed Trust status, while 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; and

- WHEREAS, An approximately 6 acre portion of the Project site along the shoreline, referred to as the India Basin Open Space, is currently owned by the City under the jurisdiction of the Recreation and Park Department (“RPD”); and
- WHEREAS, The Trust lands held by the Port within the Project area consist primarily of paper street fragments, including paper streets within the India Basin Open Space, separated by non-Trust blocks, and there are several upland parcels of disputed trust status that are privately owned and cut off from the water are not useful for Trust purposes, but cannot be developed without resolution of Trust title issues; and
- WHEREAS, The existing Port property, which consists of the paper street fragments, cannot be independently developed and the Port currently makes no use of this property; and
- WHEREAS, To address these Trust-related uncertainties and to allow for housing development away from the shore as well as the consolidation of the Trust into useable space along the shore, the Development Agreement proposes a Trust exchange agreement, substantially in the form attached to the Development Agreement (the “Trust Exchange” Agreement”), that will place or confirm in the Trust approximately 10.3 acres of shoreline uplands to be developed as parks and open space, and confirm a Trust easement in approximately 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, Inc., an affiliate of Developer that may eventually be transferred to the City in fee if the City approves the environmental condition of the subject lands; and
- WHEREAS, The form of the Trust Exchange Agreement is on file with the Secretary of the Commission, was approved by the Board of Supervisors as part of the approval of the Development Agreement, and must still be finally approved by the State Lands Commission; and
- WHEREAS, As part of the Trust Exchange, there will be a net increase of land owned by the City (approximately 3 acres) and a net increase in the land subject to the Trust (approximately 5 acres from non-Trust to confirmed Trust), and the Trust will be located along the shoreline in an area of greater value to the Trust than the current paper streets held by the Port; and
- WHEREAS, As the City’s holder of most of the Trust property in and around the City, and to rely on the existing authority under Chapter 310 of the Statutes of 1987 (“Chapter 310”), the existing lands held by the City under jurisdiction of the Recreation and Park Department (approximately 6 acres) will be transferred to the jurisdiction of the Port, as trustee of the Public Trust; and

WHEREAS, As result of the Trust Exchange and the Project, the City intends to create a series of contiguous, integrated waterfront parks for the benefit of this southeast community and the residents of San Francisco and California at large. The Developer will improve the parks in the Project Site at no cost to the City, including improvements that address sea level rise for the City-owned park lands along the shore. The City, acting through RPD, will improve the neighboring City-owned 900 Innes and India Basin Shoreline Park, together creating a contiguous park running from the north to the south shoreline of the Project area, including connections for the Bay Area Trail along the waterfront; and

WHEREAS, As a result of the existing RPD property and the desire to create an integrated park system, together with Port's expertise in matters relating to the Public Trust and the requirements of Chapter 310, the Port and RPD staff have agreed that the Port will remain trustee of the Public Trust with veto powers over any proposed land use that is not Trust consistent, but that the Trust lands in the Project Area will all be parks that are managed and operated by RPD without any Port liability; and

WHEREAS, To effectuate this division of responsibility between the Port and RPD, and to satisfy City Charter requirements regarding transfers of RPD property, the City, following consultation with the City Attorney's Office, has determined that is necessary and appropriate to record a Declaration of Open Space Covenant, in the form attached to the Trust Exchange Agreement, that would be recorded against the former RPD property that is being placed in the Trust; and

WHEREAS, The Declaration of Open Space Covenant would restrict the use of the applicable Trust lands as parks and open space, with the Port as trustee of the Trust with the right to ensure that uses are consistent with the Trust, and cannot be amended without the prior approval of the Port Commission, the RPD Commission, and the Board of Supervisors, each in their sole discretion; and

WHEREAS, The Declaration of Open Space Covenant confirms that RPD will remain responsible for the operation, maintenance, management and liability associated with the Trust lands, subject to the Port's power to ensure Trust consistency at all times; and

WHEREAS, To memorialize more specific responsibilities regarding these Trust lands, the Development Agreement calls for the Port Commission to enter one or more Memoranda of Understanding (collectively, the "MOU") with RPD, the City Department of Public Works, the City Department of Building Inspection, and the San Francisco Public Utilities Commission as a condition to execution of the Trust Exchange Agreement; and

WHEREAS, On July 26, 2018, the Planning Commission (1) reviewed and considered the Final Environmental Impact Report for the India Basin Project (“FEIR”) (Case No. 2014-002541ENV); (2) found the FEIR to be adequate, accurate and objective, thus reflecting the independent analysis and judgment of the Planning Department and the Planning Commission; and (3) by Motion No.20247, certified the FEIR as accurate, complete and in compliance with the California Environmental Quality Act (“CEQA”), the CEQA Guidelines, and Chapter 31 of the San Francisco Administrative Code; and

WHEREAS, At the same hearing, the Planning Commission approved the Project and in so doing, adopted findings under CEQA by Motion No. 20018, including a Statement of Overriding Considerations (the “CEQA Findings”), and adopted a Mitigation Monitoring and Reporting Program (“MMRP”). The Planning Department issued a memorandum dated October 10, 2018 to address certain revisions to air quality mitigation measures for the Project and the Board of Supervisors adopted these revisions as conditions of the Project on October 16, 2018 as further described below. A copy of the Planning Department memorandum, the Planning Commission Motions, the India Basin Mixed Use Project CEQA Findings, and the MMRP, as revised, are on file with the Port Commission Secretary and may be found in the records of the Planning Department at 1650 Mission Street, San Francisco, CA, and are incorporated in this resolution by reference as if fully set forth herein; and

WHEREAS, On August 23, 2018, the Planning Commission recommended that the Board of Supervisors approve the Development Agreement for the Project; and,

WHEREAS, On October 16, 2018, The Board of Supervisors took the following actions:

- (1) Affirmed the Final Environmental Impact Report Certification - India Basin Mixed-Use Project Motion affirming the Planning Commission’s certification of the Final Environmental Impact Report prepared for the proposed India Basin Mixed-Use Project.
- (2) Unanimously approved the General Plan Ordinance - amending the General Plan to revise the Bayview Hunters Point Area Plan, and the Urban Design, Commerce and Industry, and Recreation and Open Space Elements, to reflect the India Basin Mixed-Use Project; adopting findings under the California Environmental Quality Act; and making findings under Planning Code, Section 340, and findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1.

- (3) Unanimously approved the Ordinance amending the Planning Code to establish the India Basin Special Use District, located generally at Innes Avenue between Griffith Street and Earl Street, along the India Basin shoreline, in the south-east part of San Francisco; amending the Planning Code by amending the Zoning Map to change zoning designations, height districts, and add the India Basin Special Use District; and making findings under the California Environmental Quality Act, findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1, and findings of public necessity, convenience, and welfare under Planning Code, Section 302.
- (4) Unanimously approved the Ordinance approving a Development Agreement –Development Agreement between the City and County of San Francisco and India Basin Investment LLC, a California limited liability company, for the India Basin Project at the approximately 28-acre site located at Innes Avenue between Griffith Street and Earl Street, with various public benefits, including 25% affordable housing and 11 acres of parks and open space; making findings under the California Environmental Quality Act and findings of conformity with the General Plan, and with the eight priority policies of Planning Code, Section 101.1(b); approving a Public Trust Exchange Agreement, making public trust findings, and authorizing the transfer and acceptance of real property and the recording of a land use covenant consistent with the Public Trust Exchange Agreement; approving specific development impact fees and waiving any conflicting provision in Planning Code, Article 4, or Administrative Code, Article 10; confirming compliance with or waiving certain provisions of Administrative Code, Chapters 14B, 23, 56, and 82, and Subdivision Code, Section 1348; and ratifying certain actions taken in connection therewith.

WHEREAS, The Port Commission has reviewed the FEIR, the MMRP (as revised) and the CEQA Findings, and finds that the approvals before the Port Commission are within the scope of the FEIR and that no substantial changes in the Project or the circumstances surrounding the Project have occurred and no new information that could not have been known previously showing new significant impacts or an increase in severity in impacts has been discovered since the FEIR was certified; now, therefore be it

RESOLVED, That the Port Commission adopts the CEQA Findings as its own and adopts the MMRP as revised; and be it further

RESOLVED, The Port Commission finds that this resolution and the Project are consistent with and furthers the purposes of the common law public trust and statutory trust under the Burton Act (Stats. 1968, ch. 1333), as follows:

(a) Approximately 2.63 acres of the City Property, consisting of portions of Fairfax Avenue, Evans Avenue and Arelious Walker Drive (formerly Fitch Street), lie waterward of the historic ordinary high tide line and, as such, are subject to the public trust and held within the administration and control of the Port Commission in accordance with the Burton Act and the City Charter (but this land is managed by the Recreation and Park Department as part of the India Basin Open Space). An additional approximately 9 acres of City Property consists of streets under the jurisdiction of the Department of Public Works (“Public Works”) with disputed trust status, and parcels within the existing India Basin Open Space under the jurisdiction of the RPD and Public Works that are free of the trust or have disputed trust status;

(b) The Project site includes filled lands that are not subject to the public trust and lands that are of disputed trust status;

(c) As the public trust is presently configured, most of the lands on or adjacent to the shoreline are either free of the public trust or have uncertain trust status. At the same time, the filled lands proposed for private development are further inland and cut off from the water, and therefore are not useful to the public trust, yet they are encumbered with disputed trust claims. The Project site has remained undeveloped and inaccessible for decades, despite its waterfront location and adjacency to the existing waterfront parks;

(d) The proposed Public Trust Exchange would eliminate all trust title uncertainties within the Project site and will facilitate the improvement and expansion of the India Basin Open Space. The exchange would not remove any existing trust property from the Burton Act trust, but the public trust would see a net gain of filled lands that will be useful to the public trust. All lands exchanged into the trust will be used for public open space, habitat restoration and water-oriented uses, all of which are consistent with the Burton Act. The Trust Exchange Agreement will consolidate the public trust lands along the water for open space and public access, providing significant benefits to the trust over existing conditions.

(e) As set forth in the Public Trust Exchange Agreement, the lands to be freed from the trust claims have been filled and reclaimed, are cut off from access to the waters of San Francisco Bay, constitute a relatively small portion of the lands granted to the City and County of San Francisco and are not needed or required for the promotion of the public trust or the Burton Act trust. In addition, the Project would not cause a substantial interference with public trust uses and purposes by virtue of the exchange. The lands or interests in lands to be impressed with the public trust have an economic value equal to or greater than that of the lands

or interests in lands that will be freed from the public trust, and are useful for the particular trust purposes specifically authorized in the Burton Act.

RESOLVED, Upon consideration of the Development Agreement, the Port Commission hereby consents to the Development Agreement, including the Trust Exchange Agreement, as it relates to matters under Port jurisdiction; and be it further

RESOLVED, That the Port Commission hereby authorizes the Executive Director, or her designee, to execute the Trust Exchange Agreement and the consent to the Development Agreement, in substantially the form on file with the Port Commission Secretary, subject to such further changes and revisions as deemed necessary and appropriate to implement this resolution; and be it further

RESOLVED, That the Port Commission hereby authorizes the Executive Director, or her designee, to execute the Declaration of Open Space Covenant, in substantially the form on file with the Port Commission Secretary, at such time as is called for under the Development Agreement and Trust Exchange Agreement, subject to such further changes and revisions as deemed necessary and appropriate to implement this resolution; and be it further

RESOLVED, That the Port Commission hereby authorizes the Executive Director, or her designee, to execute the MOU, with terms as set forth in the Memorandum accompanying this item, at such time as is called for under the Development Agreement , subject to such further changes and revisions as deemed necessary and appropriate to implement this resolution; and be it further

RESOLVED, That the Port Commission authorizes the Executive Director, or her designee, to enter into any amendments or modifications to the consent to the Development Agreement, the Trust Exchange Agreement, the Declaration of Open Space Covenant and the MOU that the Executive Director determines, in consultation with the City Attorney, are in the best interest of the Port, do not materially decrease the benefits to or materially increase the obligations or liabilities of the Port, and are in compliance with all applicable laws.

I hereby certify that the foregoing resolution was adopted by the San Francisco Port Commission at its meeting of October 23, 2018.

Secretary