

MEMORANDUM

November 14, 2014

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

FROM: Monique Moyer
Executive Director

SUBJECT: Request approval of an Amended and Restated Exclusive Negotiation Agreement between the Port of San Francisco and Seawall Lot 337 Associates, LLC for the lease and development of Seawall Lot 337 and Pier 48 bounded by China Basin Channel, Third Street, Mission Rock Street, and San Francisco Bay and adjacent to AT&T Park

DIRECTOR'S RECOMMENDATION: Approve Attached Resolution

EXECUTIVE SUMMARY

Since executing an Exclusive Negotiation Agreement (“ENA”) in September 2010 for the development of Seawall Lot (SWL) 337 and the adjacent Pier 48 (together the “Site”, shown on Appendix A), Seawall Lot 337 Associates, LLC (“Developer”), Port and City staff have negotiated a non-binding term sheet (the “Term Sheet”) with proposed financial terms for the lease and development of the Site (the “Project”). The Port Commission and Board of Supervisors each unanimously endorsed the Term Sheet in the spring of 2013.

As described in the Term Sheet, the Port and Developer have proposed a mixed-use neighborhood at SWL 337 with appropriate height and density to create a vibrant, walkable neighborhood with new parks and public spaces. In June 2014, the voters of San Francisco passed Proposition B whereby development of Port property exceeding existing height limits now requires voter approval in addition to the typical regulatory approvals. In light of Proposition B, the Developer is re-examining the proposed heights and density with the expectation that the Project will be presented to the voters on a

THIS PRINT COVERS CALENDAR ITEM NO. 12A

future ballot. Today the Port Commission is being asked to approve an Amended and Restated ENA affording Developer an appropriate amount of additional time to accomplish the additional steps required as a result of Proposition B.

BACKGROUND

In October 2007, the San Francisco Port Commission initiated a two-phase developer solicitation process for SWL 337, a 16 acre Port waterfront site located along the south side of China Basin Channel, generally bounded by Third and Mission Rock Streets, and Terry Francois Boulevard; and Pier 48, a 212,500 square foot warehouse complex adjacent to SWL 337. Currently SWL 337 is used as a surface parking lot under lease to a San Francisco Giants affiliate. Pier 48 uses are primarily ballpark overflow parking in the northern shed and storage for the Department of Elections in the southern shed. All of these current uses are on short term leases in anticipation of termination to allow for development.

On May 12, 2009, the Port Commission awarded the SWL 337 development opportunity to Developer and authorized exclusive negotiations for a mixed used development project at SWL 337 and Pier 48. Port and the Developer negotiated an Exclusive Negotiation Agreement (“ENA”) which outlines a two phase approach. Phase 1 allocated 24 – 30 months for the parties to reach agreement on a project plan and financial terms culminating in recommendation for a term sheet endorsement by the Port Commission and the Board of Supervisors. Phase 2 allocated 3 years to complete the entitlement and permitting process for the project.

1st AMENDMENT TO EXCLUSIVE NEGOTIATION AGREEMENT

On October 9, 2012, the Port Commission approved a First Amendment to the ENA extending Phase 1 to provide additional time to negotiate and incorporate financing tools into the Project Term Sheet.

2nd AMENDMENT TO EXCLUSIVE NEGOTIATION AGREEMENT

On March 12, 2013, the Port Commission approved a Second Amendment to the ENA to:

1. Extend Phase 1 to provide additional time for Developer to obtain endorsement of the Term Sheet by the Board of Supervisors. DONE
2. Require the parties to agree on a Phase 2 ENA budget and for Developer to provide quarterly and annual budget reports. DONE
3. Require Developer to produce evidence of Developer’s financial and professional capacity to support any proposed increase in the predevelopment budget. DONE
4. Provide for Port Commission review and approval of the qualifications of any person or entity that Developer proposes to admit as a new member, if the new member will be obligated for any material portion of Developer funds, skill, or expertise. DONE

5. Expand the Site to include P20¹ and the approximately 0.58-acre marginal wharf between Pier 48 and Pier 50. DONE
6. Refine the conditions under which the Site could be identified as an alternative location for a proposed arena. DONE

AMENDED AND RESTATED EXCLUSIVE NEGOTIATION AGREEMENT

In June 2014, the voters of San Francisco passed Proposition B whereby development of Port property exceeding existing height limits now requires voter approval in addition to the typical regulatory approvals. The State Lands Commission has filed a lawsuit challenging its validity, which is pending. As described in the Term Sheet, the Port and Developer have proposed a mixed-use neighborhood at SWL 337 with appropriate height and density to create a vibrant, walkable neighborhood with new parks and public spaces. In light of Proposition B, the Developer is re-examining the proposed heights and density with the expectation that the Project would be presented to the voters for approval on a future ballot. This unanticipated requirement necessitates an extension of the ENA along with other proposed amendments as described below:

Proposed Amendments

1. Acknowledge Developer's timely satisfaction of all Performance Benchmarks for Phase 1.
2. Revise Phase 2 Performance Benchmarks in accordance with the expected approval steps (see also Appendix B).
3. Acknowledge Phase 2 will expire on the earlier of December 31, 2019, or the last day of the 12th full month after Developer has obtained voter approval of the proposed height limit subject to regulatory force majeure and Developer extension rights.
4. Revise definition of Outside Transaction Costs to include project management services of two full time City/Port staff persons.
5. Adjust Port's right to review evidence of Developer's financial capacity in relation to achievement of the revised milestone schedule.

With the passage of time, certain provisions of the ENA, as amended, have expired or have been superseded. For clarity and effective management of the ENA going forward, staff has prepared a fully Amended and Restated ENA with revised Exhibit C showing adjusted Phase 2 performance benchmarks, which is attached to the memorandum as Appendix B.

¹ Parcel P20 is adjacent to the southerly boundary of SWL 337 and is a component of the former Redevelopment Agency's open space plan for Mission Bay. Adding Parcel P20 to the Site is subject to required authorizations by the State Lands Commission and Legislature (with respect to its inclusion in SB 815 as part of SWL 337), the Successor Agency to the San Francisco Redevelopment Agency and its Oversight Board, and the Board of Supervisors and other city agencies.

RECOMMENDATION

Port staff recommends the Port Commission approve the attached resolution approving the Amended and Restated Exclusive Negotiation Agreement as described in this staff report and attached hereto.

Prepared by: Phil Williamson, Port Senior Project Manager

Jonathan Stern, Port Assistant Deputy Director,
Waterfront Development

Michael Martin, Project Director
Office of Economic and Workforce Development

For: Byron Rhett, Port Deputy Director
Planning & Development

Ken Rich, Director of Waterfront Development
Office of Economic & Workforce Development

Appendix A - The Site

Appendix B – Performance Benchmarks

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

RESOLUTION NO. 14-60

- WHEREAS, Charter Section B3.581 empowers the Port Commission with the authority and duty to use, conduct, operate, maintain, manage, regulate and control the lands within Port jurisdiction; and
- WHEREAS, The Port owns approximately 16 acres at Seawall Lot 337 (“SWL 337”) and Pier 48, bounded generally by China Basin, the San Francisco Bay, Mission Rock Street and Third Street, including China Basin Park and a portion of the existing Terry Francois, Jr. Blvd. (the “Site”); and
- WHEREAS, The Port Commission previously awarded to Seawall Lot 337 Associates, LLC (“Developer”) the opportunity to negotiate for the development of SWL 337 and Pier 48 as a mixed-use development project (the “Project”), authorized Port staff to negotiate an Exclusive Negotiation Agreement (the “ENA”) for development of the Site, and authorized the Executive Director or her designee to execute the ENA and amendments all as set forth in Resolution Nos. 09-26, 10-32, 12-77, and 13-10 which are incorporated by this reference; and
- WHEREAS, The Port Commission (by Reso. No. 13-10) and the Board of Supervisors (by Reso. No. 13-0286) have endorsed the Term Sheet negotiated by Developer and Port staff, which sets forth the essential terms upon which the Port and Developer will negotiate in good faith to reach agreement on the final development agreement, lease, and related documents (“Transaction Documents”) and is incorporated by this reference; now, therefore be it
- RESOLVED, That the Port Commission authorizes the Executive Director to enter into the Amended and Restated ENA with the amended terms as described in the staff report accompanying this resolution and incorporated by this reference, to: (1) acknowledge Developer’s timely satisfaction of all Performance Benchmarks for Phase 1; (2) revise Phase 2 Performance Benchmarks as shown in Appendix B to the staff report; (3) define Phase 2 expiration as the earlier of December 31, 2019, or the last day of the 12th full month after Developer has obtained approval of the proposed height limit subject to regulatory force majeure and Developer extensions; (4) revise the definition of Outside Transaction Costs to include project management services of two full time City/Port staff persons; and (5) refine the Port’s right to review evidence of Developer’s financial capacity in relation to the achievement of the revised milestone schedule; and the Port Commission further authorizes the Executive Director to enter into any subsequent modifications (including the exhibits or related documents) to the Amended and Restated ENA that the Executive Director, in

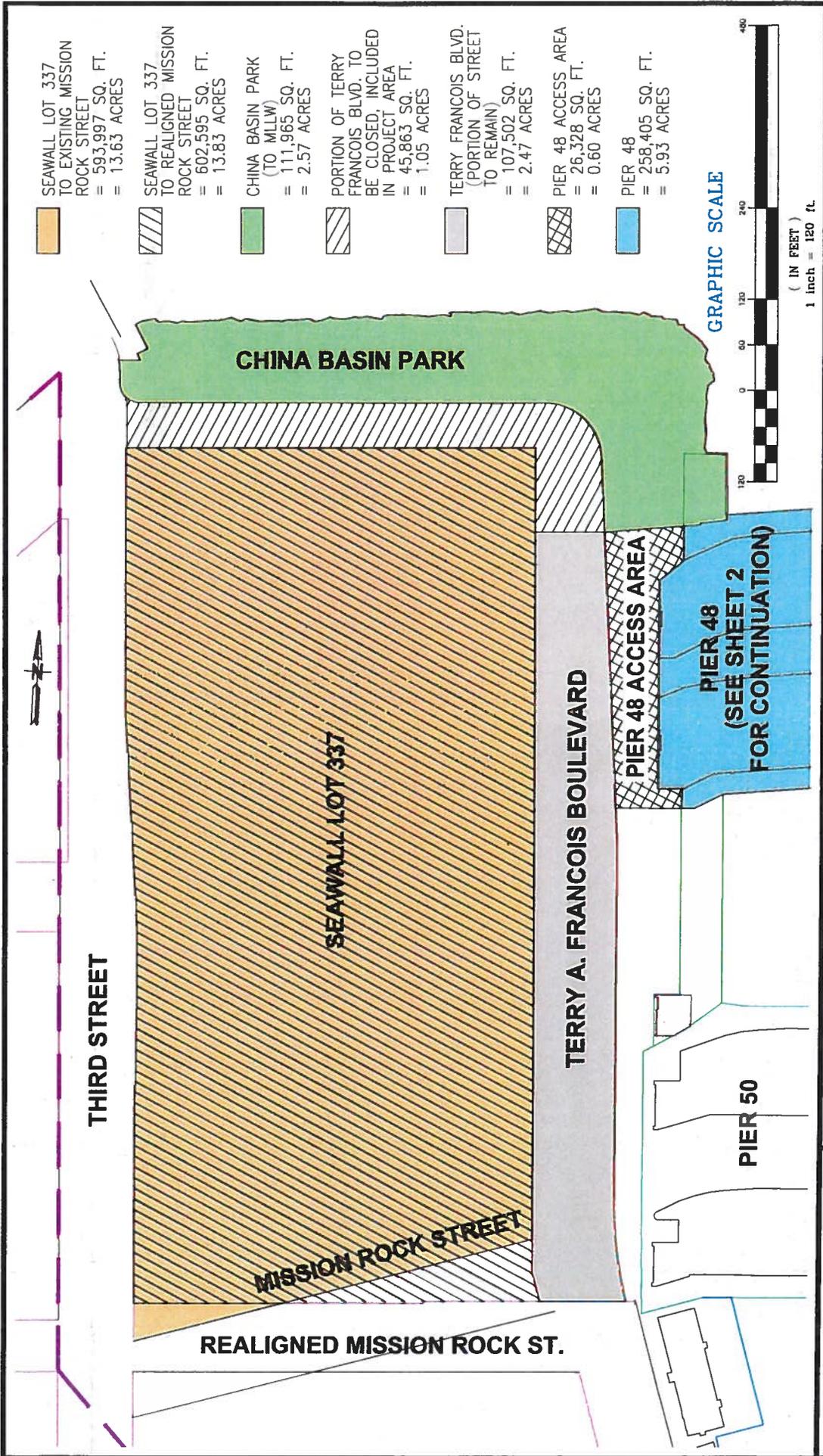
consultation with the City Attorney, determines are in the best interests of the Port and otherwise do not materially increase the obligations or liabilities of the Port or materially decrease the public benefits accruing to the Port or the City, and are necessary or advisable to implement the intent of this resolution, such determination to be conclusively evidenced by the execution and delivery by the Executive Director of the Amended and Restated ENA; and be it further

RESOLVED, That the Port Commission reserves the right, if exclusive negotiations with Developer are unsuccessful and do not lead to approval of Transaction Documents, to undertake other efforts such as issuing a new request for proposals, at the Port Commission's sole discretion; and be it further

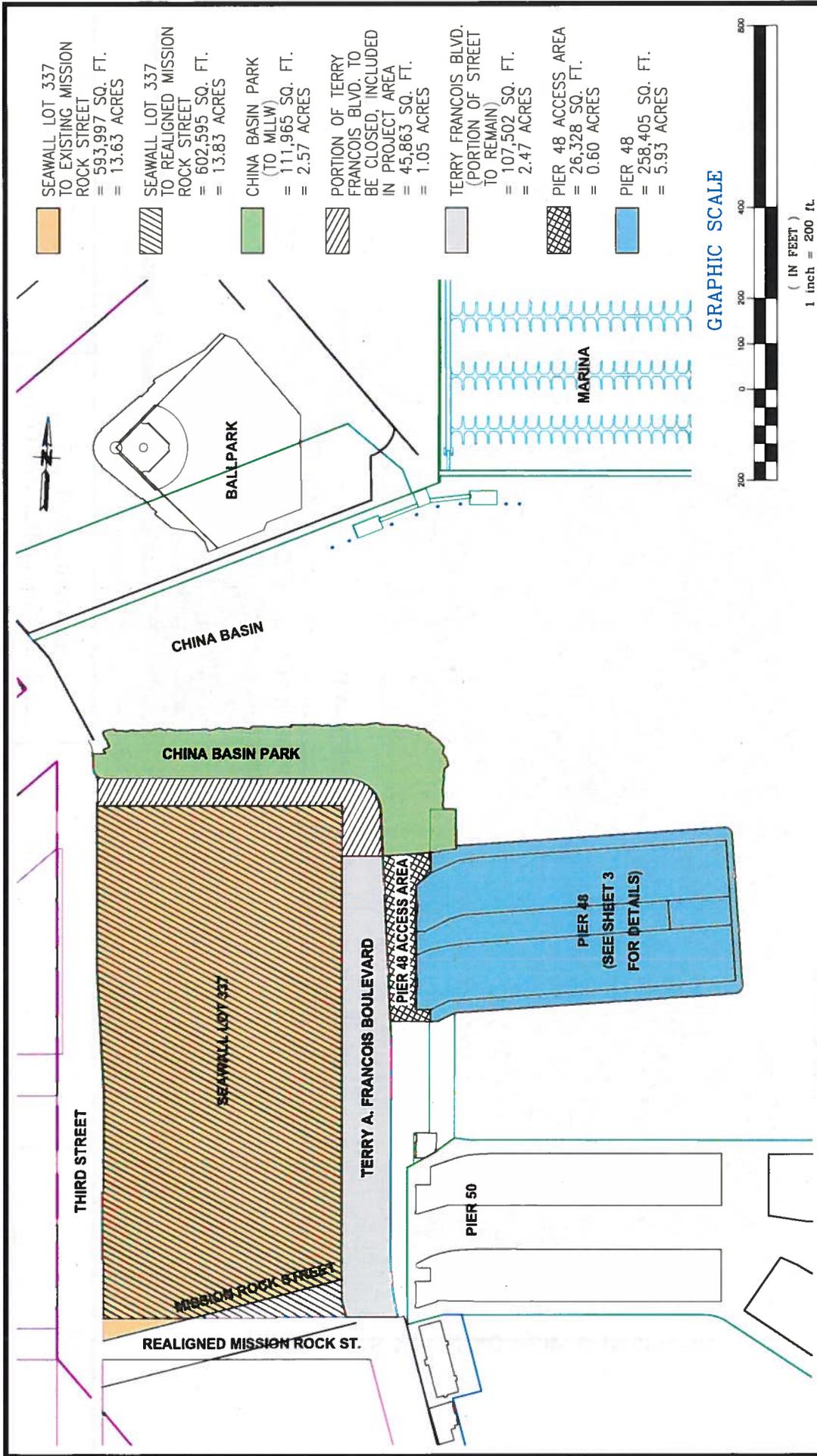
RESOLVED, That the Port Commission will not take any discretionary actions committing the Port to implement the Project unless and until the Port Commission and the Planning Commission have reviewed and considered environmental documentation prepared in compliance with the California Environmental Quality Act for the Project and the Project has been approved.

I hereby certify that the foregoing resolution was adopted by the Port Commission at its meeting of November 18, 2014.

Secretary



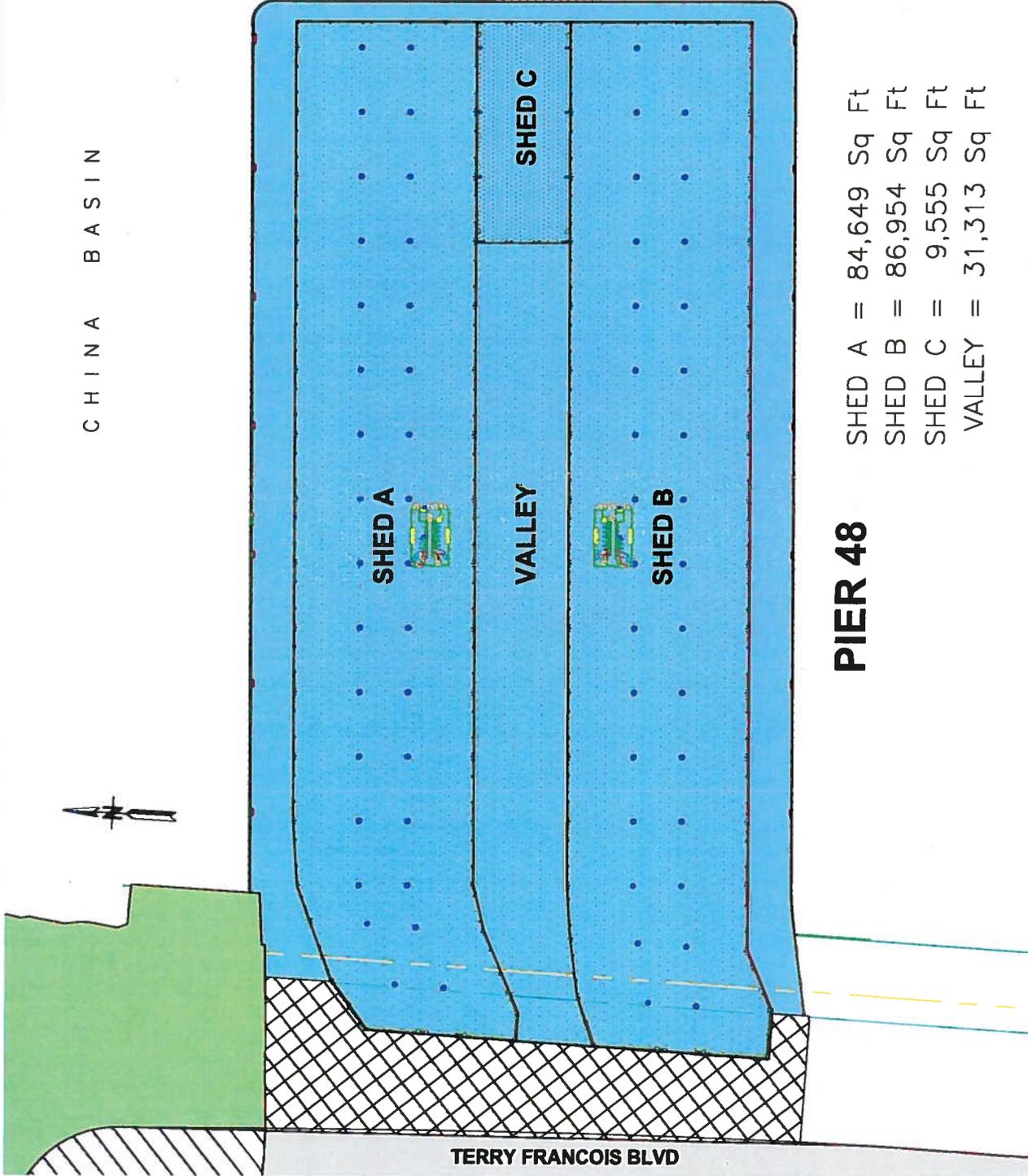
APPROVED BY SAN FRANCISCO PORT COMMISSION DATE _____	CHIEF HARBOR ENGINEER
 SAN FRANCISCO PORT COMMISSION PORT OF SAN FRANCISCO DEPARTMENT OF ENGINEERING	
SEAWALL LOT 337 DEVELOPMENT OPPORTUNITY SITE	
PREPARED BY: AMN	CHECKED BY: D. OSHIMA
DRAWN BY: AMN	DATE: MAY 19, 2008
CONTRACT NO.	SCALE: 1" = 120'
DRAWING NO.	SHEET NO. 1
	OF 2 SHEETS



APPROVED BY SAN FRANCISCO PORT COMMISSION DATE _____ CHIEF HARBOR ENGINEER	 SAN FRANCISCO PORT COMMISSION PORT OF SAN FRANCISCO DEPARTMENT OF ENGINEERING	SEAWALL LOT 337 DEVELOPMENT OPPORTUNITY SITE	PREPARED BY: AMN DRAWN BY: AMN CONTRACT NO. DRAWING NO.	CHECKED BY: D. OSHIMA DATE: MAY 19, 2008 SCALE: 1" = 200' SHEET NO. 2 OF 2 SHEETS
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SAN FRANCISCO BAY

CHINA BASIN



PIER 48

- SHED A = 84,649 Sq Ft
- SHED B = 86,954 Sq Ft
- SHED C = 9,555 Sq Ft
- VALLEY = 31,313 Sq Ft

APPROVED BY
SAN FRANCISCO PORT COMMISSION
DATE

SAN FRANCISCO PORT COMMISSION
PORT OF SAN FRANCISCO
DEPARTMENT OF ENGINEERING

**SEAWALL LOT 337
DEVELOPMENT OPPORTUNITY SITE
PIER 48 DETAILS**

DRAWN BY: ECC
CHECKED BY: D. OSHIMA
PLACE CODE NO. 1480-00

SHEET NO. 3
OF 3 SHEETS

APPENDIX B

PERFORMANCE BENCHMARKS

INITIAL PERFORMANCE BENCHMARKS Phase 1		TIME FOR PERFORMANCE
1.	<u>Developer Formation Documents</u> . Developer must submit a copy of its operating agreement.	Complete
2.	<u>PR Program</u> . Developer must submit its proposed PR Program.	Complete
3.	<u>Revised Proposal Concept</u> : Developer must submit its preliminary massing and land use concept and proposed phasing for the Revised Proposal.	Complete
4.	<u>Revised Proposal</u> : Developer must submit its Revised Proposal.	Complete
5.	<u>Community Outreach Program</u> : Developer must submit its proposed Community Outreach Program.	Complete
6.	<u>Public Trust Consistency Proposal</u> : Developer must submit its proposed Public Trust Consistency Proposal for Pier 48 and other portions of the Site that will remain subject to the public trust, including the process for completion of the Planning Study for SWL 337.	Complete
7.	<u>Regulatory Approval Strategy</u> : Developer must submit its proposed Regulatory Approval Strategy.	Complete
8.	<u>Term Sheet</u> . Developer must submit its proposed Term Sheet for the Revised Proposal.	Complete
9.	<u>Additional Due Diligence</u> : The Port Commission must confirm Developer's financial capacity to entitle and complete horizontal construction of the Project.	Complete
10.	<u>Port Endorsement</u> : The Port Commission must adopt a resolution endorsing the Revised Proposal and Term Sheet.	Complete
11.	<u>Fiscal Feasibility Analysis</u> : If the Term Sheet includes more than \$1 million in rent credits or any other form of public financing other than tax increment financing, such as Mello-Roos financing, Developer must provide for the Port's review and approval a draft report to the Board meeting the requirements of Administrative Code Chapter 29.	Complete
12.	<u>Board Endorsement</u> : The Board must adopt a resolution endorsing the Term Sheet.	Complete

INITIAL PERFORMANCE BENCHMARKS Phase 1		TIME FOR PERFORMANCE
13.	<u>Fiscal Feasibility Determination</u> : If required, Developer must obtain a Board finding that the Project is financial feasible under San Francisco Administrative Code Chapter 29.	Complete

FINAL PERFORMANCE BENCHMARKS Phase 2		TIME FOR PERFORMANCE
14.	<u>Phase 2 Transaction Costs Budget</u> : Developer and the Port must reach agreement on the Transaction Costs Budget for Phase 2.	Complete
15.	<u>Environmental Review</u> : Developer must file the environmental review application for the Project.	Complete
16.	<u>Environmental Review</u> : The initial study must be published.	Complete
17.	<u>Final EIR and Height Limit Adoption</u>	12/16/18
18.	<u>Rezoning</u>	12 months from Height Limit Adoption
19.	<u>Transaction Documents</u> : Developer and Port staff must reach final agreement on the form of the LDDA, Lease, and all related Transaction Documents.	12 months from Height Limit Adoption
20.	<u>Public Trust Consistency Determination/Port Approval of Transaction Documents</u> : Developer must obtain the Port Commission's approval of the LDDA and the other Transaction Documents, based on its Public Trust Consistency Determination.	12 months from Height Limit Adoption
21.	<u>Board Approval of Lease</u> : Developer must obtain the Board's approval of the Lease.	12 months from Height Limit Adoption
22.	<u>Regulatory Approvals</u> : Developer must obtain any other non-Port Regulatory Approvals required to entitle the first development phase of the Project.	12 months from Height Limit Adoption
23.	<u>Due Diligence Investigation</u> : Developer must complete its due diligence investigation of the Site, including surveys, title, field measurements, structural analyses and inspections, samples, borings, sediment analyses, historic building surveys and documentation, hazardous materials surveys, utility availability, and any other investigations as required by good engineering practices and by Regulatory Agencies.	12 months from Height Limit Adoption