



MEMORANDUM

April 22, 2022

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

FROM: Elaine Forbes
Executive Director 

SUBJECT: Request approval an amendment to the Pier 70 Special Use District Design for Development to clarify the definitions of Retail Use and Office Use, without altering building bulk or height maximums, permitted use categories, or development capacity of the project as approved by the Planning Commission on March 3, 2022 and receive a project update

DIRECTOR'S RECOMMENDATION: Approve the Attached Resolution No. 22-22

EXECUTIVE SUMMARY

On April 14, 2022, the Port Commission heard an informational item on the proposed Pier 70 Special Use District Design for Development changes. Port staff note that during that meeting, Port Commissioners requested future agenda items related to: (a) the affordable housing site in Phase 1 (with Mayor's Office of Housing and Community Development staff) and (b) an overall project update. Port staff have placed these items on the forward calendar. Also, Port staff wish to point out that, in order to advance the project, both by improving its performance and accelerating vertical development, Brookfield has proposed a series of changes to the project documents. Port staff is currently evaluating Brookfield's proposal and if an agreement can be reached, staff anticipates returning to the Port Commission with an update and recommendation later this year.

Other than the above information, this memorandum is identical to the information presented at the April 14, 2022 meeting, with the addition of the recommended resolution, attached.

The Port's Pier 70 development partner, FC Pier 70, LLC, now an affiliate of Brookfield Properties ("Developer" or "Brookfield"), has requested an amendment to the Pier 70 Special Use District Design for Development ("D4D") to clarify: (1) the definitions of "Retail Use" and "Office Use" to prevent inconsistencies for terms used interchangeably throughout the D4D and (2) that parcels designated for "Office Use" may be developed with laboratory and life science uses, in addition to general office uses (collectively, the "D4D Amendment"). It is important to note the D4D Amendment does not change building height maximums or building envelopes, permitted use categories, or the development capacity of the "Pier 70 Mixed-Use Project" analyzed under the Final Environmental Impact Report for the Pier 70 SUD ("FEIR").

Port staff seeks approval of the attached resolution approving the D4D Amendment. The D4D Amendment was unanimously approved by the Planning Commission on March 3, 2022.¹ Staff also presented the D4D Amendment as part of a broader Pier 70 update to the Southern Advisory Committee ("SAC") on October 6, 2021. The SAC was supportive of the D4D Amendment with limited questions or concerns.

This memorandum also provides an update on Brookfield's implementation of Phase 1 of the project. Phase 1 horizontal improvements are now substantially complete with the exception of the parks, which will be constructed on a schedule that coincides with delivery of adjacent vertical development. As to vertical development, Brookfield has completed the rehabilitation of historic Building 12 (retail, studio/maker space, office) and is actively marketing the space. Brookfield has also received design approvals for Parcel A (commercial), Parcel E2 (apartment), and Building 2 (office).

To date, Brookfield has not exercised an option of any Phase 1 option parcels, citing the ongoing economic impacts of the pandemic and construction costs on the viability of vertical development. Additionally, in June 2021, the final appraised value of Parcel E2 triggered an event of down-market delay for Phase 1. This is because the final appraised value is lower than the threshold value set for the parcel in the transaction documents. As a result, the timeframes for Brookfield's performance of time-sensitive matters, including the close of escrow on option parcels, are tolled until a down market no longer exists. The soonest either party may request a new appraisal to determine if the down market has ended is June of this year.

As of December 31, 2021, the balance owed to the Developer for entitlement and horizontal costs plus return is approximately \$206.6 million. In light of market conditions over the last several years and the resulting delays in vertical development and public financing, Phase 1 revenues to repay developer costs are coming in much later and possibly lower than expected, creating a lower developer return than was projected at project approvals in 2017. The majority of the revenues the Port expected at project

¹ Click [here](#) for March 3, 2022 memo to Planning Commission on the D4D Amendment.

approvals (in 2017) are still expected once vertical development is complete and buildings are operational.

In order to advance the project, both by improving its performance and accelerating vertical development, Brookfield has proposed a series of changes to the project documents. Port staff is currently evaluating Brookfield's proposal and if an agreement can be reached, staff anticipates returning to the Port Commission with an update and recommendation later this year.

STRATEGIC OBJECTIVE

The D4D Amendment meets the following Port Strategic Objective by helping to advance implementation of development within the Pier 70 Special Use District ("Pier 70 SUD"):

Productivity: Attract and retain tenants to build an economically successful and vibrant waterfront.

- Advance the Pier 70 development.

PROJECT BACKGROUND

In 2017, the City approved the Pier 70 SUD, a 35-acre redevelopment area generally bound by 20th Street to the north, 22nd Street to the south, Illinois Street to the west, and the San Francisco Bay to the east. Subsequently, in October 2017, the San Francisco Board of Supervisors approved the project, and on November 15, 2017, Mayor Lee signed all project-related legislation. These approvals included the D4D, which provides the vision, intent, use, character, and requirements for the design of buildings and public realm within the Pier 70 SUD. In 2020, the D4D was amended to allow residential buildings with a 90-foot height limit to contain up to 9 stories where previously limited to 8 stories, without changing building heights or the overall development capacity of the Pier 70 SUD.

The 35-acre Pier 70 SUD includes (1) an approximately 28-acre Port-owned site ("28-Acre Site"); (2) the 20th/Illinois Street parcels known as Parcel K North and Parcel K South; and (3) approximately 3 acres owned by PG&E known as the Hoedown Yard. The Pier 70 SUD provides for a mixed-use project comprised of up to 4.2 million square feet of development including 200,000 square feet of rehabilitated historic buildings (Historic Buildings 2, 12, and 21), 1,500 to 3,000 residential units with 30% provided at below market rates, office, retail, and production, design and repair uses, a new arts facility, mitigations to protect against future sea level rise, and 9-acres of new parks that will create public access to the San Francisco Bay where it has never previously existed.

The Port's partner for development of the 28-Acre Site is Brookfield. The 28-Acre Site project, which will be built out in three phases, is governed by a Disposition and Development Agreement ("DDA") and related agreements between the Port and the Developer. Under the DDA, the Developer is responsible for subdividing and improving

the 28-Acre Site and Parcel K South with horizontal improvements to serve vertical development. The Developer also has the option to lease or purchase designated parcels to develop vertical improvements. In May 2018, the Port approved the Phase 1 Submittal for the project, which includes the development of three acres of parks and backbone infrastructure to support an anticipated 588 residential units, more than 100,000 square feet of maker/PDR/retail space, and up to 460,000 square feet of office.

PROPOSED D4D AMENDMENT

On October 22, 2021, Brookfield submitted a request to amend the D4D to clarify: (1) the definitions of “Retail Use” and “Office Use” to prevent inconsistencies for terms used interchangeably throughout the D4D and (2) that parcels designated for “Office Use” may be developed with laboratory and life science uses, in addition to general office uses, as detailed below. See Exhibit A for full text of the D4D Amendment.

Retail Use

Consistent with the approval by the Planning Commission on March 3, 2022, the definition of “Retail Use” would be amended to clarify inconsistencies throughout the D4D. Within the D4D, the terms “Retail”, “Retail Uses”, “Retail + Services”, and “Retail Sales and Service Uses” are used interchangeably; however, those terms are not separately defined in the document and there are no separate controls for each term. This amendment would clarify that in instances where each term is used, they are in reference to the “Retail Use” definition. No changes to height, building volume, or permitted uses are provided by the D4D Amendment.

Office Use

Consistent with the approval by the Planning Commission on March 3, 2022, the definition of “Office Use” would be amended to make two clarifications. First, the amendment would clarify inconsistencies throughout the D4D similar to the amendment to the “Retail Use” definition above. Throughout the D4D, the terms “Office”, “Commercial-Office”, “Commercial/Office”, and “Office Space” are used interchangeably; however, those terms are not separately defined and there are no separate controls for each term. This amendment would clarify that in instances where each term is used, they are in reference to the “Office Use” definition. No changes to height, building volume, or permitted uses are provided by this amendment.

Second, the amendment to this definition would clarify that parcels designated for “Office Use” may be developed with Design Professional, Laboratory, or Life Science uses, in addition to General Office, Retail Professional, and Non-Retail Professional Uses. This clarification is technical in nature. The D4D uses the terms “Office”, “Commercial-Office”, “Commercial/Office”, and “Office Space” interchangeably and does not include a clear intent or justification to limit parcels to only “General Office” uses. In addition, the D4D establishes that all uses are permitted, except those listed specifically as “NP” (Not Permitted). Clarifying that Design Professional, Laboratory, and

Life Science uses are “Office Uses” would establish where within the Pier 70 SUD those uses are permissible, while also defining where those uses are not permissible.

This clarification would also bring the D4D in line with the controls governing other similar Development Agreement projects. For example, Mission Rock, which has the entirety of its first phase under construction, was allowed to include such uses on commercial parcels under its design controls and laboratory uses were included in Block B of that development.

It is important to note, in response to community and city-wide concerns about life science uses encroaching into areas designated for Production, Distribution & Repair (“PDR”) uses, that the only areas affected by this clarification are portions of the site (or portions of buildings within the site) that are already designated specifically as “Office Use”. Areas where “Office Use” is not permitted (including the ground floors of Buildings 12, 21, and E4) would remain not permitted for life science uses and PDR uses would remain permitted across all such parcels.

Required Approvals and Outreach

Planning Commission Approval. On March 3, 2022, the Planning Commission unanimously approved the D4D Amendment to clarify the definitions of “Office Use” and “Retail Use”. The Planning Commission was supportive of the amendment with limited questions or concerns.

Environmental Review. On December 15, 2021, the Planning Department issued a Note to File, finding the D4D Amendment did not result in any significant land use impacts beyond those identified in the FEIR and addendum. Additionally, there would not be any new or substantially greater environmental impacts for other resource topics and new mitigation measures would not be required.

Community Outreach. Staff presented the D4D Amendment as part of a Parcel A vertical development and broader project update to the SAC on October 6, 2021. Overall, the SAC was supportive of the proposed amendment with limited questions. The SAC did raise one general concern about ground floor uses in office/laboratory buildings, wanting to make sure ground floors are well designed and activated. Port staff addressed this concern by noting the D4D has detailed design controls and standards that ensure ground floors are appropriately scaled and pedestrian friendly and, where appropriate, activated with retail uses.

Staff Recommendation

Based on the above analysis and other considerations, Port staff supports the proposed Pier 70 D4D Amendment based on the following:

- The D4D Amendment would help implement the Pier 70 Mixed-Use Project by providing flexibility and clarity in the design and development of non-residential parcels at the site, which could help accelerate vertical development;
- The D4D Amendment is consistent with all requirements of the Pier 70 SUD, the City’s General Plan, and the DDA; and
- The D4D Amendment does not alter the maximum development capacity of the site or alter the Pier 70 Mixed-Use Project from what was previously analyzed in the FEIR and thus is consistent with the adopted FEIR.

Staff requests that the Port Commission adopt the attached resolution approving the D4D Amendment, consistent with the unanimous approval by the Planning Commission on March 3, 2022.

PHASE I IMPLEMENTATION UPDATE

Horizontal Improvements

Brookfield began Phase 1 site preparation and demolition in August 2018 followed by the substantial start of construction in March of 2019 upon issuance of a Street Improvement Permit by the City. The horizontal scope of work included installation of utilities, including auxiliary water supply main, low-pressure water main, combined sewer main, combined sewer storage, and non-potable water mains, electricity and gas infrastructure, and surface improvements along 20th Street, Maryland Street, Louisiana Street, 21st Street, and 22nd Street. Phase 1 horizontal improvements are now substantially complete but for the parks, which will be constructed on a schedule that coincides with delivery of adjacent vertical development. Issuance of a Notice of Completion by the City for the Phase 1 street improvements is anticipated this Spring, followed by acceptance of public infrastructure by the City and the Port by the end of the year.

Brookfield also obtained approvals from the Port and City for a final transfer map, a tentative subdivision map, and a final subdivision map for Phase 1, as well as design review approval for the Phase 1 parks.

Local Business Enterprise Participation

The Pier 70 project has a 17% Local Business Enterprise (“LBE”) participation goal. Contracts awarded by Brookfield through the end of 2021 were comprised primarily of Phase 1 horizontal improvement construction work, rehabilitation of Historic Building 12 and design consultants for upcoming vertical projects. Brookfield hired RDJ Enterprises, an LBE-MBE firm, to tailor LBE engagement efforts to maximize LBE participation on trade packages. Through 2021, Pier 70 has awarded \$217.0 million in contracts, of which \$62.0 million or 29% has been awarded to LBE firms, including SBA-LBEs. \$53.8 million or 25% has been awarded to small and micro-LBE firms. \$30.8 M or 50% of total

contract dollars to LBEs have been awarded to LBEs (including SBA-LBEs) located in the three zip codes located near the project (94107, 94124 & 94134).

Vertical Improvements

Building 12. Under the DDA, Brookfield is obligated to renovate historic Building 12 as part of Phase 1. In January 2020, the Port entered a 66-year lease with a Brookfield affiliate for Building 12. Construction, which commenced immediately thereafter, included raising the building to account for future sea level rise, seismic updates, a new 2nd floor, vertical connections via a grand staircase and four new elevators, rehab of the windows and other historic elements, and other aesthetic improvements. The Port issued a Temporary Certificate of Occupancy in January of this year and Brookfield is actively working to lease the space, which includes a ground floor market hall, large scale production and retail opportunities, second floor maker and artisan studios, and third floor office uses. Brookfield has already begun activating the space while this leasing effort is underway, including the highly successful Paint the Void event, showcasing pandemic-era murals throughout the building.

Option Parcels. Under the DDA, Brookfield has an option to purchase or lease all development parcels within the 28-Acre Site except the 100% affordable housing parcels, Parcel C1A, historic buildings 12 and 21, and the arts building parcel. Subject to excusable delay, Brookfield must close escrow on 1) one Phase 1 option parcel (the “Early Lease Parcel”) no later than two years after the commencement of substantial construction of horizontal improvements and 2) the balance of the Phase 1 option parcels no later than three years after completion of Phase 1 horizontal improvements (excluding parks); otherwise, the Port has the right to offer the parcels through a public offering.

To date, Brookfield has received design review and administrative approval for three option parcels:

1. **Parcel E2**, containing 281 rental dwelling units, of which 56 units (20%) will be affordable at an average of 80% of area median income;
2. **Parcel A**, a 356,415 gross square foot commercial building; and
3. **Building 2**, a rehabilitated historic structure to accommodate 111,500 square feet of office space.

In February 2020, the Port agreed to transact Parcel E2 at an appraised value lower than the threshold value set in the DDA in exchange for Brookfield agreeing to shorten the timeframe for closing on Parcel A.² Under that agreement, Brookfield had until June 17, 2020 to exercise its options and enter binding contracts to lease each site. Citing the impacts of the COVID-19 pandemic on real estate markets and the appraised values of Parcels A and E2, Brookfield declined to exercise its options for both parcels. Subsequently, the parties reverted to existing rights under the DDA to dispute the values of Parcels A and E2 through a reappraisal process. During this timeframe, in

² Click [here](#) for February 11, 2020 memo to Port Commission on proposed transaction.

consideration of the ongoing economic impacts of the pandemic, the parties also agreed to extend the deadline for Developer's close of escrow on the Phase 1 Early Lease Parcel in accordance with the provisions of the DDA.

The reappraisal process for Parcels A and E2 concluded in June of 2021. The final appraised value of Parcel E2 was lower than the threshold value set in the DDA, thereby triggering an event of down market delay for Phase 1. This means that the timeframes for Brookfield's performance of time-sensitive matters under the DDA, including those related to the close of escrow on option parcels, are tolled until a down market no longer exists. The soonest either party may request a new appraisal to determine if the down market has ended is June of this year.

Current Project Performance

For costs expended through December 2021, Developer project costs plus return total approximately \$237.4 million. As anticipated at project approvals, Developer capital, which earns a market rate, risk-adjusted return of 18 percent annually, has been the primary early source of project funding aside from the Port capital contribution of \$6.5 million made in December 2018 and the \$24.2 million of land proceeds from the sale of Parcel K North in February 2019. Currently, the balance owed to the Developer is approximately \$206.6 million.

Phase 1 costs to date have been higher than originally projected due in part to Bay Area-wide construction cost increases. Meanwhile, Phase 1 revenues are coming in later and possibly lower than expected due to market conditions, creating a lower developer return than was projected at project approvals in 2017. While some of the Port's expected revenues from the project are contingent upon Brookfield earning an 18% return, there are many long-term Port revenue streams the Port will receive over the life of the project, irrespective of Developer's return, once vertical development starts to occur. These revenue streams, which include sale proceeds from Parcel C1A, percentage rent from leased option parcels, participation in proceeds from expected lease transfers and refinancings, condominium transfer fees, Port's share of tax increment, and services, arts building and shoreline special taxes, were estimated at \$259.6 million (net present value terms) in 2017 at project approvals and are still expected once vertical development is complete and buildings are operational.

In order to advance the project, both by improving its performance and accelerating vertical development, Brookfield has proposed a series of changes to the project documents. Port staff is currently evaluating Brookfield's proposal and anticipates returning to the Commission with an update and recommendation later this year.

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Attachments

1. Exhibit A - Amended D4D Definitions Page

**PORT COMMISSION
CITY AND COUNTY OF SAN FRANCISCO
RESOLUTION NO. 22-22**

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, On September 26, 2017, the Port Commission approved Resolution No. 17-43 approving a Development Disposition Agreement (“DDA”) between Port and FC Pier 70, LLC (“Developer”), an affiliate of Brookfield Properties, for a mixed-use development project on the 28-Acre Site (the “Project”), creation of the Pier 70 Special Use District, including the 28-Acre Site, Parcel K North, Parcel K South and the Hoedown Yard (“Pier 70 SUD”), and Pier 70 SUD Design for Development (“D4D”), which provides land use controls, detailed development standards and guidelines for buildings, open space and streetscape improvements for development and improvements in the Pier 70 SUD; and

WHEREAS, On October 31, 2017, the San Francisco Board of Supervisors approved the Project, the Pier 70 SUD, and the Development Agreement by and between Developer and the City, dated as of May 2, 2018 (“DA”); and

WHEREAS, Subsequently, Mayor Lee signed all necessary legislation; and

WHEREAS, The DDA specifies Developer’s construction obligations for the Project and development is subject to the DA, the DDA, the Pier 70 SUD, the D4D and other applicable laws and policies; and

WHEREAS, Planning Code Section 249.79(c) authorizes the Planning Commission and the Port Commission to amend the D4D upon approval by both bodies, to the extent that such amendment is consistent with Planning Code Section 249.79, the San Francisco General Plan, the DDA and the DA; and

WHEREAS, On February 25, 2020 and August 11, 2020, the Planning Commission and Port Commission, respectively, approved an amendment to Standard 6.4.2 of the D4D to allow residential buildings within the Pier 70 SUD with a 90-foot height limit to contain nine stories, where previously limited to eight stories, while maintaining the same permitted heights and overall massing required by other D4D standards; and

WHEREAS, On October 5, 2021, the Developer requested a second amendment to the D4D to clarify: (1) the definitions of “Retail Use” and “Office Use” to prevent inconsistencies for terms used interchangeably throughout the D4D and (2) that parcels designated for “Office Use” may be developed

with laboratory and life science uses (collectively, the “D4D Amendment”);
and

WHEREAS, The D4D Amendment, shown in Exhibit A, would help implement the Project by providing flexibility and clarity in the design and development of non-residential parcels at the site, without altering building bulk or height maximums, permitted use categories, or development capacity of the Project; and

WHEREAS, The D4D Amendment is consistent with the Pier 70 Mixed Use District Final Environmental Impact Report (“FEIR”) (2014-001272ENV) and does not alter the maximum development capacity of the site or alter the Project from what was previously analyzed in the FEIR; and

WHEREAS, On March 3, 2022, the Planning Commission adopted the D4D Amendment; now therefore, be it

RESOLVED, That the Port Commission approves the D4D Amendment, as shown in Exhibit A, for the following reasons:

1. The D4D Amendment would help implement the Pier 70 Mixed-Use Project by providing flexibility and clarity in the design and development of non-residential parcels at the site, which could help accelerate vertical development;
2. The D4D Amendment is consistent with all requirements of Section 249.79 of the Planning Code, the San Francisco General Plan, the DDA and the DA; and
3. The D4D Amendment does not alter the maximum development capacity of the site or alter the Project from what was previously analyzed in the FEIR and thus is consistent with the adopted FEIR.

I hereby certify that the foregoing resolution was adopted by the San Francisco Port Commission at its meeting of April 26, 2022.

Secretary

EXHIBIT A: AMENDED D4D DEFINITIONS

OFFICE USE^{*}

A grouping of uses that includes General Office, Retail Professional Services, and Non-Retail Professional Services, Design Professional, Laboratory, and Life Science. This use shall exclude: retail uses other than Retail Professional Services; Commercial Storage; Wholesale Sales; repair; any business characterized by the physical transfer of tangible goods to customers on the premises; wholesale shipping, receiving and storage; and design showrooms or any other space intended and primarily suitable for display of goods. For purposes of Planning Code Table 249.79(g)(1) note (17) only, the term Office shall mean "Office Use" as defined in the Planning Code Section 102.

Other uses within Office Use as defined in Planning Code may not be permitted within the Project (see S2.1.1 and Table 2.1.1).

* The use of the terms office, commercial-office, commercial/office, office space or any variation of the foregoing in Planning Code 249.79 and this Design for Development shall have the same meaning as Office Use within this definition.

RETAIL USE^{*}

A commercial use that includes uses that involve sale of goods, typically in small quantities, or services directly to the ultimate consumer or end user including, but not limited to, Retail Sales and Services Uses, Commercial Entertainment, and Arts and Recreation Uses. Other uses within Retail Use as defined in Planning Code may not be permitted within the Project (see S2.1.1 and Table 2.1.1).

*The use of the terms Retail, Retail Uses, Retail + Services, Retail Sales and Service Use, or any variation of the foregoing in Planning Code 249.79 and this Design for Development shall have the same meaning as Retail Use within this definition.