



MEMORANDUM

September 18, 2020

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

FROM: Elaine Forbes
Executive Director

SUBJECT: Informational presentation regarding a proposed lease with Bay Area Council (BAC) for the mooring of the historic ferryboat Klamath to be located at Pier 9 South at The Embarcadero and Broadway for a term of 15 years with two five-year options.

DIRECTOR'S RECOMMENDATION: Informational Only – No Action Required

Executive Summary

The Bay Area Council is proposing to repair and rehabilitate the historic ferryboat Klamath and moor it along the south side of Pier 9. The vessel would serve as the headquarters for the Bay Area Council, with office and conference room space, primarily on the upper deck, that will allow the Klamath to become an important historic meeting place and regional destination for leaders, partners, and the broader Bay Area community. Additional office space would be available to rent to subtenants on the main deck, with priority given to maritime and water-related tenants. The BAC would also provide significant public access to all levels of the vessel, compliant with the Americans with Disabilities Act (ADA), including to the roof deck with views of the Bay, as well as exhibition space, likely dedicated to the Klamath and history of ferry service on the Bay. The Bay Area Council would provide event tours with maritime education through historic points of interest throughout the vessel. The project would require a minor amount of dredging for the Klamath to moor at Pier 9, and construction to provide electrical, water, and other connections to landside utilities. The pier apron from The Embarcadero to the Klamath would be converted to public access.

Accordingly, through this informational presentation, Port staff is seeking direction from the Port Commission as to whether to bring the proposal described below to a future

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Port Commission meeting for approval of the transaction as described in this report.

Strategic Objectives

The proposed Maritime lease is expected to contribute in a substantial way to meeting multiple objectives of the Port's Strategic Plan, including:

- *Evolution*, by transforming the waterfront to respond to changing public and Port needs
- *Productivity*, by attracting and retaining tenants that build an economically viable Port
- *Equity*, by ensuring Port activities advance equity and public benefit, and attract a diversity of people to the waterfront
- *Engagement*, by increasing the public's awareness of the purpose and benefits of Port functions and activities

Background

Between 1850 and 1939, there were 120 ferryboats in operation on San Francisco Bay at one time or another. As George Harlan wrote in *San Francisco Bay Ferryboats*, this armada of cherished vessels "profoundly influenced the settlement of the Bay Area and affected the daily life of the people who lived and worked in [its] communities." The boats came in many shapes and sizes and marked a glorious period in our history as they carried passengers, cars, trains, horses, livestock, agriculture, and all manner of other items. They hosted marathon card games, live music, dining halls, well-stocked bars and saloons, with room for running and exercise, barbershops, pinball machines, and children "with noses pressed close to the glass panes...often entertained for the entire voyage." The completion of the Golden Gate Bridge and Oakland Bay Bridges in the mid-1930s initiated the eventual demise of ferryboats on the Bay. One by one, the stately boats were scrapped, destroyed, or otherwise lost. In 1979, only 14 could be accounted for in various locations in the United States. Since then, nine more have been destroyed or scrapped, leaving just five historic ferryboats today.

On the occasion of its 75th anniversary of stewarding the Bay and the communities that surround it, the nonprofit Bay Area Council proposes to save and rehabilitate one of these five relics back to the Bay Area and San Francisco: the historic ferryboat Klamath.

The Klamath was built in San Francisco by Bethlehem Shipbuilding Corporation in 1924 to service the Southern Pacific auto routes between the San Francisco Ferry Building and Oakland and Alameda in the East Bay. She was named for Klamath County, Oregon, and carried as many as 1,000 people and 78 cars. The Klamath was powered by a 1,400-horsepower triple-expansion steam engine that drove two cast-iron propellers, 10 feet in diameter, one on each end. (Her propellers have been curiously resting on the sidewalk in San Francisco's Aquatic Park since the 1960s.) In 1929, the Klamath joined the fleet of Southern Pacific Golden Gate Ferries, Ltd., which was the largest ferry line in the world, and serviced the San Francisco Hyde Pier-Sausalito route for nine years.

In 1938, the Klamath was sold to the Richmond-San Rafael Ferry Company. For the next 18 years she operated between Point Molate (Richmond) and San Quentin. She made her last ferry run on September 1, 1956, the day before the Richmond-San Rafael Bridge opened. She was the last major boat to operate on the Bay, and thus ended an era.

In 1964, Walter Landor and his company, Landor Associates, purchased the Klamath after finding it abandoned at the Oakland Estuary. He renovated the ferry at the place of her birth at San Francisco's Bethlehem Shipyard. The boat served as the headquarters for his design firm at Pier 5 on the Embarcadero in San Francisco until 1988, creating new San Francisco history. It was here, on the Klamath, that some of the most famous logos in the world were created, including Bank of America, British Airways, Coke, FedEx, Levis, and MUNI, among thousands of others. Kimberly Brooks, an artist who interned at Landor described the Klamath as such: "The huge ferryboat [headquarters] was like being inside a brain. They had a word department where people would make up the names for the juices that would appear on a Dole Pineapple container. The design department was filled with designers, photographers, and architects working on the latest airlines (British Airways, JAL, NorthWest) or gas stations. In the main conference room, there would regularly be a twenty-foot shoji screen filled with logos for a new client." The Klamath became a cultural gathering spot for writers and artists like Andy Warhol, Tom Wolfe, Issey Miyake, and Marshall McLuhan.

In 1992, after vastly outgrowing the capacity of the Klamath, Landor sold the boat to Duraflame, in Stockton, for its corporate headquarters. The historic ferry crossed San Pablo Bay on November 9, 1992, bound for a new permanent mooring site on Stockton's Deep-Water Channel. Duraflame maintained the boat for nearly three decades and hosted all number of civic and social events for the Stockton community. The company and family that owned it are now moving on and Duraflame has sold the vessel.

The Bay Area Council has purchased the Klamath and plans to drydock and overhaul the vessel in order to rehabilitate it for a return to San Francisco, and share and extend the incredible history of the Klamath, and the old ferryboats of the Bay.

Historic Vessel Policy

In 2005, the Port Commission adopted a Historic Vessel Policy which recognizes historic vessels as an important part of San Francisco's maritime legacy and provides eligibility criteria and guidelines in considering static berthing of historical ships at the Port (Port Commission Reso. 05-12). The established guidelines are based on review with entities involved in the static mooring of historic ships, concurrence with local lease regulations and policies, review of the Port's Waterfront Land Use Plan, and other regulatory requirements. The Klamath satisfies all the eligibility criteria in the Historic Vessel Policy. Given the policies underlying the History Vessel Policy and because the Klamath and the proposed lease meets substantive requirements of the policy, Port

staff has determined that a competitive solicitation is not appropriate in these circumstances.

The Historic Vessel Policy notes that the financial terms of the then-existing Port leases and berthing agreements were based on percentage rent formula and suggests that any new lease agreements use a similar model. However, as the intended use of the Klamath is unique in that it will primarily serve as the headquarters for the Bay Area Council, Port staff has proposed a rent structure modeled on current Port master office leases which represents the fair market value in these circumstances.

Project Description

Proposed Historic Ferryboat Klamath Site

The Bay Area Council proposes to repair and rehabilitate the exterior of the historic 1924 ferryboat Klamath (234' length x 45' width x 17' height) to an external appearance similar to the appearance of the vessel in 1924 and to permanently moor, use, and maintain the Klamath as BAC headquarters and public space on the southwest side of the Pier 9 along The Embarcadero under a lease with the Port. The Klamath would be approximately 500 yards from one of her former ferry service slips, and 150 yards from her 24-year "Landor" life at Pier 5. She would visually balance the open water basin, which features the historic ferry Santa Rosa at Pier 3. Bay Area Council has been working as regional stewards helping to shape the future of the Bay Area and the waterfront since 1945.

Proposed Improvements to the Site

To facilitate an adequate conference center facility and Bay Area Council headquarters, utility and access improvements will need to be made including, but not limited to, electrical power infrastructure, water and sewage utilities, and ADA-accessibility improvements. Bay Area Council will design and construct improved access along the adjacent apron on the south side of Pier 9 to allow for public access activation of a currently inaccessible portion of the San Francisco waterfront. Areas on the apron for seating and viewing the Bay will be made available for the public.

After a comprehensive review of available berths along the Port, Pier 9 proves to be the best available berth for the Klamath. To improve the berth for ideal use, the Tenant will: relocate one or two existing piles; add two new piles; add an approximately 80-linear-foot ADA-compliant ramp on west side of the Klamath; add an approximately 80-linear-foot ADA-compliant ramp on the east side of the Klamath; establish up to 600-amp electrical service; facilitate fresh water supply via two-inch supply pipe; facilitate sewage discharge via three-inch discharge pipe; and dredge between 3,500-5,000 cubic yards to a depth of approximately 20 feet (mean lower low water) in the footprint of the boat. Current depths in the area are between 8-17 feet.

Key benefits of the proposed improvements are:

- Provide an aesthetically pleasing enhancement to the southern apron of Pier 9 in the heart of The Embarcadero corridor and the Broadway Open Water Basin

- The Klamath will increase public access and provide a visitor destination, bringing more foot traffic to the Klamath, the Pier 9 apron, and associated businesses in the vicinity of the improvements
- The utilities infrastructure upgrades will improve the longevity and marketability of the facility for the future

Proposed Lease Summary

The following summarizes the key terms of the proposed Maritime lease.

<i>Lease Commencement</i>	Subject to conditions and approvals, estimated in the last quarter of Calendar Year 2020
<i>Premises:</i>	On the south side of Pier 9: <u>Parcel A</u> : approximately 7,250 square feet of apron space for non-exclusive use; and <u>Parcel B</u> : approximately 18,000 sq. ft. of submerged land
<i>Term:</i>	Fifteen (15) years.
<i>Extension Options; Rent during Extension Term(s):</i>	Tenant shall have 2 options to extend the term (each, an “ Extension Option ”) for a period of 5 years each (each, an “ Extension Term ”). Monthly Base Rent shall be the greater of: (A) the total Monthly Base Rent for the previous month increased by the higher of: (i) 2%; or (ii) by the CPI; provided that the increase shall not exceed 3% regardless of the CPI; or (B) the total of (i) the square footage of Parcel B multiplied by the lowest Port Commission-approved rate for apron space for the then-current fiscal year plus (ii) the square footage of the BAC Offices multiplied by the lowest Port Commission-approved rate for Pier 9 offices for then-current fiscal year multiplied by 27.4%. Participation Rent will remain the same during any Extension Term.
<i>Conditions Precedent:</i>	Tenant agrees that Port shall have no obligation to execute this Lease until Port has confirmed Tenant’s statement under penalty of perjury that it has adequate funding sufficient to meet its Lease obligations including completion of the Initial Tenant Improvements, payment of Base Rent throughout the Term, and compliance with the requirements of the Operations Plan and any findings of a Conditions Report.
<i>Permitted Use:</i>	Parcel A Apron: Non-exclusive rights to use Parcel A for ingress/egress Parcel B Submerged Land: mooring of The Klamath The following uses are permitted on The Klamath: (i) no more than 10,000 square feet of office space for the exclusive use as the headquarters of the Bay Area Council (“BAC Offices”);

	<p>(ii) no more than 4,999 square feet of office space that may be subleased (“Subtenant Offices”);</p> <p>(iii) no more than 3,000 square feet of conference center (“Conference Center”); and</p> <p>(iv) no less than 10,500 square feet of Public Access Areas including restrooms (as described below) and permanent exhibition/museum space open during normal business hours for visits by the general public at no charge.</p> <p>Special Events are permitted in all areas of The Klamath.</p>
<i>Monthly Base Rent and Annual Adjustments:</i>	<p>Tenant shall pay an initial total Monthly Base Rent of \$15,045 calculated as follows:</p> <p><u>Parcel A</u>: \$0.00 for non-exclusive apron space.</p> <p><u>Parcel B</u>: \$3,420.00 (based on the lowest Port Commission-approved rate for submerged land for FY19/20 of \$.19 per square foot.)</p> <p><u>BAC Offices</u>: \$11,625 (based on the lowest Port Commission-approved rate for Pier 9 Offices for FY19/20 of \$4.25 per square foot multiplied by 27.4%).</p> <p>On each Anniversary Date, Monthly Base Rent will increase by the greater of: (i) 2%; or (ii) by the CPI; provided that the increase shall not exceed 3% regardless of the CPI.</p>
<i>Participation Rent:</i>	<p>In addition to the monthly Base Rent, Tenant shall pay on a monthly basis the following amounts (collectively, “Participation Rent”): (i) 30% of all Subtenant Rent (“Subtenant Participation”); PLUS (ii) 20% of all Special Event Revenues (“Special Event Participation”). There shall be no set off for Base Rent.</p>
<i>Security Deposit:</i>	<p>Thirty thousand ninety dollars (\$30,090).</p>
<i>Financial Guaranty for Vessel Removal:</i>	<p>Tenant must deliver to Port a \$300,000 irrevocable, stand-by and unconditional letter of credit as collateral for the removal of The Klamath immediately upon expiration or earlier termination should Tenant fail to do so.</p>
<i>Initial Tenant Improvements:</i>	<p>No later than Spring 2021, at its sole cost and expense and without rent credits or other concessions, Tenant must complete dredging work and improvements to the apron in connection with its use. Tenant estimates the cost of the Initial Tenant Improvements to be \$500,000.</p>
<i>Operations Plan:</i>	<p>All Permitted Uses must be performed in compliance with an operations plan that describes the activities that will occur on the Premises, including on the Klamath, and how they will be conducted. Tenant must prepare and maintain such Operations Plan to document its procedures consistent with this Lease, Laws, industry standards and best management practices and good house-keeping for all interior and exterior spaces. The Port-approved Operations Plan is attached hereto</p>

as **Exhibit D** and is hereby incorporated. Port may, from time to time, review Tenant's Operations Plan and make recommendations for revisions. The Operations Plan and all revisions thereto whether initiated by Port or Tenant, are subject to Port approval, in its sole discretion. Failure to comply with the Operations Plan is a material default of this Lease.

At a minimum, the Operations Plan shall include the following elements and provisions:

(1) Routine Operation and Maintenance Plan that describes activities that will occur on the Premises and how they will be conducted using environmental best management practices for pollution prevention for activities as applicable. The Operations Plan must establish a program and procedures for inspection, control and removal of invasive species including undaria, a non-native aquatic plant that attaches to vessels, floats, and ropes. Best management practices and procedures for invasive species control and removal As further detailed in the Operations Plan, Tenant shall be permitted to: perform maintenance and cleaning within the confines of the Klamath; perform minor repairs and maintenance work on the exterior of the Klamath and include best management practices and procedures for vessel anti-fouling and below-hull cleaning; and, provided that Handling is at all times in full compliance with all Environmental Laws, Tenant may store small quantities of Hazardous Materials onboard the Klamath including office cleaning products and other materials necessary for minor vessel maintenance and repair. The Operations Plan must analyze whether the use of non-copper based paints adequately meet vessel anti-foulant needs and use less toxic alternatives to the extent practical and available.

(2) Inspection, Maintenance and Repair Plan prepared by an Accredited Marine Surveyor that requires the following minimum requirements: (i) scheduled periodic inspections throughout the Term and Extension Term(s), if any, no less frequently than every two (2) years beginning on the first (1st) Anniversary Date; (ii) preparation and delivery to Port no later than thirty (30) days after the inspection a conditions assessment report prepared by an Accredited Marine Surveyor detailing the results of the inspection in form and content acceptable to Port and including, at a minimum, the following ("**Conditions Report**"):

(A) a description of the current conditions of the vessel's hull (including all submerged elements), and all utilities systems and exterior finishes of the Klamath;

(B) a list of the maintenance and repair needs for each element, whether the maintenance and repair needs can be provided on the Premises (subject to the other restrictions and limitations set forth in this Lease) or requires drydocking, and the schedule and estimated cost to address such needs;

(C) an estimate of the remaining useful life of each element and a five (5)-year replacement reserve analysis;

(D) recommendations and timelines for further inspections, maintenance and repair (including out-of-water inspections, maintenance and repair) and other action;

	<p>(E) an explanation of cost estimating methodologies and assumptions;</p> <p>(F) a determination, Certified by the preparer of the Conditions Report, that the Klamath’s hull, keel, decking, cabin and mast are structurally sound, generally free from dry-rot, and capable of preventing discharges of pollutants, including, without limitation, petroleum products, contaminated bilge water, and human wastes ("Seaworthy").</p> <p>In addition to the preparation and delivery of Conditions Reports to Port in accordance with this Section, if any Conditions Report or similar facilities condition report is prepared by or on behalf of Tenant for any other reason or purpose, Tenant will promptly provide Port with a copy of such report.</p> <p>Tenant shall perform the maintenance and repairs recommended in any Conditions Report within the timeframe set forth in the Conditions Report or as agreed by Port in its sole discretion. Failure to do so is a material default of this Lease.</p> <p>As to any Conditions Report required by this Lease, if Port reasonably believes the Conditions Report does not adequately describe the condition and integrity of the listed elements, the adequacy or timing of required maintenance and repairs, or does not satisfactorily conclude that the Klamath is Seaworthy, then Port shall notify Tenant of such deficiency and Tenant shall address such deficiencies and revise the Conditions Report to address them within the timeframe specified by Port. If Tenant fails to provide a required Conditions Report or a revised Conditions Report to Port within the timeframe specified by Port, Port after giving thirty (30) days' notice to Tenant shall have the right, but not the obligation, to cause the preparation of a Conditions Report by a team of professionals of Port's choice, at Tenant's sole cost and Tenant shall perform the maintenance and repairs (including without limitation any out-of-water needs) recommended in any such Port-prepared Conditions Report within the required timeframe. Failure to do so is a material default of this Lease.</p> <p>Prior to the return of the Klamath to the Premises after any out-of-water inspection, maintenance or repair, Tenant shall submit a Conditions Report including a Certified determination that the Klamath is Seaworthy. Notwithstanding any other provision of this Lease, absent a Certified determination in a Conditions Report that the Klamath is Seaworthy, the parties agree that the Klamath is prohibited from returning to the Premises. There shall be no rent abatement of Base Rent or Subtenant Participation while the Klamath is in drydock or otherwise absent from the Premises.</p> <p>The remedies described above are in addition to and not a limitation on Port’s remedies under this Lease, at Law or in equity.</p>
<p><i>Subleasing Program:</i></p>	<p>All Subleasing is subject to Port’s prior consent. Tenant will make every reasonable effort to obtain and retain desirable subtenants and book special events that are consistent with the public trust and shall first market to maritime and other trust-consistent users.</p>
<p><i>Management Covenants:</i></p>	<p>Tenant will maintain and operate The Klamath consistent with City code and the standards for a first-class mixed-use office/light industrial development located on</p>

	the San Francisco waterfront. Tenant shall make at least three (3) toilet facilities on The Klamath available as a public restroom open during normal business hours.
<i>Transfer Proceeds:</i>	Tenant and all subsequent assignees must pay to Port fifteen percent (15%) of net proceeds from sales and financing events.
<i>Form Lease/City Requirements</i>	The Lease will be consistent with the Port’s form lease and include standard provisions regarding Maintenance and Repair, Hazardous Materials, Defaults and Remedies, Indemnity and Waiver, Insurance and all required City requirements.

California Environmental Quality Act.

In fulfillment of the requirements of the California Environmental Quality Act (“CEQA”), on August 27, 2020 the San Francisco Planning Department issued Addendum 3 (“Addendum”) to the certified Final Environmental Impact Report (“FEIR”) for the proposed 34th America’s Cup and James R. Herman Cruise Terminal and Northeast Wharf Plaza Projects (EIR Case No. 2010.0493E), which included a Mitigation Monitoring and Reporting Program (“MMRP”) for both projects. The Addendum concluded that mooring The Klamath at Pier 9 would not cause new significant impacts not identified in the FEIR, and no new mitigation measures would be necessary to reduce significant impacts. In order to mitigate any potential significant environmental impacts of the project, BAC must comply with any applicable MMRP requirements.

In addition to the San Francisco Planning Department CEQA environmental review of the project Port Planning staff are coordinating with the BAC and its consultant team to guide the design of proposed alterations to the apron and the ferry vessel. The focus of this staff guidance is to ensure that the work within the Embarcadero Historic District and to the historic Ferry Boat Klamath is consistent with the Secretary of the Interior's Standards for the Treatment of Historic Properties (Secretary's Standards) and Port Commission 89-04. The Commission adopted Resolution 89-04 in 2006 requiring that all work within the Embarcadero Historic District comply with the Secretary's Standards and supports the Port's stewardship of the historic district. The staff review and determination that all components of the proposed project will be consistent with the historic standards and Port stewardship best practices will support other agency approvals. These approvals include a BCDC permit authorizing new Bay fill and an Army Corps. of Engineers permit to authorize dredging and installation of piles.

Bay Conservation and Development Commission (“BCDC”).

Several BCDC approvals are needed, which are the responsibility of BAC. The mooring of the Klamath requires a BCDC permit because the vessel is considered to be “fill.” However, because mooring the Klamath at Pier 9 would violate the policies under the current Special Area Plan (SAP), BAC is seeking an amendment to the SAP. The SAP provides that amendments can only be approved if BCDC finds that the revised public benefits and revised development entitlements would be in balance and the public benefits would be sufficient to warrant a finding that the revised balance of public and private benefits would be necessary to health, safety and welfare of the entire Bay Area.

Port Staff Financial Analysis

Port staff has determined that the proposed lease with Bay Area Council, the proposed capital improvements, and associated lease term meet the criteria in the Historic Vessel Policy. As described above, Port staff has evaluated the projected use and revenues projections as viable and has determined that the proposed capital improvements will likely generate an additional long-term gain that the Port would not otherwise receive. In summary, Port staff concludes:

1. The proposed location would activate a maritime berth facility that has long stood vacant and create increased public access, infrastructure improvements, financial stability, and favorable conditions for recovery in a post-COVID economic climate.
2. The return of a historic ferryboat to the San Francisco waterfront for use as the headquarters of the Bay Area Council brings focus and attention to the gateway of our world-class city and our boutique maritime port, provides increased revenue-generating opportunities, and secures a location that can be used for public education and inspiration, while improving views and attractions along The Embarcadero.
3. The proposed new lease term is reasonable in relation to the size of the operation and the need to amortize the tenant's investment over a manageable period.

Recommendation

Port staff seeks comment, input, and guidance from the Port Commission at the September 22, 2020 meeting on Bay Area Council's proposed use and terms. If so directed, Port staff intends to incorporate the feedback from the Port Commission in its negotiations and return to a future Port Commission meeting with a recommendation for action.

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