

MEMORANDUM

February 7, 2020

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: Informational update on the California Barrel Company, LLC (CBC), mixed-use project located on the former Potrero Power Station site bounded by 23rd, Illinois and 22nd Streets and San Francisco Bay, including Port of San Francisco shoreline and adjacent lands referred to as portions of Seawall Lot 349, Pier 72 and 23rd Street; Port-related transaction documents for the Potrero Power Station project including: (1) consent to Development Agreement between the City and CBC; (2) approval of lease with CBC to use Port lands for public parks and open space and publicly accessible ways, including an option to impress a public trust easement on privately owned shoreline land and a portion of 23rd Street leading to the shoreline; (3) delegation of authority to Port's Executive Director to enter into one or more Memoranda of Understandings with various City agencies, including the San Francisco Public Utilities Commission, the San Francisco Public Works Department and the Department of Building Inspection, relating to each agency's role and responsibility; and (4) adoption of environmental findings, including a mitigation monitoring and reporting program and a statement of overriding considerations, pursuant to the California Environmental Quality Act.

DIRECTOR'S RECOMMENDATION: Information Only – No Action Required

EXECUTIVE SUMMARY

On September 11, 2018, the Port Commission received an informational briefing on the Potrero Power Station (PPS) project, led by the California Barrel Company, LLC (CBC or Project Sponsor) and managed on behalf of the City by the Office of Economic and

Workforce Development (OEWD).¹ The planning and entitlement work has been coordinated by an interagency team, including the Planning Department, the San Francisco Public Utilities Commission (SFPUC), San Francisco Public Works (SFPW) and the Port of San Francisco (Port) to rezone the PPS site, establish land use controls, develop design standards, and provide for development of residential, commercial (including office, research and development / life science, retail, hotel, entertainment/ assembly and production, distribution and repair), parking, community facilities and open space land uses (see *Exhibit 1, Project Location*). The September 2018 briefing focused on the planning efforts for the former Potrero Power Plant, including the proposed use of certain Port lands for public and private rights-of-ways, parks and open spaces and the participation in the planning efforts to ensure that the future improvements respond to the Port and its stakeholders' needs, including coordination with the Pier 70 projects.

Overall, the proposed PPS project would construct up to approximately 5.4 million gross square feet (gsf), of uses, including approximately:

- 2.5 and 2.7 million gsf of residential uses (about 2,500 to 2,700 dwelling units);
- 1.6 and 1.8 million gsf of commercial uses (office, R&D/life science, retail, hotel, and PDR);
- 965,000 gsf of parking;
- 50,000 gsf of community facilities; and
- 25,000 gsf of entertainment/assembly uses.

The program also includes approximately 6.9 acres devoted to publicly accessible open space (see *Exhibit 2, Land Use Program*). Most of the new buildings would range in height from 65 to 180 feet, with one building at 240 feet.

Of the 6.9 acres of open space planned for the 29-acre PPS site, about 40 percent or 2.9 acres is located on Port-owned property. The 2.9 acres consists of three noncontiguous areas (see: *Exhibit 3, Land Ownership*):

- the largest area is 1.6 acres located between the former Power Station sub-area and the Bay and includes water area for a potential recreational dock;
- the second largest is 1.3 acres located along 23rd Street between the Power Station sub-area and Illinois Street; and
- the smallest piece is less than one tenth of an acre and is located on the northeast corner of the site next to the Bay.

Coordinating through an interagency process, the Project Sponsor proposes to lease Port land for a term of 66 years for shoreline parks and open space. The lease would allow and require the Project Sponsor to improve, operate and maintain the premises for the public's enjoyment and access and would include an indemnity for claims

¹ A copy of the February 23, 2016 Port Commission staff report and associated exhibits is available at: https://sfport.com/sites/default/files/Commission/Documents/Item%2011A%20Potrero%20Power%20Station%2009.11.2018_0.pdf

relating to activities that occur on the premises. As additional consideration for the lease, the Project Sponsor has also agreed to grant Port an option to impress a Public Trust Easement on certain of the Project Sponsor's lands along the shoreline adjacent to the premises and in the 23rd Street right-of-way leading to the shoreline.

This staff report is organized around seven topics including:

1. Project Background
2. How the Project meets the Port's Strategic Objectives
3. The Southern Waterfront Beautification and Community Benefits program
4. The Lease and Public Trust Easement
5. Port Commission Approval and Key Transaction documents
6. Community Outreach
7. Next Steps and Schedule

PROJECT BACKGROUND

The City, Port and CBC have been coordinating for over three years on the PPS project, which will include land use controls, infrastructure program and financing plan that will be documented in a Development Agreement. The planning has undergone an extensive community engagement process, including outreach to both the Port's Central Waterfront Advisory Group and Southern Waterfront Advisory Committee. In many regards the PPS project is like the Pier 70 Special Use District and will have similar controls and require similar approvals. CBC has been coordinating with the Port and Brookfield on aspects of the PPS project that connect to the Pier 70 project including shoreline parks, streets, transportation, infrastructure and resiliency measures.

Project Benefits

The land use program as described above along with the Development Agreement and lease include several public, City and Port benefits, including the following:

- *Open Space:* Creation or improvement of approximately 6.9 acres (2.9 acres within the Port's jurisdiction) of public open space and enhancing the Blue Greenway.
- *Maintenance of Public Spaces:* The open space maintenance will be funded by the Project Sponsor, which will also include indemnification of the Port and City. For additional financial security, maintenance costs will also be backed by a contingent services tax under the Community Facilities District covering the PPS project site, which the City can activate in case the Project Sponsor fails to sufficiently fund maintenance costs.
- *Public Trust Easement:* The Project Sponsors have agreed to grant the Port an option to record a Public Trust easement on privately-owned shoreline lands adjacent to the premises and the 23rd Street right-of-way to provide significant benefits to the Public Trust in perpetuity by consolidating and expanding the total acreage of lands protected by the Public Trust, providing and protecting public

access and recreation along the shoreline and enhancing the physical configuration of Public Trust lands along the shoreline.

- *Affordable Housing:* The PPS project will include an affordable housing plan to facilitate development of 30% of all residential units built within the project site as below market rate units and \$45 million in affordable housing fees generated from the site.
- *Transportation:* The PPS project is projected to generate \$64 million towards the Transit Sustainability Fee (TSF) and will construct capital improvements to support a Muni bus line planned to be routed through both Pier 70 and the PPS site. The project also includes a Transportation Demand Management Program. Up to \$2 million of the TSF funds may be used to pilot a San Francisco shoreline small vessel service, subject to trailing approvals by SFMTA when such TSF funds are collected.
- *Jobs and Workforce Development Program:* The PPS project would implement a workforce development 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 PPS project will provide additional resources (e.g., funding, on-site job training opportunities, internships/work experiences and space for jobseeker events) to support community-based organizations that provide job readiness training for individuals within at-risk populations.
- *Community Facilities:* The PPS project is providing 25,000 square feet for a Community Center and will also include two 6,000 square foot childcare facilities.

Improvements Within the Port's Jurisdiction

The Port lands will be improved to provide publicly accessible shoreline parks and open spaces and improved roadway access to the shoreline parks and open spaces. The improvements will include the following amenity types:

- Blue Greenway Pathways and a potential recreational boating dock;
- Plazas, public art, gardens and picnic areas; and
- Informal play structures and site interpretation.

The shoreline will be elevated to address projected sea level rise for the next 100 years and designed to accommodate projected sea level rise of 90" plus a storm surge of 42", for a total of 132" above current Mean Higher High Water (MHHW). The shoreline will also be adaptable if future sea level rise exceeds current projections.

The shoreline open spaces will connect to the Pier 70 open spaces and will help close a gap along the Blue Greenway. Ultimately as the property to the south of the PPS site redevelops, the PPS shoreline open spaces will connect the Pier 70 open spaces with Warm Water Cove Park.

In addition to the shoreline open spaces, the PPS project will fully improve the Port's portion of 23rd Street which is an underimproved Port street. 23rd Street will also be extended to the east to accommodate the project. The extension will not include a sidewalk on the south side because of the need to provide loading access to the adjacent property owner. The Port will issue a license to CBC to construct the street improvements, and such improvements will be completed to specifications that would allow Public Works to accept the improvements for maintenance as a public right-of-way.

Craig Lane, which is a service alley that is located on both the PPS site and the Pier 70 site, will be constructed and maintained by PPS in perpetuity in accordance with a Reciprocal Easement Agreement between PPS and the Port. This service alley, while not a public street, will be open for use by the public.

City Approvals

On January 30, 2020, the Planning Commission certified the Final Environmental Impact Report (FEIR), adopted CEQA findings, and approved General Plan amendments and findings, Planning Code and Zoning Map amendments, the Potrero Power Station Design for Development, and the Development Agreement for the Potrero Power Station Mixed-Use Project, with a recommendation that the Board of Supervisors approve the transactional documents.

The PPS project is scheduled to be presented to the SFPUC for consent to the DA on March 10, 2020.

The PPS project is scheduled to be presented to the Board of Supervisors' Land Use Committee on March 9, 2020, with a first reading at the full Board of Supervisors on March 17, 2020.

STRATEGIC PLAN OBJECTIVES

The Port's participation and coordination in the PPS project will address two of the Port's Strategic Plan goals including:

- *Evolution* to transform the waterfront to respond to changing public and Port needs. The PPS project will improve Port open spaces consistent with the Public Trust to provide publicly desired amenities and activities; and
- *Engagement* to increase the public's awareness of the purpose and benefits of Port functions and activities. The PPS project will strengthen public understanding and support of Port responsibilities and projects through community engagement and participation at many levels.

SOUTHERN WATERFRONT COMMUNITY BENEFITS AND BEAUTIFICATION

Described previously are the numerous City, Port and community benefits the PPS project provides. Specific to the Port, the proposed project would improve and maintain

the Potrero Power Station shoreline and provide new open space and parks for the public to enjoy, including closing a gap in the Blue Greenway. The Project Sponsor would be responsible for all costs associated with the park improvements and 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, and the City and the State of California at large, but also close a gap in the Blue Greenway to connect the rest of the City to this community. The project generates no revenue to the Port and thus would not generate revenue to the Southern Waterfront Community Benefits and Beautification fund.

PORT COMMISSION APPROVALS AND KEY TRANSACTION DOCUMENTS

The following approval actions by the Port Commission are needed for the Potrero Power Station Mixed-Use Project:

1. **Consent to the Development Agreement** between the City and California Barrel Company, LLC, including approval of infrastructure, stormwater management improvements, parks and open spaces and other public improvements planned for land under Port jurisdiction and delegation to the Port Executive Director to grant later approvals described in the Development Agreement;
2. **Approval of a lease** with CBC to use Port lands for public parks and open space, streets and publicly-accessible areas in compliance with the Public Trust, including an option to impress a Public Trust Easement for the Port, City and State benefit on shoreline land and the portion of 23rd Street currently owned by CBC;
3. **Delegation** to the Port's Executive Director to enter into one or a series of **Memoranda of Understanding** with SFPW, SFPUC, the Department of Building Inspection (DBI) or other City agencies, as appropriate, to delineate agency responsibilities for management, maintenance, programming and permitting authority for the Public Trust lands held by the Port as trustee.

Development Agreement

The Development Agreement (DA), which is anticipated to be approved by the Planning Commission and Board of Supervisors, vests in California Barrel Company, LLC, master entitlement to construct the Potrero Power Station Mixed-Use Project in exchange for public benefit obligations above and beyond those provided by typical code-compliant projects. The key provisions of the DA that relate to the Port's consent include:

- *Parks and Open Space:* The DA provides for CBC to construct approximately 7.0 acres (2.9 acres of which would be located within the Port's jurisdiction) of public parks and open space. The parks and open space would be constructed commensurate with development, in three phases (*see Exhibit 4: Phasing Plan*).

- *Infrastructure Plan:* The Infrastructure Plan defines the infrastructure proposed for the entire PPS project, including infrastructure planned for Port property, the oversight, acceptance and maintenance of which will be the subject of the Memorandum of Understanding with other City agencies.
- *Financing Plan:* The Financing Plan includes a Community Financing District (CFD). The CFD will include a contingency tax that would be triggered upon property owners at the Port's option should the lessee fail to adequately fund the maintenance of the Port property. This is meant as a backstop protection for the Port so that future maintenance and liability costs do not fall to the Port.

Other City agencies consenting to the DA include the SFPUC, the SF Municipal Transportation Agency (SFMTA) Board of Directors, SFPW and the SF Fire Department (SFFD), as the DA relates to those agencies' jurisdiction.

Lease and Public Trust Easement

The proposed lease between the Port and CBC is for shoreline property to be used for public parks and open space for a term of 66 years. CBC will be responsible for improving, maintaining and managing the property for the duration of the lease and will indemnify the City and Port for any damages or injury that occur on the Port property. The park design will be developed to compliment with the Pier 70 shoreline parks and will be programmed with amenities to maximize public use and access.

While the Port owns a significant portion of the shoreline land, there are parcels within planned parks and open spaces along the shoreline and future roadways that are owned by CBC. The Port, City and State would benefit by having these lands encumbered in perpetuity through a Public Trust Easement. The benefit of an easement rather than fee title is that the Port, City and State will not take on any new or additional liabilities on formerly industrial lands that have contamination from historical uses while also permanently guaranteeing them for uses consistent with the Public Trust. CBC has agreed to grant the Port an option to impress a Public Trust Easement on shoreline properties adjacent to the lease premises and the portion of 23rd Street leading to the waterfront (*see Exhibit 5 Lands to be Impressed with Public Trust Easement*). The Port has consulted with State Lands Commission staff, who support the easement concept. If the Port exercises the option, the easement would be impressed upon approximately 1 acre of shoreline area and approximately 0.9 acres of roadway.

Memorandum of Understanding

As described above, the proposed Memorandum of Understanding (MOU) or MOUs between the Port and various City agencies, including the SFPUC, SFPW, and DBI, will be prepared to establish the roles and responsibilities of each of these agencies with respect to the both public and private improvements on Port lands. The MOU would assign management, maintenance, liability, 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 certain public improvements on Port lands. The Port, however, would retain review authority of uses

within its jurisdiction for consistency with the Public Trust and for certain permitting and acceptance activities as required by the Chief Harbor Engineer.

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

City Agency	Key MOU Terms
SFPUC	<ul style="list-style-type: none"> • Oversee construction of any public utility infrastructure and stormwater management facilities that are or will be under the SFPUC ownership, control or oversight. • Accept, operate, and maintain the public utility infrastructure that SFPUC elects to accept.
SFPW	<ul style="list-style-type: none"> • To the extent agreed with the Chief Harbor Engineer, review applications for necessary permits for roadways, alleys, geotechnical and shoreline improvements, grading, park construction and related activities within the Trust lands and where appropriate, issue such permits • Work with DBI on permits, inspections, and other responsibilities for the construction, alteration, improvement or removal of any structure within the Trust lands. • Accept, operate and maintain the infrastructure constructed within the Trust lands and for street vacations.
DBI	<ul style="list-style-type: none"> • In accordance with the existing as-needed MOU relationship with the Port, provide review support for permits for structures and other improvements on the Trust lands, and related oversight and inspections as requested.

COMMUNITY OUTREACH

Since purchasing the site in 2016, the Project Sponsor has conducted intensive community outreach. In addition to ten publicly noticed community workshops where feedback on the proposed project was attained, the Project Sponsor has conducted monthly site tours and held over 100 stakeholder meetings. Biweekly open office hours are hosted by the Project Sponsor at various neighborhood establishments, and members of the public are invited to converse with the team on any topic of their liking. In addition to numerous neighborhood group meetings and open houses, the project

was reviewed by the Port's Central Waterfront Advisory Group and Southern Waterfront Advisory Committee.

SCHEDULE AND NEXT STEPS

Port anticipates returning to the Port Commission for approval of the lease and consent to the DA on February 25, 2020.

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

- Request adoption of environmental findings, including a mitigation monitoring and reporting program and a statement of overriding considerations, pursuant to the California Environmental Quality Act;
- Approve a lease between the Port and California Barrel Company, LLC, for use of Port lands for public parks and open spaces and other public improvements, including an option to impress a Public Trust Easement on privately-owned shoreline land and a portion of 23rd Street leading to the shoreline;
- Consent to the Development Agreement between the City and California Barrel Company, LLC, as it relates to matters under the Port's jurisdiction; and
- Approve delegation to the Port's Executive Director to enter one or more Memoranda of Understanding with the SFPUC, SFPW, and DBI, as needed, regarding the roles and responsibilities with respect to improvements on the Public Trust lands.

Prepared by: David Beaupre
Senior Development Project Manager

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

Jon Lau
Office of Economic and Workforce
Development, Director of
Development

EXHIBITS

- Exhibit 1: Site Location
- Exhibit 2: Land Use Program
- Exhibit 3: Property Ownership
- Exhibit 4: Phasing Plan
- Exhibit 5: Public Trust Easement Map