




## MEMORANDUM

December 4, 2020

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

**FROM:** Elaine Forbes  
Executive Director 

**SUBJECT:** Informational presentation on (1) the proposed Declaration of Restrictions between the Port and 64 PKN Owner, LLC for Access Area for emergency pedestrian egress and a Clearance Zone for fire separation for the Developer's proposed mixed-use development on Pier 70 Parcel K North; (2) the termination of the DOR upon Port Commission's dedication of the proposed 20<sup>th</sup> Street Plaza as a park; (3) the public dedication of the park at acceptance, allowing the park to be deemed a "public way" as defined in Port Building Code; and (4) providing for each proposed park in Mission Rock and Pier 70 Waterfront Special Use Districts to be publicly dedicated upon acceptance, to similarly serve as a "public way" for Building Code purposes.

**DIRECTOR'S RECOMMENDATION:** Information Only – No Action Required

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### **Executive Summary**

This staff report provides information to the Port Commission and the public related to a technical, permitting issue that occurs when a new building fronts a public park or plaza. Under the Port Building Code (defined as California Building Code as modified and adopted by the Port) for building entrance and exiting and for fire safety, each building entrance must face a "public way," which is a publicly-accessible, 10-foot wide area. In the case of several buildings in the Pier 70 and Mission Rock Special Use Districts ("SUDs"), these new buildings are designed fronting a public park or plaza, so that building activities can spill out and activate these new open spaces.

Port staff and development partners have identified a gap in the permitting process for buildings fronting open spaces which is that permit reviewers must have assurance that a 10-foot wide “public way” exists or will exist when a building is complete. Because the buildings and parks are typically built together (rather than the park or plaza being built prior to the building), Port staff recommend that the Port Commission allow the Port Executive Director to execute temporary, declaration of restrictions (“DOR”) along each “public way” required for a building permit to be issued. The DOR would automatically terminate upon the Port Commission’s acceptance and public dedication of the public park or plaza. Once the public park or plaza is built and accepted by the Port Commission as a Port park, the publicly-dedicated facility would qualify as a “public way” in the Port Building Code.

Taking this action is in the Port’s interest because it allows building permit reviews for vertical projects at Pier 70 and Mission Rock to proceed without delays. All vertical buildings at both sites generate special taxes, tax increment, and, in the case of condominium projects, transfer taxes. The Port uses these taxes to pay for public infrastructure, to pay for maintenance of infrastructure and parks (including the already built Crane Cove Park), and for Port operations.<sup>1</sup>

This staff report describes: (1) this permitting issue, (2) the intent to seek Port Commission consideration and approval, in its future meeting, of the DOR for the Port-owned 20<sup>th</sup> Street Plaza parcel (“Plaza”), and (3) authorizing the Port Executive Director to execute similar temporary, DORs for future buildings at the Pier 70 and Mission Rock SUDs, in consultation with the City Attorney. The first project at Pier 70 to face this permitting issue is the Parcel K North project (“PKN” or “Vertical Project”). This condominium project with ground floor commercial uses abuts the Plaza – please refer to Exhibit “A,” Site Map, for location of the Plaza and PKN.

The granting of the temporary DOR prior to park dedication will allow the proposed building to build to the property line, maximizing the developable envelop, and satisfy pedestrian emergency exiting and fire separation requirements of the Port Building Code, including its Fire Code provisions. As each park or plaza is completed at the project sites, Port staff will request Port Commission park acceptance and public dedication of each of the proposed parks in the SUDs.

Port staff is making this presentation to allow Port Commission to provide input and feedback to staff and for the public to review and comment on the proposed temporary DOR and park dedication intent.

### **Strategic Objective**

When approved, the proposed DOR and park dedication provisions will help advance the implementation of residential development on PKN and other developments in the Mission Rock and Pier 70 SUDs, toward achieving the objectives of the Port’s Strategic Plan, particularly the productivity objective.

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<sup>1</sup> Condominium transfer taxes go to the Harbor Fund and can be used for any Port purpose.

## **Background**

On September 26, 2017, by Resolution No. 17-52, the Port Commission approved: (i) the terms of a competitive solicitation and sale of the PKN site, a 1.5- acre vacant land parcel, for no less than its appraised fair market value and (ii) the form of a Vertical Disposition and Development Agreement to be entered into between Port and the successful bidder. On February 5, 2019, the Board of Supervisors approved the form of Agreement by Resolution 40-19. The Site is shown on the attached **Exhibit “A” (Site Map)**; it is now sometimes used for surface parking. It is governed by the Design for Development (“D4D”) approved for the Pier 70 Waterfront Site SUD (the “Pier 70 SUD”).

On February 8, 2019, Port and Vertical Developer entered into a Vertical Disposition and Development Agreement (“the “VDDA”) for (i) Vertical Developer to purchase and develop the Vertical Project - approximately 245 residential condominium units over ground floor parking, and spaces for retail, art, and light industrial uses (“Project #1 - Buildings”) and (ii) and to construct: (1) certain improvements to the one block segment of Michigan Street between 20th Street and the future 21st Street (the “Michigan Street Improvements” or “Project #2 - Street”) and (2) an approximately 0.3-acre plaza at the southwest corner of Illinois and 20th Streets (the “Plaza or “Project #3 - Plaza”). Project #1 Buildings may be constructed in two phases; the first phase will consist of the first tower (“South Tower”), and the second phase will consist of the second tower (“North Tower”).

Please refer to **Exhibit “A”** and **Exhibit “B”** for locations of the Plaza, the project site, and Michigan Street.

## **UPDATE ON ENTITLEMENTS AND REGULATORY APPROVALS**

Following the VDDA execution, the Vertical Developer prepared its proposed schematic design for the Vertical Project, submitted it to Port and City Planning Department for review, and conducted outreach to community stakeholders, including the Central Waterfront Advisory Group, Dogpatch Neighborhood Association and Potrero Boosters to solicit feedback on the design. On November 22, 2019, the City Planning Director approved the schematic design for the Vertical Project based on its compliance with the administrative review process for vertical improvements in the Pier 70 SUD.

Since approval of its schematic design, the Vertical Developer has been working on obtaining building permit approval for Projects #1 Buildings, #2 Street and #3 Plaza. It is working on obtaining approval for: its concept design for Project #2 Street to enable the pursuit of other entitlement approvals allowing Project #1 Buildings to continue to move forward and (2) the schematic design for Project #3 Plaza.

To obtain building permit for Project #1 Buildings, the respective scopes of improvements for Projects #2 Street and #3 Plaza must be finalized. Project #2 Street’s scope of improvements include installation of wet and dry utilities and regrading and paving Michigan Street roadway. Project #3 Plaza’s scope of improvements require design approval by the Port Commission at the schematic design level. Project #1 Buildings’ permits depend upon gaining access rights over certain portions of the Plaza

parcel for emergency pedestrian egress and fire separation to comply with Port Building Code, including its Fire Code provisions.

Because of the above relationships amongst Projects #1 Buildings, #2 Street, and #3 Plaza, the Port, under the VDDA, engaged the Vertical Developer to design and construct Projects #2 Street and #3 Plaza. In sum, Project #1 Buildings needs the improvements to Michigan Street to be able to operate and it also needs the Plaza to accommodate emergency exiting and to activate the northern portion of its condo building since it abuts the Plaza, which separates the building from 20<sup>th</sup> Street.

### **Local Business Enterprise Participation**

Port Commission had directed Port staff to provide opportunity for Local Business Enterprises to participate in development projects under the Port's jurisdiction whenever possible. Projects #2 Street and #3 Plaza provide such opportunity since they will be funded with proceeds from the bonds the Port will issue using Community Facilities District special assessment taxes and tax increment generated from Project #1 Buildings. As such, Port and Contract Monitoring Division staff have negotiated and executed an LBE Utilization Agreement providing a 25% LBE participation goal in the pre-construction and construction work for Projects #2 Street and #3 Plaza. The LBE agreement provides guidance for Vertical Developer to follow to attain the 25% LBE participation target, including the procedures to follow and to engage contracting teams that reflect the diversity of the City. These include participation of both businesses and residents from the City's most disadvantaged communities (such as the communities within the 94107, 94124, and 94134 zip codes) including, without limitation, with respect to:

1. Hiring consultants and contractors for Soft Cost items – predevelopment work.
2. Hiring consultants and contractors for Hard Cost items – construction work.
3. Conducting the necessary outreach to LBEs in support of good faith efforts.
4. Providing timely notices to LBEs about contracting opportunities; and
5. Working cooperatively with the applicable City Agencies to achieve the desired LBE goals.

This LBE agreement does not apply to Project #1 Buildings, because it is private property and a development funded with private funds and no public funds.<sup>2</sup> The LBE agreement requires quarterly reporting to commence upon construction of the project.

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<sup>2</sup> Note that the Parcel K development was not part of the Pier 70 28-Acre Site Development Agreement. That document includes a comprehensive Workforce and LBE Utilization Plan which spans both the horizontal and vertical projects.

Construction is anticipated to begin once the project receives building permits, anticipate in 2021.

## **PROPOSED DOR TERMS AND PARK DEDICATION**

### **SUMMARY OF PROPOSED TERMS FOR THE DOR**

The temporary DOR will provide: (1) an Access Area for emergency pedestrian egress and (2) a Clearance Zone for fire separation as depicted in the attached **Exhibit “B,” Map showing Access Area and the Clearance Zone**, subject to terms and conditions that must be satisfied before the Port will allow the DOR to be recorded. The key terms of the DOR include:

1. **The Description of the Access Area and the Clearance Zone:** A land surface area in the Plaza consisting of a 10-foot strip for pedestrian emergency egress and a land surface area of 25-foot strip running alongside the northern property line of the Site, next to the Vertical Project.
2. **Purpose of Access Area and Clearance Zone:** This Access area will provide a non-exclusive area for pedestrian egress under certain situations requiring emergency evacuation from the Vertical Project. The Clearance Zone will provide the fire separation area required for the Vertical Project to comply with the Port Building Code, including its Fire Code provisions.
3. **Duration of the Access Area and the Clearance Zone:** The DOR will allow for the Access Area and Clearance Zone upon its recordation until the Port Commission accepts and publicly dedicates the Plaza.
4. **Consideration:** Both the Port and Vertical Developer anticipated under the VDDA that adjustments to boundary of surrounding properties may be necessary as well vacation, or placement, of easements as necessary given the history of the parcels involved.
5. **Risk Control Provisions:** Liability related to any claims arising from use of injuries Access Area and Clearance Zone will be the Vertical Developer’s responsibility and will indemnify City.
6. **Preconditions to recording the DOR:** The Vertical Developer will be required to meet the preconditions set forth in the VDDA to commence construction of any of the Projects before the DOR will be permitted to record.

### **Park Dedication**

***Post-DOR Termination, Permanent Solution: Port Open Space as “Public Ways” Under the Building Code***

The California Building Code provides that “buildings or portions thereof shall be provided with a means of egress system . . .” (Section 1001.1). The means of egress must lead to a “public way.” (Building Code Section 202). The term “public way” is defined as a “street, alley or other parcel of land open to the outside air leading to a street, that has been deeded, dedicated or otherwise permanently appropriated to the public for public use and which has a clear width and height of not less than 10 feet” (Building Code Section 202). These provisions of the California Building Code are not modified by the Port Building Code.

Since the Port open space parcels will be “open to the outside air leading to a street” and satisfy the minimum physical dimensions, they will meet the physical criteria for public ways. However, to be certain, the Port open space parcels need to be dedicated or otherwise permanently appropriated to the public for “public use” to be recognized as public ways under the Port Building Code. “Parks” under the Port Code include: “[T]hose certain grounds, public access areas, promenades, plazas, roadways, avenues, squares, recreation facilities, and other property identified in Appendix A attached hereto, any other areas that are or become publicly-dedicated public access areas and such other areas of land or water that are designated to be subject to this Code by a resolution of the San Francisco Port Commission and which are under the jurisdiction of the San Francisco Port Commission.” (Port Code Section 1.1) The conclusion that all “parks” under the Port Code are dedicated to the public at all times is supported by other provisions of the Code, which include specific terms for limiting public access to parks only in limited circumstances, i.e. prohibitions on sleeping in parks during certain hours and limitations on access “in case of an emergency” or “when public interest demands it.” (Port Code Sections 2.3, 2.10.)

## **ANALYSIS OF THE PROPOSED DOR TERMS AND PARK DEDICATION.**

**Duration and park-consistent minor structures.** Port staff considers the DOR the equivalent of a temporary easement for the Access Area and Clearance Zone since it will automatically terminate when the Port Commission dedicates the Plaza as a public park after the Plaza construction and acceptance. Upon dedication, the Plaza will become a public park for public use and remain open, thus satisfying the requirements for a “public-way” defined in *Port Building Code Section 202*. While no significant structure will be permitted in the park, minor structures, like a kiosk for selling concessions or a public restroom for the Plaza users, may be allowed. With the dedication, the Park will serve as a public way as defined in *Port Building Code Section 202*.

**Pier 70 SUD Anticipates using portions of Plaza for the proposed Clearance Zone.** Pier 70 SUD (D4D 6.12.3) encourages new mixed-use developments to build to the property line and open up to the parks and for the PKN building to open to the Plaza, in addition to requiring retail areas on the northwest corner of the building to provide activation/outdoor dining for the Plaza. Since the D4D requires a minimum 25 feet of exposure setbacks between dwelling units/structures and allows for the PKN building to be built to its property line, this implies that the proposed Clearance Zone is consistent with the D4D’s intent.

**Park Dedication Provisions.** Dedicating the Plaza and the applicable open spaces in Mission Rock and Pier 70 each as a park is consistent with the intent of the SUDs, maximizes development density on the adjoining land parcels, and enhances health and safety measures. Since the SUDs allow for buildings to be built to its property line next to the park, Port staff anticipate that future public acceptance and dedication of parks Port Commission actions will provide the clarity needed that the park is construed as a public way for the purpose of fire separation required under Port Building Code Section 202. By allowing the building near the property line, a 25 to 40 strip of land is made available to increase building floor area; thus, maximizing the economic benefits of both the park and the development and further supporting building to the property line. Health and safety will be promoted by this dedication in that park will be further activated and the building fenestration would help discourage nonpermitted activities at the park by having eyes on the park.

It should be noted that both the DOR and the park dedication will limit the Port's ability to build any significant above-grade structure at the Plaza or park as long as the Access Area and Clearance Zone are needed. Future park acceptance and dedication Port Commission action items will describe whether the park has been designed and built to account for required access area and clearance zone.

**Protecting Port's Economic Interest.** Advancing building permitting for Project #1 Buildings is in the vital economic interest of the Port since the Port needs to receive several key revenue streams from Project #1 Buildings (the Vertical Project), including (a) CFD services taxes (to go towards funding maintenance of the Plaza, Crane Cove Park, and other public spaces) and (b) participation in condo unit resales, among others, as detailed in the financing plan for Pier 70 SUD.

**Project Timeline:** Construction is expected to start in 2021 and is anticipated to take 27 months to complete. Completion of Project #2 Michigan Street improvements will be concurrent with completion of the South Tower and completion of the Plaza will be concurrent with the temporary certificate of occupancy for the North Tower.

### **Next Steps**

Port staff anticipate returning to the Port Commission at a subsequent meeting to request consideration and approval of: (1) the DOR, and the park dedication provisions making the park the equivalent of a "*public-way*"; and (2) delegation of authority to Executive Director to execute similar DORs for similarly situated park and plaza fronting future buildings sites in the Mission Rock and Pier 70 Waterfront SUDs.

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- Exhibits:**
- “A” Site Map
  - “B” Map Showing Access Area and Clearance Zone
  - “C” Building Ground Level Map



Exhibit "A"  
Site Map

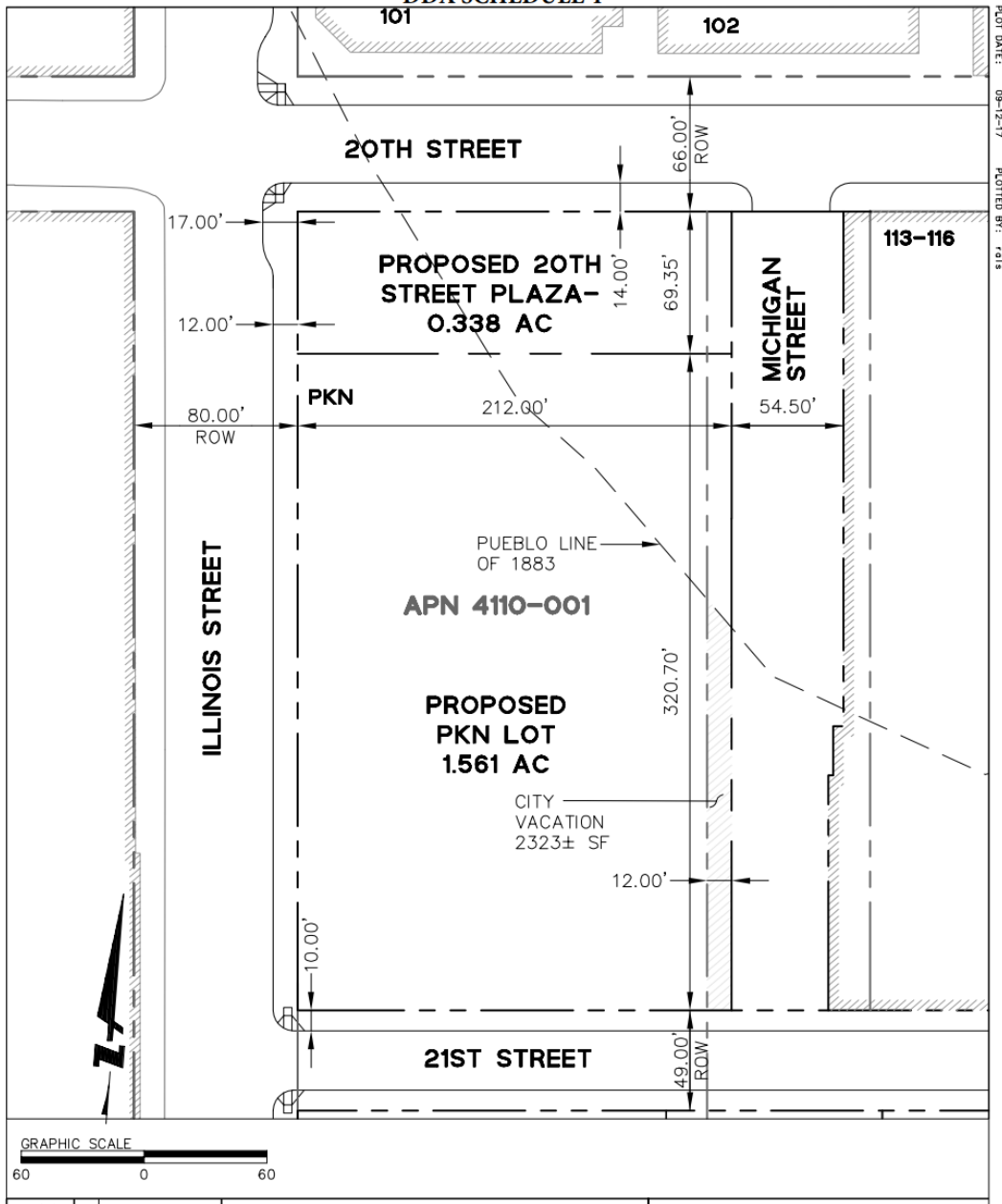
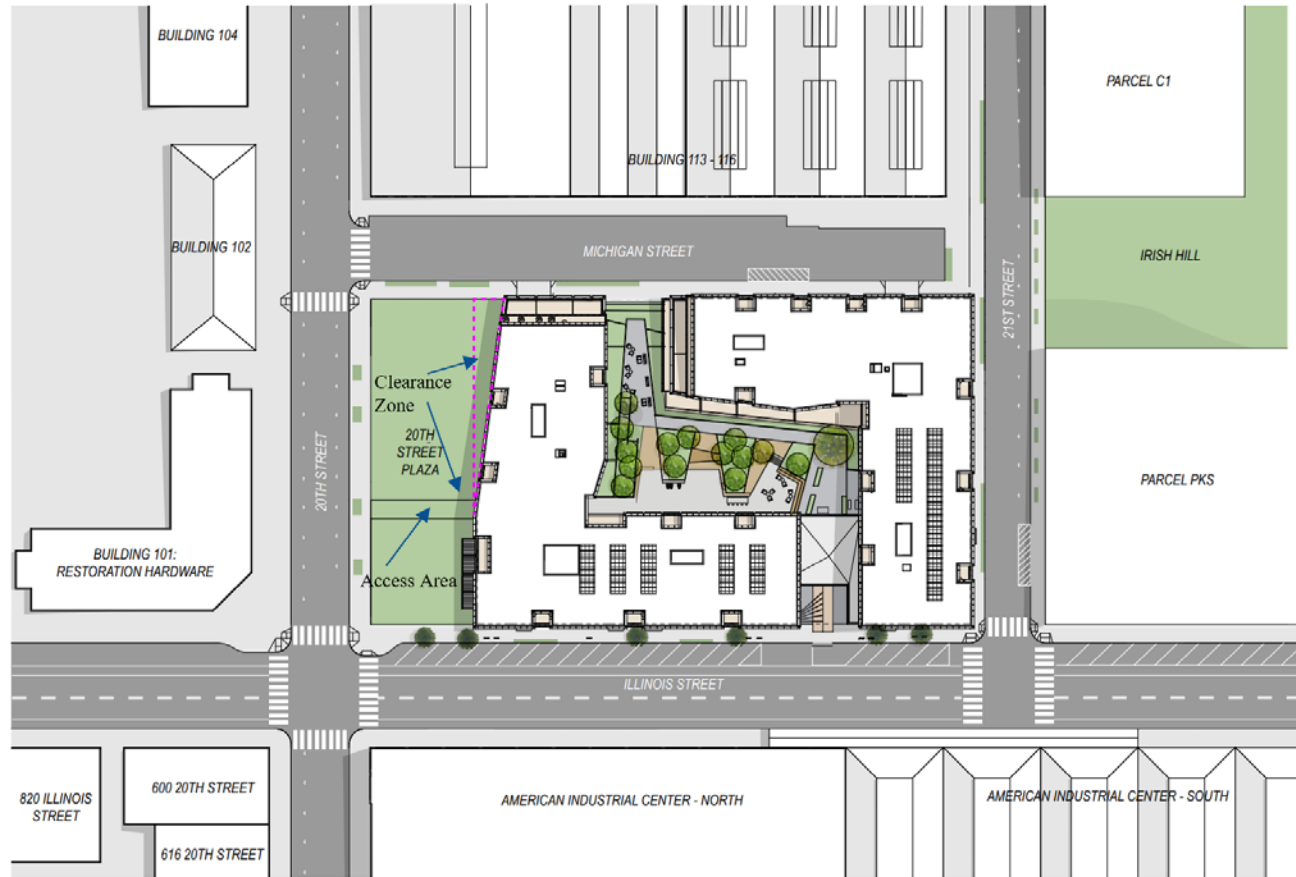


Exhibit "B"  
Map Showing Access Area and Clearance Zone

PROPOSED SITE PLAN



PIER 70 SPECIAL USE DISTRICT - PARCEL K NORTH VERTICAL PROJECT - APPLICATION FOR DESIGN REVIEW - September 19, 2019

PKN MANAGER LLC - PRESIDIO BAY VENTURES  
PKN  
HANDEL ARCHITECTS - MSLA

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