



July 24, 2014

Mr. John Arntz  
Director, Department of Elections  
City & County of San Francisco  
1 Dr. Carlton B. Goodlett Place, Room 48  
San Francisco, CA 94102

**Subject:** *Request for Departmental Analysis, Ballot Simplification Committee*

Dear Mr. Arntz:

I write in response to your request for a departmental analysis from the Port of San Francisco of the initiative measure titled, "Pier 70 Development Site Height Limit Increase," slated for consideration at the November 4, 2014 election.

#### *Background*

Pier 70 is a 69 acre site located south of Mission Bay, east of Illinois Street, and north of 23<sup>rd</sup> Street and the former Potrero Power Plant. Pier 70 has been home to ship building and ship repair operations on Port property for 150 years, stretching from the Spanish-American War (1898) through World War II. Pier 70 includes a unique collection of industrial buildings representing different industrial architectural styles, including Victorian-era industrial and office buildings lining 20<sup>th</sup> Street. The Port's ship repair operator, BAE Systems, Inc., continues to repair ships on a portion of the site which includes the Port's Drydock #2, the largest floating drydock on the west coast of the Americas.

Early, failed efforts to redevelop a 16-acre site within Pier 70 in 2001-02 led Port staff and the Port Commission to conclude that planning for the entire Pier 70 area was required. From 2007 to 2010, the Port undertook planning for the entire Pier 70 area, and published the Pier 70 Preferred Master Plan ("Master Plan") in April of 2010, which was accepted by the Port Commission. The impetus for the Master Plan was to save and rehabilitate as many of Pier 70's extraordinary historic structures as possible, which were listed on the National Register as part of the Union Iron Works Historic District ("District") in 2014. The District tells the story of San Francisco's 150 year old ship building and repair industry, and Pier 70's importance during World Wars I and II. The Master Plan's preservation and open space programs require significant public and private economic development investment.

The Master Plan directs locations and parameters for development that are compatible with continuing drydock ship repair operations, balanced with the Port's preservation and public open space objectives. The Master Plan recognizes such development will require amendments to the Port and City plans including the Waterfront Land Use Plan, zoning and height limits. As part of the Pier 70 Preferred Master Plan, Port staff produced a massing exercise that showed buildings at 90 feet tall, but the Master Plan itself did not recommend specific heights for the site, deferring that determination to later project planning after site due diligence was complete. The extraordinary cost of seismic retrofit, hazardous

materials remediation, historic rehabilitation and climate adaptation in Pier 70 depends on substantial new development planned integrally within the historic district, and the Master Plan concluded that there was a financial feasibility gap to develop and restore the 69 acre site. Further information about the Master Plan and subsequent planning efforts is available at [www.sfport.com/pier70](http://www.sfport.com/pier70).

Concurrent with master planning for Pier 70, Port staff sought state legislation to capture both the local and state share of future property tax increment growth at Pier 70 through local approval of an Infrastructure Financing District to fund public improvements such as environmental remediation, streets, utilities, parks and historic rehabilitation. Port staff also negotiated with the California State Lands Commission – a state agency that oversees local agency trustees like the Port – to obtain state legislation authorizing an exchange of the public trust within the site to enable mixed use development on a portion of the site. The public trust is a set of land use restrictions that requires that current or former tidelands – whether filled or unfilled – be used for trust consistent uses, including maritime, open space or visitor-serving uses such as restaurants and hotels. Pier 70 includes lands that are subject to the public trust, and lands that are not subject to these rules. Finally, in 2008, voters approved a ballot measure – Proposition D – to provide for special local financing and land use approvals for development of Pier 70.

Given the complexity of the Pier 70 area, Port staff recommended and the Port Commission opted to pursue a Master Plan implementation strategy dividing the site into distinct subareas, with different implementation strategies for each area. On the northern portion of the site, Port staff is leading a park planning effort to design Crane Cove Park, a two phase \$45 million, 9 acre park that will juxtapose open space with historic Slipway #4, San Francisco Bay and active ship repair operations to the east. Designs for the first phase of this park have been approved, and construction will start in 2015. The Port and BAE Systems, Inc. are negotiating a new lease for continuing ship repair operations in the ship repair area, including upgrades to the shipyard to support these operations. On July 22, 2014, the Board of Supervisors approved the lease and related transaction documents with Orton Development Inc., which will enable Orton Development Inc. to commence work in Fall 2014 to save 6 buildings along 20<sup>th</sup> Street. These 6 historic buildings together represent the most significant contributing resources to the Union Iron Works Historic District.

#### *Pier 70 Waterfront Site*

The Waterfront Site, located in the southeast quadrant of Pier 70, is the largest of these subareas and is the principal opportunity area for new development at Pier 70. On May 11, 2010, the Port Commission authorized a Request for Qualifications to select a developer for the Waterfront Site.

In April 2011, the Port Commission selected Forest City as the Master Developer of the Waterfront Site and in July 2011 approved an Exclusive Negotiation Agreement (“ENA”) with Forest City. The ENA between the Port and Forest City outlines a two-phase approach to completing the project negotiations. The ENA requires the Master Developer to craft a project proposal based on due diligence and community input and to receive endorsement from the Port Commission and the Board of Supervisors on business terms for the project, articulated as a non-binding Term Sheet between the Port and the Master Developer, in Phase 1.

Forest City has been working with the Port, the Office of Economic and Workforce Development and the Planning Department for several years to develop a use program for the 28 acre Waterfront Site, and new infrastructure to support Pier 70. Early conceptual design includes a mix of office, market rate and affordable residential, retail and maker uses, centered around high quality, diverse open space and rehabilitation of historic Buildings 2, 12, and 21. Forest City has also been pursuing site due diligence and has developed early conceptual designs for infrastructure including streets, utilities and parks needed to support this development, which have been (and will continue to be) subject to review by relevant City

departments including the Planning Department, Port, Department of Public Works, San Francisco Public Utilities Commission and San Francisco Municipal Transportation Agency. These site conceptual designs and related conceptual site infrastructure plans have been shared through a public process managed by Forest City over the past several years.

In May of 2013, Forest City and the City, through the Office of Economic and Workforce Development and the Port, reached agreement on proposed business terms for development of the site under which Forest City will use private capital to complete conceptual planning for the site, perform required environmental review under the California Environmental Quality Act (“CEQA”), rezone the site through required public approvals, and finalize public infrastructure plans (collectively, “predevelopment costs”). The Waterfront Site is anticipated to be developed in phases (currently estimated at 4 phases).

Subject to required approvals from the Port Commission, the Planning Commission and the Board of Supervisors, Forest City will be repaid for predevelopment costs and the costs of installing new streets, utilities and parks through a combination of project sources, with an annual 18% return. Sources of repayment would be Port land value, valued according to an appraisal process or through a bid process, Infrastructure Financing District tax increment proceeds, and possibly special taxes on land in the area through a formation of a Community Facilities District. The Port and the City would benefit from entirely new site infrastructure, rehabilitation of three historic buildings in the Union Iron Works Historic District, and payments that Port staff estimated at nearly \$7 billion to the Port over approximately 100 years, or approximately \$150 million in 2014 dollars.

The development program at the time of Term Sheet endorsement included 3.25 - 3.5 million gross square feet of buildable area, including:

- 950-2,000 housing units, with 15-20% of these units to be delivered as affordable housing
- up to 2.25 million gross square feet of Class A office and R&D space (which could be reduced to accommodate more residential)
- 400,000 GSF of retail and arts and innovation space
- rehabilitation of Buildings 2, 12 and 21 consistent with Secretary of the Interior Standards for Treatment of Historic Properties
- 7 acres of parks and recreation space, and
- accessory parking

When the Term Sheet was endorsed by the Port Commission and the Board of Supervisors in mid-2013, Forest City and City staff proposed heights for the site, subject to environmental review under CEQA and further urban design analysis, of up to 230 feet in several areas of the site. City staff was persuaded that the site was large enough to accommodate some height in appropriate areas. The current height limit for buildings on the site is 40 feet.

#### *Proposition B – Voter Approval for Waterfront Development Height Increases*

In June, 2013, San Francisco voters adopted Proposition B, a measure that prevents City staff or officers from taking action to permit development on Port property that would exceed waterfront height limits in effect as of January 1, 2014, unless voters approve the proposed increase in height for such proposed development. The measure requires the ballot language for future initiative ordinances to specify both the existing and proposed height limits.

In July 2014, the California State Lands Commission filed a lawsuit against the City and County of San Francisco challenging the validity of Proposition B and requesting that the court enjoin San Francisco from enforcing Proposition B. The lawsuit argues that Proposition B is invalid because it specifically targets State-owned tide and submerged lands over which the State Legislature has expressly precluded the right of local initiatives. The lawsuit also argues that Proposition B is invalid because under the 1968 Burton Act and Transfer Agreement, when the State of California conveyed the Port lands to the City to manage on behalf of the people of California, the State, exclusively delegated administration of the Port lands to the Port Commission and not to the City or its electorate. The San Francisco City Attorney is defending Proposition B from this legal challenge.

This analysis does not address the validity of Proposition B, the California State Lands Commission lawsuit challenging Proposition B or the potential impact of the lawsuit on the Pier 70 Development Site Height Limit Increase ballot measure.

*Proposed Measure – Pier 70 Development Site Height Limit Increase*

Forest City has proposed a ballot measure that would increase the height limit for buildings on the site to 90 feet. Development on the site will continue to be subject to public approval processes, including environmental review pursuant to CEQA. The height limit increase would not become effective until the Port, after compliance with CEQA, approves the development plan as consistent with the public trust and the state trust exchange legislation. The proposed height increase, if adopted by voters, could be used for any future development at the Pier 70 Waterfront Site, whether that development is built by Forest City or another developer.

The proposed measure includes the following non-binding policies to guide development of the site:

- nine acres of waterfront parks and recreation areas;
- approximately 1,000 to 2,000 new residential units, with the majority available for rent and 30% affordable for middle-and low-income households;
- restoration and re-use of historic structures;
- space for arts and cultural activities, nonprofits, small-scale manufacturing, retail, and neighborhood services;
- preservation of the artist community currently located on Pier 70;
- between approximately 1-2 million square feet of new commercial and office space; and
- parking and transportation infrastructure improvements.

*Analysis*

**Land Uses  
and Density**

The mix of land uses proposed by Forest City in the measure is consistent with the development program negotiated with City staff during the ENA period and presented during the public process that led to a Term Sheet endorsed by the Port Commission and the Board of Supervisors. At 90 feet, the development program in the measure is somewhat smaller than the Term Sheet development program. Port staff estimates that the program would include approximately 2.8 million gross square feet of development, or approximately 16-20% less development than the Term Sheet development program.

**Heights**

At 90 feet, the height of the proposed project is consistent with the massing exercise produced by Port staff for the Pier 70 Preferred Master Plan. Building heights would be

consistent with the tallest existing historic buildings at the site, but will be more uniform than the building heights proposed as part of the Term Sheet development program.

**Affordable  
Housing**

The increase in the target percentage of housing affordable to middle and low-income residents from 15-20% (at Term Sheet) to 30% is consistent with Citywide policy direction from the Mayor. If the measure passes, the Port and Forest City would likely have to gain the approval of the California State Lands Commission to increase affordable housing production at the site. In the view of Port staff, there is a strong policy rationale for increasing affordable housing at the site, because the Term Sheet endorsed by the Board of Supervisors envisions that the City would use Infrastructure Financing District tax increment to fund project streets, utilities and parks – a major investment in the waterfront that should enable the City to shape the development to meet local policy goals like affordable housing.

**Land Value**

The development program at 90 feet is smaller than the Term Sheet development program, which means that the appraised value of the land within the Waterfront Site would be somewhat less, and the project would generate a lesser amount of Infrastructure Financing District (IFD) tax increment proceeds to pay for infrastructure.

**Port Rent  
and Other  
Consideration**

Reduced land value and a reduction in the amount of IFD tax increment will reduce the amount of rent and other consideration the parties would be paid for development of the Waterfront Site. Proration of the reduction between the parties would depend on the final approved development agreement between Forest City and the Port. This development agreement will not be finalized for several years (after environmental review under CEQA is complete).

With respect to other considerations, Port and City staff are researching public financing mechanisms which are already permitted in the endorsed Term Sheet which could preserve land value at the site and could help the Port achieve rents and other consideration with a 90 foot development program similar to the rents and other consideration contemplated when the Term Sheet was endorsed.

Port staff hopes that the above information is useful to the Ballot Simplification Committee. Port staff will be present to answer any further questions at its meeting on July 30, 2014. Should you require any further information, or have any questions, please do not hesitate to contact me.

Thank you for your attention to this matter.

Sincerely,



Monique Moyer  
Executive Director

