

MINUTE ITEM

This Calendar Item No. C34 was approved as Minute Item No. 34 by the California State Lands Commission by a vote of 3 to 0 at its 10-20-03 meeting.

**CALENDAR ITEM
C34**

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D. Plummer
G. Kato
K. Olin
B. Stevenson
D. Fruechtl
A. Hager

**CONSIDERATION OF EXCHANGE AGREEMENT
WITH THE CITY AND COUNTY OF SAN FRANCISCO,
ACTING THROUGH THE SAN FRANCISCO PORT COMMISSION, TO REMOVE
THE PUBLIC TRUST AND BURTON ACT TRUST FROM A 0.52 ACRE PORTION OF
SEAWALL LOT 330 AND TO IMPOSE THE PUBLIC TRUST AND BURTON ACT
TRUST ON AN 8.8 ACRE PORTION OF THE WESTERN PACIFIC PARCEL; CITY
AND COUNTY OF SAN FRANCISCO**

PARTY:

Douglas F. Wong
Executive Director
Port of San Francisco
Pier 1
San Francisco, CA 94111

BACKGROUND:

The City and County of San Francisco, acting through the Port of San Francisco (Port), has proposed to terminate the Public Trust in a parcel of land at the intersection of Bryant and Beale Streets that is approximately 0.52 acre in size. This parcel, referred to in this calendar item as the "Sending Parcel," lies within a larger parcel of land known as Seawall Lot 330. This property is located on the landward side of the Embarcadero just south of the Bay Bridge, and is shown for reference purposes in Exhibits A and A-1 to this calendar item. The Port is proposing, through a land exchange, that the Public Trust be placed on an approximately 8.8 acre parcel of land farther south along the San Francisco waterfront. This parcel, called the "Receiving Parcel," lies within the industrial area of the Port to the south of the Mission Bay development, and is contiguous to the Port's Pier 80 break-bulk facility. The Receiving Parcel is shown in Exhibit B for reference.

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The proposed exchange has several benefits: It transfers public trust title from a parcel which is not useful for public trust purposes to one which is useful for those purposes; it allows the one-half acre Sending Parcel within the three acre Seawall Lot 330 to be sold for its highest and best use (a condominium tower), thereby maximizing a return to the Port of \$9.3 million; it requires that \$9 million of this money be spent on construction of the Brannan Street Wharf, a public park along the Bay (with the remainder going to the Cruiseship Terminal or for other public trust purposes); and it makes more likely the future construction of the Cruiseship Terminal at Piers 30-32, which has important public trust elements, although it also has non-trust commercial office and other non-trust uses.

Some background is in order. The Sending Parcel, as a part of the waterfront of San Francisco, is public trust land granted in trust by the Legislature to the city and County of San Francisco, for administration by its Port. This trust grant, found in Chapter 1333, Statutes of 1968 (as amended), is often referred to as the "Burton Act." The Burton Act imposes certain terms and conditions upon the City in its administration of present and former tide and submerged lands in addition to those of the common law public trust for commerce, navigation and fisheries. In this calendar item, the common law public trust and the Burton Act trust will together be referred to as the "Public Trust."

An amendment to the Burton Act in 1987 permits the City, with the approval of the California State Lands Commission (CSLC) pursuant to certain findings and conditions, to exchange certain granted lands subject to the Public Trust for other lands to be made subject to the Public Trust (Section 5, Chapter 310, Statutes of 1987). The authorization in Chapter 310 to perform land exchanges within San Francisco is general in geographic scope, and does not refer specifically to the Receiving or Sending Parcels. Where the necessary findings can be made and the Public Trust served, an exchange may be authorized with the approvals of the CSLC and of San Francisco government entities. Both the Port and the San Francisco Board of Supervisors have approved this exchange (by actions of the Port and the Board on June 24, 2003, and October 7, 2003, respectively).

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DESCRIPTION OF THE EXCHANGE

The Sending Parcel lies at the back corner of Seawall Lot 330, a triangular shaped parcel of approximately three acres on the landward side of the Embarcadero. Seawall Lot 330 is also shown for reference on Exhibits A and A-1. Seawall Lot 330 was created in the early twentieth century by the building of a seawall as part of a program to reclaim lands along the waterfront and to improve the harbor. Other triangular shaped seawall lots along the Embarcadero, like Seawall Lot 330, were created by the erection of the early twentieth century seawall, and took their triangular shape from the San Francisco street grid abutting the Embarcadero.

In 1987, the Legislature freed several seawall lots (Seawall Lots 331, 332 and 333) from the use restrictions of the Public Trust (Chapter 310, Statutes of 1987). In doing so, the Legislature made some of the same findings regarding these seawall lots that it requires the CSLC to make when approving an exchange authorized by Section 5 of Chapter 310. In reference to Seawall Lots 331, 332 and 333, the Legislature found the lots to be filled and reclaimed, cut off from access to the waters of San Francisco Bay, to be a relatively small portion of the tide and submerged lands granted to the City, and no longer to be needed or required for the Public Trust. The proposed exchange, in comparison, involves only a small part of one seawall lot. This represents a very small amount of the tide and submerged lands granted to the City along its waterfront, which the Port states is 0.06% of the total area granted.

Seawall Lot 330 is currently used on an interim basis as surface parking for nearby residential and commercial establishments. This is not a Public Trust use, but an interim non-trust use to raise income. The Sending Parcel is at the inland side of Seawall Lot 330 and abuts residential and residential-serving commercial uses. This does not rule out its use as a park. However, the Sending Parcel is cut off from the water by the Embarcadero and is bordered by two major roadways (Bryant and Beale Streets), and is not desirable for open space, park use, or water-related recreation, especially when contrasted with the planned Brannan Street Wharf nearby on the water. It had been considered for the site of a hotel, but a hotel at this site is not economically feasible because of the lack of demand for hotel rooms in this area.

If the Sending Parcel is freed from the Public Trust, the Port will sell it to San Francisco Cruise Terminal, LLC ("SFCT"), the developer of the Cruise Terminal Project at Piers 30-32, pursuant to a Port-authorized purchase and sale agreement. SFCT will pay the Port the current appraised fair market value for the Sending Parcel, \$9.3 million (\$9

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million at the time of sale, and \$324,000 after payment of construction loans). The cruise terminal developer will construct a 22-story condominium tower on the site. The Port will retain the balance of Seawall Lot 330 as public trust lands. If approved by the CSLC, exchanges may be entered in future years involving the balance of Seawall Lot 330, where further condominium or mixed-use development is anticipated. This will occur only in the context of a land exchange beneficial to the Public Trust.

Under the purchase and sale agreement between the Port and SFCT, the developer will be limited to a fixed return on its investment, and must use all proceeds from the sale of the condominiums in excess of the fixed return for the Cruise Terminal Project. The investment opportunity being provided to the developer by virtue of the purchase and sale agreement is intended by the Port to offset the costs to be incurred by the developer for the seismic and structural upgrades of Piers 30-32 for the Cruise Terminal Project.

Through the exchange, the Public Trust will be imposed on a parcel of land within a larger area known as the "Western Pacific Parcel," currently owned by the Port but not subject to the Public Trust. This property---referred to here as the "Receiving Parcel" and shown on Exhibit B---is needed for the expansion of maritime and waterfront-related industrial activities near Pier 80 pursuant to the Port's plans for the Pier 80 Terminal Complex and for consolidating maritime and waterfront-related industrial activities in the southern waterfront. The Receiving Parcel is approximately 8.8 acres in size. It is directly connected to the waterfront by Public Trust lands on its waterward edge and has convenient over-sized vehicular access from Maryland, Cesar Chavez, and 25th Streets. It is in the midst of an area that the Port believes will be needed for projected and anticipated maritime and maritime- industrial activities.

The Receiving Parcel is the portion of the larger Western Pacific Parcel lying on the bay side of Maryland Street. The portion of the Western Pacific Parcel landward of Maryland Street is currently subject to a use right of the San Francisco Municipal Railway for its Metro East maintenance and storage facility. In 1998, pursuant to a title and boundary settlement agreement made in connection with the redevelopment of Mission Bay, the State relinquished public trust claims it had to the entire Western Pacific Parcel, other than the waterfront strip adjoining the Receiving Parcel in which Public Trust title was confirmed. At the time, title issues existed in the Western Pacific Parcel that made it difficult to develop for either Public Trust or other uses. The site had been the subject of a sale by the State of sovereign land to the Golden City Homestead Association (Chapter 407, Statutes of 1863-1864). The State asserted that a Public

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Trust easement remained in the Western Pacific Parcel despite its inclusion within a sale. The Port and Catellus Development Corporation (the record owner of the Western Pacific parcel at the time) contested this. In return for the State's relinquishment of its Public Trust claim, the Port agreed to the imposition of the Public Trust on an approximately 125-foot wide band along the shoreline of the Western Pacific Parcel. The remainder of the Western Pacific Parcel was transferred free of the Public Trust to the Port by Catellus. This settlement of the controversy was approved by the Legislature through Chapter 203, Statutes of 1997.

At the time of this 1998 settlement agreement, the Port and the State did not believe the Western Pacific Parcel landward of the shoreline band to be useful for Public Trust purposes. Much of the Port's commercial cargo business had gone to the Port of Oakland because of its capabilities in handling container cargo. However, over the last five years, the Port has made substantial progress in marketing its southern waterfront for maritime activities. The Port has been directing its marketing campaign to small container carriers and non-container carriers whose cargo can be handled through the Pier 80 terminal. The shift in the Port's marketing strategy and its partnership with Marine Terminals Corporation, which manages the Pier 80 terminal, has resulted in a substantial increase in the cargo carriers now calling at Pier 80. As a consequence of the current increased maritime use and anticipated future increases as a result of the Port's marketing program, the land area provided by the Receiving Parcel would be a needed addition to the Port's Public Trust lands.

The Port and SFCT have submitted to the Staff appraisals by Clifford & Associates of both the Sending Parcel and the Receiving Parcels. The appraisal of the Sending Parcel was made in February 2003, and the appraisal of the Receiving Parcel was made in September 2003. According to these appraisals, the Sending Parcel has a net present value of \$9.3 million, and the Receiving Parcel has a net present value of \$9.4 million. Staff has reviewed these appraisals and has conducted its own independent analysis. Staff concurs with the valuations in the appraisals. Staff believes that partitioning Seawall Lot 330 and constructing a 22 story condominium tower on the separated parcel will lower the value of the portion of Seawall Lot 330 remaining in the Public Trust. That lower valuation of the remaining parcel, however, is reflected in the \$9.3 million value placed on the Sending Parcel. As a result of Staff's review of the appraisals and its own independent work, it recommends that the Commission accept the appraisals as determinants of the net present value of the Sending Parcel and the Receiving Parcel, enabling the Commission to find that the value of the Receiving Parcel exceeds the value of the Sending Parcel.

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As an element of the exchange, the Port will contractually commit to use \$9 million of the funds it will receive from the sale of the Sending Parcel to construct the Brannan Street Wharf, which is an integral part of the Port's Waterfront Plan and the Bay Conservation and Development Commission's Special Area Plan. The Brannan Street Wharf will be a major public open space installation between the Ferry Building and PacBell Park in the area of Piers 34-36. It will be a waterfront park of at least 57,000 square feet extending at least 600 feet along the Embarcadero. The current design concept for the Brannan Street Wharf is shown in Exhibit C. As provided in section 5(d) of Chapter 489, Statutes of 2001, the Port will complete Phase I of the Brannan Street Wharf contemporaneously with the construction of the Cruise Terminal Project, and will complete the entire Brannan Street Wharf project no later than five years after commencement of construction of the Cruise Terminal Project. If the proposed exchange and sale occur, the period for completion of the Brannan Street wharf will likely be shorter, independent of the construction of the Cruise Terminal Project. This is because the Port will, over the next several years, commit its revenues to make up the difference between the \$15 million estimated to build Brannan Street Wharf and the \$9 million from the sale of the Sending Parcel.

The Port now holds \$4,342,528.00 in a fund, which can be used to meet the expense of the Brannan Street Wharf, along with other activities under the Special Area Plan approved by the Port and the S. F. Bay Conservation and Development Commission (BCDC). Proceeds from the sale of the Sending Parcel will be placed in a fund dedicated solely to Brannan Street Wharf construction. The effect of the sale of the Sending Parcel following the exchange will be to move the construction date of Brannan Street Wharf forward to as early as 2005.

Because the CSLC, not the City or the Port alone, has the authority to terminate the Public Trust on particular parcels and impose it on others, title to the Sending and Receiving Parcels must be transferred to the State for these purposes and then returned to the City. Therefore, the proposed Exchange Agreement will involve the following transactions:

1. The City, as trustee, will convey to the State its entire interest in the Sending Parcel;
2. The City, as a municipality, will convey to the State its entire interest in the Receiving Parcel. Prior to completion of the exchange, the State

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must approve of the condition of title it will receive in the Receiving Parcel, so that it is not subject to liens, encumbrances, or other title issues or rights which would interfere with its use for Public Trust purposes;

3. After accepting the conveyance of the Sending Parcel from the City as trustee, the State will convey the Sending Parcel by patent to the City, as a municipality, free of the Public Trust, reserving minerals in the manner required by Section 6401 of the Public Resources Code;
4. After accepting the conveyance of the Receiving Parcel from the City as a municipality, the State will convey the Receiving Parcel by patent to the City, as trustee, subject to the Public Trust.

Staff has reviewed the proposed exchange and the Exchange Agreement and believes that the CSLC can make all of the legally required findings for an exchange. Through the exchange, the near-water part of the Western Pacific Parcel will be made subject to the Public Trust. This land will support the Port's maritime and industrial maritime operations, including its increased handling of break-bulk and small container cargo. The exchange will provide the Port with \$9 million to use for the construction of the Brannan Street Wharf, so that this important public waterfront area may be completed in advance of the schedule currently mandated. The exchange accomplishes this by freeing from the Public Trust a parcel of land that has been filled and reclaimed as part of a early twentieth century harbor development project, is cut off from the Bay, is a very small portion of the lands granted to the City, and is no longer needed for Public Trust purposes.

STATUTORY AND OTHER REFERENCES:

- A. Public Resources Code: Div. 6, Parts 1 and 2; Div. 13.
- B. California Administrative Code: Title 2, Div.3; Title 14, Div. 6.

PERMIT STREAMLINING ACT DEADLINE:

N/A

OTHER PERTINENT INFORMATION:

1. Pursuant to the Commission's delegation of authority and the State CEQA Guidelines (Title 14, California Code of Regulations, Section 15061), the staff has determined that this activity is exempt from the requirements of

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CEQA as a statutorily-exempt project. The project is exempt because it involves settlements of title and boundary problems.

Authority: Public Resources Code section: 21080.11.

EXHIBITS:

- Exhibit A and A-1 – Plats Showing Seawall Lot 330 and the Sending Parcel
- Exhibit B – Plat Showing the Western Pacific Parcel and the Receiving Parcel
- Exhibit C – Current Design Concept for Brannan Street Wharf

RECOMMENDED ACTION:

IT IS RECOMMENDED THAT THE COMMISSION:

1. FIND THAT THE ACTIVITY IS EXEMPT FROM THE REQUIREMENTS OF THE CEQA PURSUANT TO TITLE 14, CALIFORNIA CODE OF REGULATIONS, SECTION 15061 AS A STATUTORILY EXEMPT PROJECT PURSUANT TO PUBLIC RESOURCES CODE SECTION 21080.11, SETTLEMENT OF TITLE AND BOUNDARY PROBLEMS.
2. FIND THAT, WITH RESPECT TO THE PROPOSED EXCHANGE AND AS REQUIRED BY SECTION 5 OF CHAPTER 310 OF THE STATUTES OF 1987 (WHICH FINDINGS SHALL BE EFFECTIVE UPON CLOSE OF ESCROW AS PROVIDED IN THE EXCHANGE AGREEMENT), THE FOLLOWING:
 - A. THE SENDING PARCEL HAS BEEN FILLED AND RECLAIMED, IS CUT OFF FROM ACCESS TO THE WATERS OF SAN FRANCISCO BAY, CONSTITUTES A RELATIVELY SMALL PORTION OF THE LANDS GRANTED TO THE CITY, AND NO LONGER IS NEEDED OR REQUIRED FOR THE PROMOTION OF THE PUBLIC TRUST FOR COMMERCE, NAVIGATION AND FISHERIES OR THE BURTON ACT TRUST.
 - B. NO SUBSTANTIAL INTERFERENCE WITH PUBLIC TRUST USES AND PURPOSES WILL ENSUE BY VIRTUE OF THE EXCHANGE.
 - C. THE RECEIVING PARCEL HAS AN ECONOMIC VALUE GREATER THAN THAT OF THE SENDING PARCEL.

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3. FIND THAT, WITH RESPECT TO THE PROPOSED EXCHANGE AND AS REQUIRED BY CALIFORNIA CASE LAW TO INSURE COMPLIANCE WITH ARTICLE X, SECTION 3 OF THE CALIFORNIA CONSTITUTION (WHICH FINDINGS SHALL BE EFFECTIVE UPON CLOSE OF ESCROW AS PROVIDED IN THE EXCHANGE AGREEMENT), THE FOLLOWING:
 - A. THE SENDING PARCEL WAS RECLAIMED AS THE RESULT OF A HIGHLY BENEFICIAL PROGRAM OF HARBOR DEVELOPMENT.
 - B. THE SENDING PARCEL IS RELATIVELY SMALL IN AREA.
 - C. THE SENDING PARCEL NO LONGER IS USEFUL FOR NAVIGATION AND RELATED PURPOSES.
 - D. THE RECEIVING PARCEL IS OF A CONFIGURATION THAT CAN BE USED MORE EFFECTIVELY BY THE CITY IN FURTHERANCE OF THE PURPOSES OF THE PUBLIC TRUST THAN THE SENDING PARCEL.
4. FIND THAT THE EXCHANGE AGREEMENT BENEFITS THE PUBLIC TRUST AND IS IN THE INTERESTS OF THE STATE BY PROVIDING, IN ADDITION TO LANDS MORE EFFECTIVELY USEABLE FOR PUBLIC TRUST PURPOSES, A COMMITMENT BY THE PORT TO EXPEND \$9 MILLION FROM THE SALE OF THE SENDING PARCEL ON THE BRANNAN STREET WHARF IN ORDER TO ACCELERATE THE COMPLETION OF THIS PROJECT.
5. FIND THAT THERE ARE NO KNOWN DEPOSITS OF COMMERCIALY VALUABLE MINERALS IN AND ABOVE A PLANE LOCATED 500 FEET BELOW THE SURFACE OF THE SENDING PARCEL.
6. FIND THAT, UPON CLOSE OF ESCROW AS PROVIDED IN THE EXCHANGE AGREEMENT, THE SENDING PARCEL SHALL BE FREE FROM THE PUBLIC TRUST AND THE BURTON ACT TRUST AND THE RECEIVING PARCEL SHALL BE HELD SUBJECT TO THE PUBLIC TRUST AND THE BURTON ACT TRUST.
7. APPROVE AND AUTHORIZE THE EXECUTION AND RECORDATION OF THE SEAWALL LOT 330/WESTERN PACIFIC PARCEL EXCHANGE

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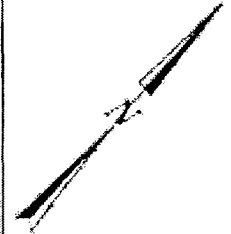
AGREEMENT AND ASSOCIATED DEEDS AND ACCEPTANCES OF CONVEYANCES ON BEHALF OF THE CALIFORNIA CSLC (CSLC) IN FORMS SUBSTANTIALLY SIMILAR TO THOSE ON FILE WITH THE COMMISSION.

8. AUTHORIZE THE EXECUTIVE OFFICER AND STAFF OF THE COMMISSION AND THE OFFICE OF THE CALIFORNIA ATTORNEY GENERAL TO TAKE ALL ACTION NECESSARY AND APPROPRIATE TO CARRY OUT THE TERMS OF THE EXCHANGE AGREEMENT, INCLUDING BUT NOT LIMITED TO APPEARING ON BEHALF OF THE COMMISSION IN ANY LEGAL PROCEEDINGS BROUGHT TO CONFIRM THE VALIDITY OF THE EXCHANGE AGREEMENT OR ANY OTHER LEGAL PROCEEDINGS RELATING TO THE EXCHANGE.

BEALE STREET
(82.25' WDIE)

EXHIBIT "A"

MAIN STREET
(82.50' WDIE)



PARCEL "C"
(W MAPS 66)
(SEE NOTE NO. 2)

NORTHWESTERLY LINE OF BRYANT STREET

PARCEL "A"
(W MAPS 66)
(SEE NOTE NO. 2)

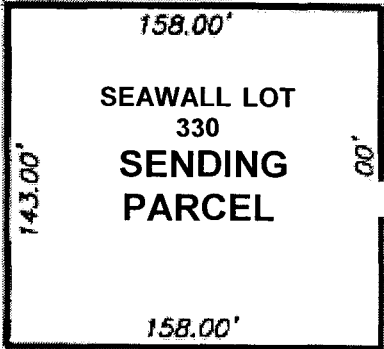
BRYANT STREET (82.50' WIDE)

P.O.C.

82.50'

82.50'

SOUTHEASTERLY LINE OF BRYANT STREET



TRUE P.O.B.

MAIN STREET
(82.50' WDIE)
(ORDERED VACATED
SEE NOTE NO. 1)

AS 3770
LOT 1
(SEAWALL LOT 330)

AS 3771
LOT 1
(SEAWALL LOT 330)

SOUTHWESTERLY LINE OF BEALE STREET

BEALE STREET
(82.50' WDIE)

NORTHEASTERLY LINE OF BEALE STRE.

THE EMBARCEDERO

LEGEND:

- S.F.P.C. SAN FRANCISCO PORT COMMISSION
- P.O.C. POINT OF COMMENCEMENT
- P.O.B. POINT OF BEGINNING

AUGUST 2003

SCALE: 1"=70' SHEET 1 OF 1

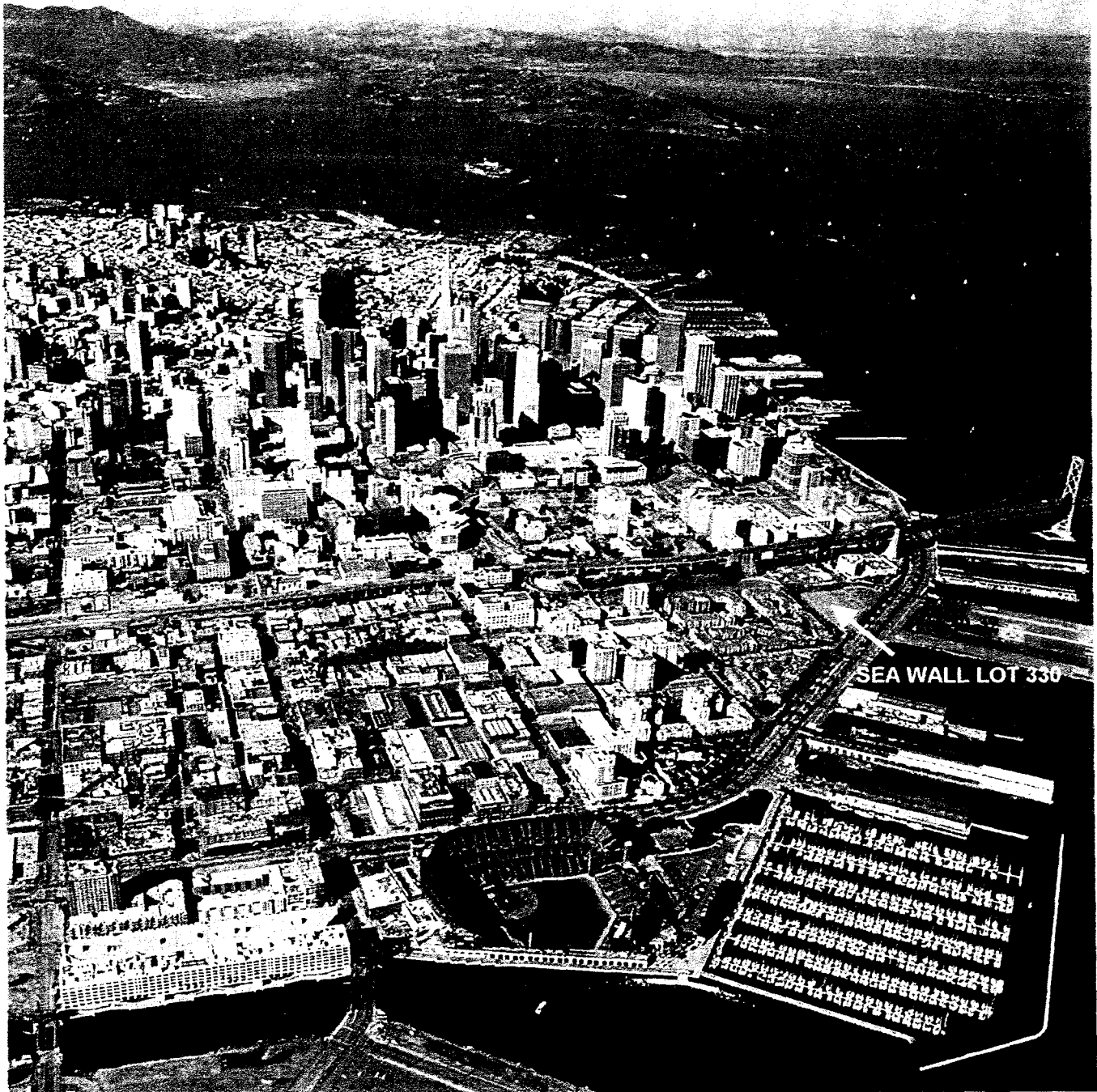
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EXHIBIT A-1

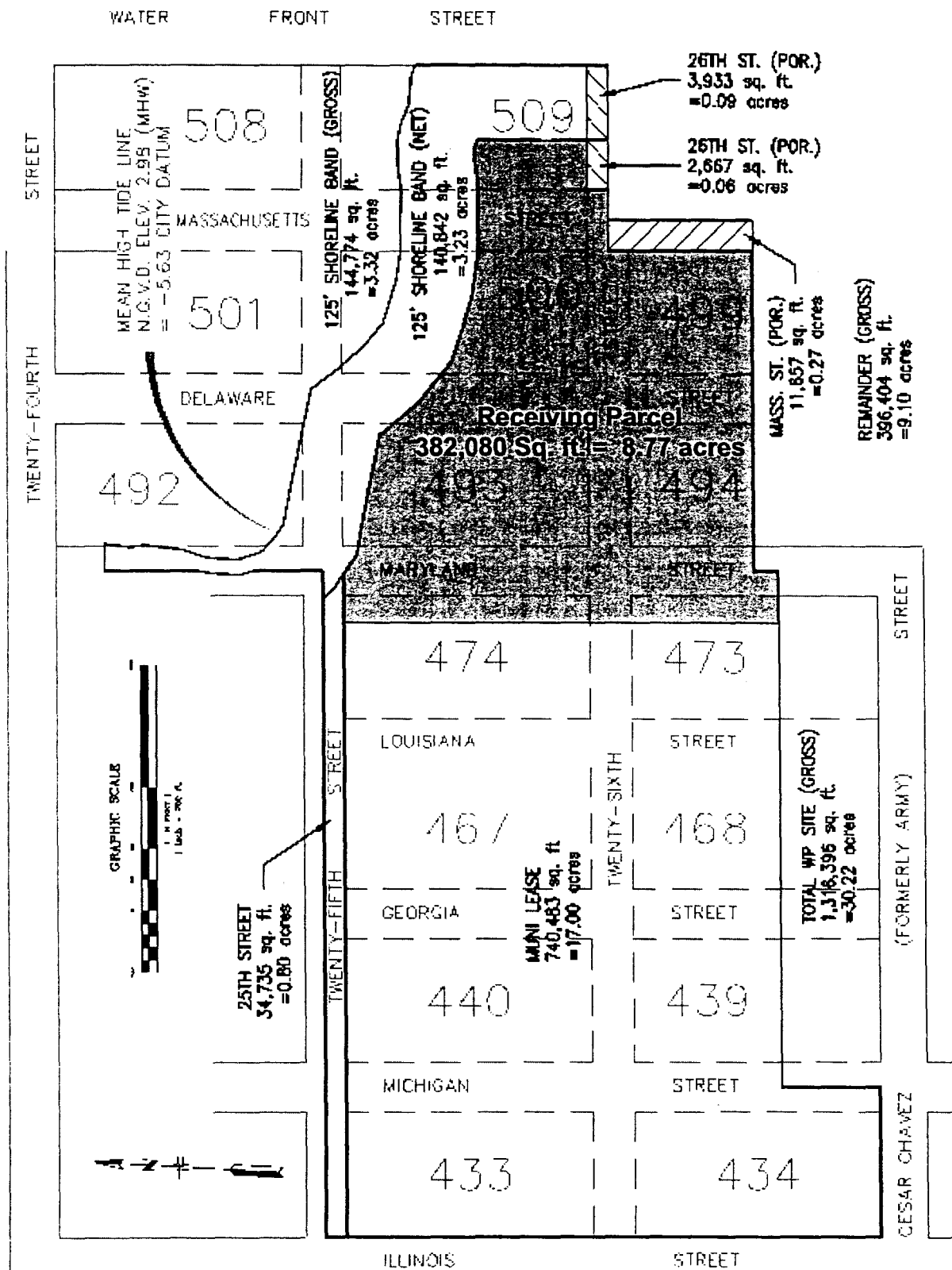


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EXHIBIT B

Plat Showing Western Pacific Parcel (Receiving Parcel)



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EXHIBIT C

Brannan Street Wharf

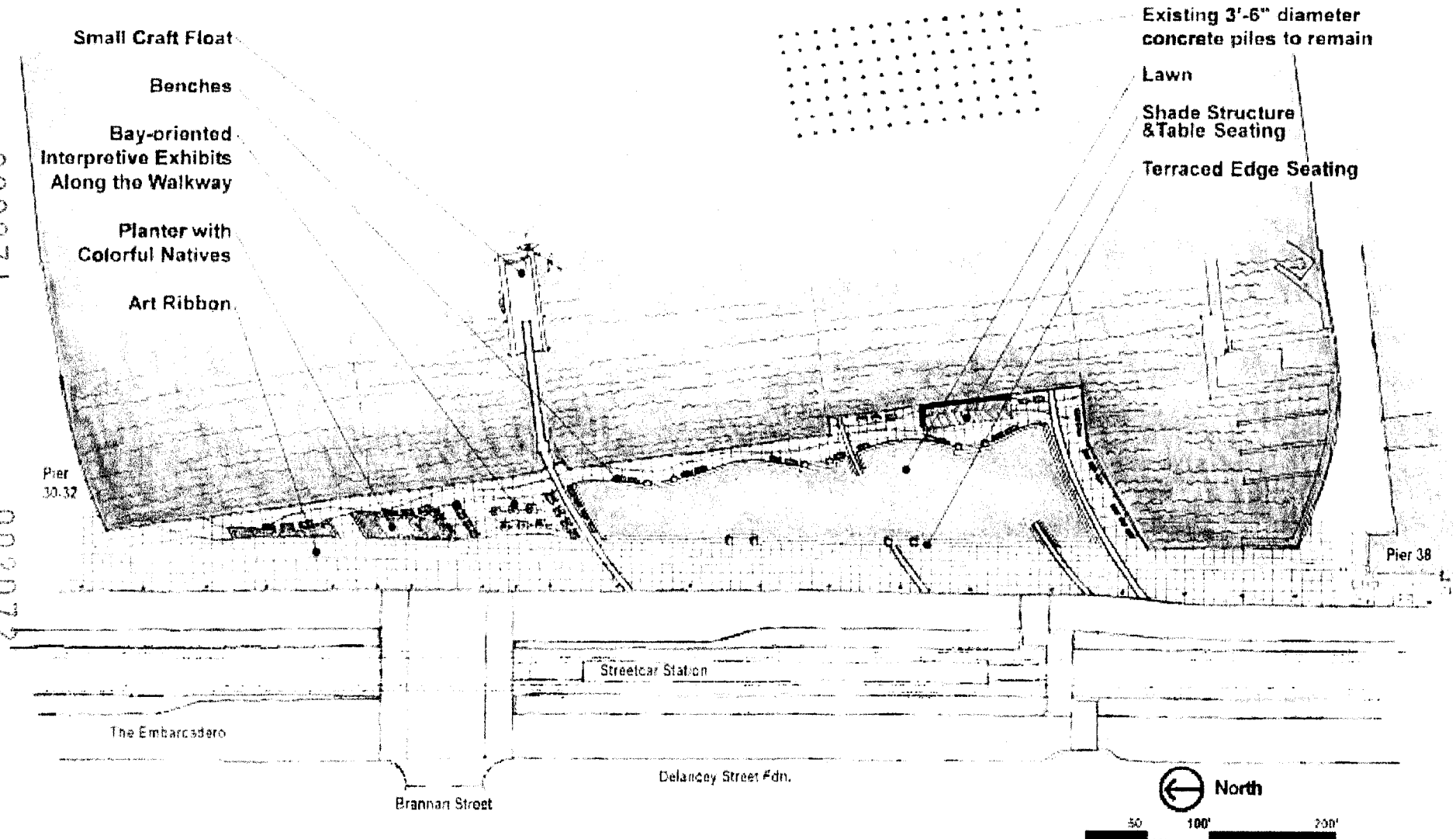
Concept Design

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Port of San Francisco
Bay Conservation & Development Commission