File No. 120128

Committee Item No. 5
Board Item No. 21

COMMITTEE/BOARD OF SUPERVISORS

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Committee: Budget and Finance Committee **Date:** February 22, 2012

Board of Supervisors Meeting **Date** 2/28/12

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Completed by: Victor Young **Date:** February 17, 2012
Completed by: Victor Young **Date:** 2-23-12

An asterisked item represents the cover sheet to a document that exceeds 25 pages. The complete document is in the file.

Amended of the Whole
in Committee. 2/22/12

FILE NO. 120128 RESOLUTION NO.

[Resolution of Intention to Form Waterfront Infrastructure Financing District]

Resolution of Intention to establish Infrastructure Financing District No. 2 for the City and County of San Francisco at the Port of San Francisco.

WHEREAS, California Statutes of 1968, Chapter 1333 (the "Burton Act") and the San Francisco Charter Section 4.114 and B3.581 empower the San Francisco Port Commission with the power and duty to use, conduct, operate, maintain, manage, regulate and control the lands within Port Commission jurisdiction; and

WHEREAS, Under Government Code Sections 53395 et seq. (IFD Law), this Board of Supervisors is authorized to establish an infrastructure financing district and to act as the legislative body for an infrastructure financing district; and,

WHEREAS, More specifically, this Board of Supervisors is authorized to establish a "waterfront district" under Section 53395.8 of the IFD Law, including (i) a waterfront district for 65 acres of waterfront land in the area near Pier 70 (a "Pier 70 district") for which there is a "Pier 70 enhanced financing plan" and (ii) a waterfront district created as a "special waterfront district" and a "Port America's Cup district" under Section 53395.81; and,

WHEREAS, Pursuant to Section 53395.8 of the IFD Law, a waterfront district may be divided into project areas; and

WHEREAS, This Board of Supervisors wishes to establish a waterfront district as described and for the purposes specified in this Resolution; now, therefore, be it

RESOLVED, By the Board of Supervisors as follows:

1. Authority. This Board of Supervisors proposes to conduct proceedings to establish an infrastructure financing district pursuant to the IFD Law, which district shall constitute a waterfront district. The waterfront district shall include project areas as identified by this Board of Supervisors from time to time, one of which is intended to constitute a Pier 70 district (at the time authorized by the IFD Law) and one or more of which may constitute special waterfront districts; and,

2. Name of IFD. The name proposed for the infrastructure financing district is "City and County of San Francisco Infrastructure Financing District (IFD) No. 2 (Port of San Francisco)". The names of the initial proposed project areas are:

a. Project Area A (Seawall Lot 330). Project Area A shall be a special waterfront district and a Port America's Cup district.

b. Project Area B (Piers 30-32). Project Area B shall be a special waterfront district and a Port America's Cup district.

c. Project Area C (Pier 28). Project Area C shall be a special waterfront district and a Port America's Cup district.

d. Project Area D (Pier 26). Project Area D shall be a special waterfront district and a Port America's Cup district.

~~e. Project Area E (Seawall Lot 351). Project Area E shall be a waterfront district.~~

~~ef. Project Area F (Seawall Lot 337). Project Area F shall be a waterfront district.~~

efg. Project Area G (Pier 48). Project Area G shall be a waterfront district.

fgh. Project Area H (Pier 70). Project Area H is expected to be a Pier 70 district and may not be subject to a Pier 70 enhanced financing plan prior to January 1, 2014.

~~g~~hi. Project Area I (Rincon Point-South Point Project Area). Unless the IFD Law is amended to permit venues within the Rincon Point-South Beach Project Area of the Redevelopment Agency of the City and County of San Francisco to be included in a special waterfront district, Project Area I shall not constitute a special waterfront district.

The City intends to establish additional project areas from time to time in compliance with the IFD Law.

3. Boundaries Described. The proposed boundaries of the IFD, including the boundaries of the initial project areas within the IFD, are as shown on the map of the IFD on file with the Clerk of the Board of Supervisors, which boundaries are hereby preliminarily approved and to which map reference is hereby made for further particulars.

4. Facilities. The type of public facilities proposed to be financed by the IFD and pursuant to the IFD Law shall consist of those listed as facilities on Exhibit A hereto and hereby incorporated in this Resolution (Facilities). The Board of Supervisors hereby authorizes the Executive Director of the Port of San Francisco and any designee of such official to execute one or more agreements to acquire Facilities financed by the IFD, which agreement(s) may provide for the acquisition of discrete portions or phases of facilities.

5. Incremental Property Tax Revenue. The Board of Supervisors hereby declares that, pursuant to the IFD Law, the IFD will use incremental property tax revenue from the City but none of the other affected taxing entities within the IFD (except to the extent permitted by Section 53395.8(h) of the IFD Law) to finance the Facilities.

6. Infrastructure Financing Plan. The Executive Director of the Port of San Francisco is hereby directed to prepare an infrastructure financing plan (Infrastructure Financing Plan) for this Board of Supervisors that complies with the requirements of the IFD Law. The Infrastructure Financing Plan shall be a special waterfront district enhanced financing plan, as defined in the IFD Law, with respect to Project Areas A, B, C and D. This Board of Supervisors reserves the right to establish enhanced financing plans in the future with respect to other project areas within the IFD. To the extent required by the IFD Law, the Executive Director of the Port shall cause the Infrastructure Financing Plan to be sent to the San Francisco Planning Department and to this Board.

7. Public Hearing. This Board of Supervisors will conduct a public hearing on the proposed establishment of the IFD in the Board of Supervisors Chambers, 1 Dr. Carlton B. Goodlett Place, City Hall, San Francisco, California, on a date to be established by the Executive Director of the Port, in consultation with the Clerk of the Board of Supervisors.

8. Notice of Public Hearing. The Clerk of the Board of Supervisors is hereby directed to cause notice of the public hearing to be published not less than once a week for four successive weeks in a newspaper designated by this Board of Supervisors for the publication of official notices in the City. The notice shall state that the IFD will be used to finance Facilities, briefly describe the Facilities and the proposed financial arrangements, including the proposed commitment of incremental tax revenue, describe the boundaries of the proposed IFD and state the day, hour, and place when and where any persons having any objections to the proposed Infrastructure Financing Plan, or the regularity of any of the prior proceedings, may appear before this Board of Supervisors and object to the adoption of the proposed Infrastructure Financing Plan by this Board.

9. Further Action. The Clerk of the Board of Supervisors and all other officers and agents of the City are hereby authorized and directed to take all actions necessary or advisable to give effect to the transactions contemplated by this Resolution.

10. No Obligation. This Resolution shall in no way obligate the Board of Supervisors to establish the IFD. The establishment of the IFD, including the project areas described above, shall be subject to the approval of this Board of Supervisors by ordinance following the holding of the public hearing referred to above.

11. California Environmental Quality Act. This Board of Supervisors hereby finds that, pursuant to Title 14, California Code of Regulations, Section 15378(b)(4), adoption of this Resolution and the establishment of the IFD are not "projects" under the California Environmental Quality Act, because they do not involve any commitment to a specific project that may result in a potentially significant physical impact on the environment.

Items 4 and 5 Files 12-0127 and 12-0128 *(Continued from February 15, 2012)*	**Department:** Port of San Francisco Office of Economic and Workforce Development

EXECUTIVE SUMMARY

Background

The 34th America's Cup is a series of international sailing races between the Golden Gate Yacht Club, the defender of the America's Cup, and the challengers, to be hosted by the City in 2012 and 2013. On December 14, 2010, the Board of Supervisors approved the original 34th America's Cup Host and Venue Agreement between the America's Cup Event Authority (Event Authority), the America's Cup Organizing Committee (ACOC), and the City, to host the 34th America's Cup and related events (Event) in San Francisco. At the same time, the Board of Supervisors found the 34th America's Cup Event to be fiscally feasible, as required by Administrative Code Chapter 29 (File 10-1259).

Subsequent to the Board of Supervisors approval of the original Host and Venue Agreement, the Mayor's Office and other City officials agreed to modifications to the Host and Venue Agreement, which are discussed further in this report.

San Francisco was selected as the host city for the 34th America's Cup on December 31, 2012, and the Mayor, Event Authority, and ACOC executed the modified Host and Venue Agreement on January 4, 2011. The Host and Venue Agreement obligated the City, as host city for the Event, to conduct environmental review of the Event, provide waterfront venues for the Event at no cost to the Event Authority, and provide or facilitate the provision of certain services required to host a successful Event.

The proposed Development and Disposition Agreement (DDA) is subject to Board of Supervisors approval because it replaces Sections 5, 6, 7, and 15 of the Host and Venue Agreement, as modified. Under the proposed DDA, the Event Authority is granted long-term development rights to certain Port properties in exchange for the Event Authority's financing infrastructure and site preparation work for certain Port properties in advance of the 34th America's Cup Event. Under the proposed DDA, the Event Authority will be granted long-term leases or transfer rights, together with development rights, for Piers 26, 28, 29, and 30-32, and Seawall Lot 330.

Fiscal Impact

Estimated costs for Authority Infrastructure Work and Additional Work performed by the Event Authority prior to the Event are $111,306,520, which is $56,306,520, or more than 102 percent over the previously estimated costs of $55,000,000 under the original Host and Venue Agreement. The entire amount of $111,306,520 is fully reimbursable by the Port to the Event Authority through the Port's granting of long term leases and development rights to the Event Authority.

Under the proposed DDA, the Port will also reimburse the Event Authority for Pre-Match Authority Infrastructure Work of $55,000,000 through the 66-year rent-free lease for Piers 30-32 and transfer of title to Seawall Lot 330. The Port will reimburse the Event Authority for Authority Infrastructure Work of the remaining estimated $56,306,520 ($111,306,520 less $55,000,000) through infrastructure financing bond proceeds, and rent credits for 10-year leases for Piers 26, 28, and 29, and a 66-year lease for Pier 29. These provisions represent a change from the original Host and Venue Agreement, as previously approved by the Board of Supervisors on December 14, 2010, which allowed for Port reimbursement only through rent credits on long term leases for Piers 30-32 and Piers 26 and 28, and transfer of title to Seawall Lot 330. The modified Host and Venue agreement extended long term development rights to the short term venues, which included Piers 19 and 19 ½, Pier 23, and Pier 29.[1] Piers 19, 19 ½, and 23 were subsequently removed as long term lease sites under the proposed DDA, leaving Pier 29 as one of the main venues for which the Event Authority has long term development rights.

The proposed DDA provides for the Port to pay a participation of 50 percent of the proceeds of a subsequent lease of Piers 30-32 to the Event Authority for up to 15 years after the termination of the 66-year lease and return of Piers 30-32 to the Port if the Port has not fully reimbursed the Event Authority. Interest accrues on the value of the Event Authority's expenditures at 11 percent per year.

The Budget and Legislative Analyst estimates that the City's costs for hosting the Event may exceed (a) contributions from the America's Cup Organizing Committee (ACOC), and (b) Sales Tax, Hotel Tax, Parking Tax, and Payroll Tax revenues generated by the Event, which could result in an estimated net loss to the City of up to $21,715,881.

The City's costs for hosting the 34th America's Cup are estimated to be $51,750,810, which is $20,329,331, or 64.7 percent more, than the previously estimated costs of $31,421,479 included in the Budget and Legislative Analyst's December 13, 2010 report to the Board of Supervisors Budget and Finance Committee on the fiscal feasibility of the 34th America's Cup project (File 10-1259). The City's estimated costs for hosting the Event of $51,750,810 are based on an estimated 5.4 million visitor days.

The estimated City costs of $51,750,810 will be offset by (a) additional Hotel Tax, Payroll Tax, Sales Tax, and Parking Tax revenues generated by the 34th America's Cup activities, of an estimated $22,034,929 [2] and (b) the potential contribution of $32,000,000 from the ACOC over three years as specified in the Host and Venue Agreement.

As shown in the table below, the City will realize an estimated net benefit from hosting the Event of $2,284,119 if the ACOC contributes the full $32,000,000, which the ACOC has pledged to

[1] Although Piers 27 and 80 were short term venues but were subject to limitations due to the construction of the Cruise Terminal on Pier 27 and the Port's breakbulk cargo operations on Pier 80. Under the modified Host and Venue Agreement, the City had sole discretion over long term leases for Piers 19 and 19 ½ and Pier 23 but not over a long term lease for Pier 29.

[2] The Budget and Legislative Analyst's November 18, 2010 memorandum to the Board of Supervisors provided a range of tax revenue estimates, based on the number of race days and visitors, from a low of $17.3 million to a high of $30.4 million. $22.0 million represents the base scenario, based on approximately 55 days of racing and 3.6 million visitor days.

raise to offset the City's costs, and the Event generates the expected level of tax revenues. However, if the ACOC contributes only $8,000,000, which is the amount currently estimated by the Controller, the City will incur an estimated net loss from hosting the Event of $21,715,881.

It should be noted that the $8,000,000 from the ACOC represents largely pledged monies, and not cash payments.

	If ACOC Contributes $32,000,000	If ACOC Contributes $8,000,000
Estimated Sales Tax, Hotel Tax, and Other Revenues	$22,034,929	$22,034,929
ACOC Contribution	32,000,000	8,000,000
Total Revenues to Offset City Costs	54,034,929	30,034,929
Estimated City Costs	(51,750,810)	(51,750,810)
Surplus/(Deficit)	$2,284,119	($21,715,881)

The estimated loss of $21,715,881 compares to the Budget and Legislative Analyst's prior estimate of $11,959,846, an increase of $9,756,035 or 81.6 percent.

Under the Host and Venue Agreement, the City may terminate the Agreement if the ACOC fails to meet its year one fundraising target of $12,000,000 by seven days after the completion of the environmental review, which was January 31, 2012. The Budget and Legislative Analyst notes that, if the Board of Supervisors approves the proposed DDA, the City waives its rights to terminate the Host and Venue Agreement, even though the ACOC has not provided the $12,000,000, as specified in the Agreement.

Recommendations of the Budget and Legislative Analyst

The Board of Supervisors should request the Executive Director of the Port to negotiate with the Event Authority to revise the proposed DDA to:

- For purposes of controlling the City's costs, require that reimbursement for all Authority Infrastructure Work and Additional Work is based on estimates provided by a third-party engineer rather than on actual expenditures.
- Require that the Port report to the Board of Supervisors prior to the future seismic upgrades to Piers 30-32 after the Event on the most fiscally effective options to perform such work, including whether the work should be performed by the Event Authority or the City.
- Eliminate the provisions, not included in the Host and Venue Agreement, as previously approved by the Board of Supervisors on December 14, 2010, in which the Port must pay participation to the Event Authority of 50 percent on revenues from subsequent leases for Piers 30-32 and Piers 26 and 28 up to 15 years after the termination of the 66-year leases and return of Piers 30-32 and Piers 26 and 28 to the Port.
- Impose a cap on the Event Authority's total expenditures that are reimbursable by the Port.

- Reinstate the provision, included in the Host and Venue Agreement, as previously approved by the Board of Supervisors on December 14, 2010, to require (i) a transfer fee equal to 1 percent of the sale price for the resale of condominiums (after the initial sale) constructed on Seawall Lot 330, and (ii) Port participation of 15 percent of the net proceeds of each transfer or sublease of more than 55 percent of the Event Authority's, or successor party's, interest in long-term leases from the Event Authority, or successor party, to other parties, excluding the first transfer.
- Require the return of short-term venues (Piers 19, 19 ½, 23, and 29 ½) to the Port immediately after the conclusion of the Event.
- Require the return of Pier 29 to the Port immediately after the conclusion of the Event if the Event Authority's Pre-Match Authority Infrastructure Work does not qualify for longer term leases for Pier 29.
- Require the Event Authority to retain Piers 26 and 28 unless the Event Authority's Pre-Match Authority Infrastructure Work or Deferred Additional Work does not qualify for longer term leases for Piers 26 and 28.
- Escalate the initial base rents for Piers 26 and 28 by the CPI prior to the start date of the longer term leases.

Approval of the proposed resolutions (File 12-0127 and File 12-0128) is a policy matter for the Board of Supervisors.

MANDATE STATEMENT

Section 9.118 of the San Francisco Charter requires Board of Supervisors approval for entering into any agreement with a term of more than 10 years or expenditures of $10,000,000 to the City or more, and to any amendments of such an agreement requiring Board of Supervisors approval. The Disposition and Development Agreement is an amendment to the 34th America's Cup Host and Venue Agreement, which requires Board of Supervisors approval under Section 9.118.

BACKGROUND

The 34th America's Cup is a series of international sailing races between the Golden Gate Yacht Club, the defender of the America's Cup, and the challengers, to be hosted by the City in 2012 and 2013.

On December 14, 2010, the Board of Supervisors approved the original 34th America's Cup Host and Venue Agreement between the America's Cup Event Authority ("Event Authority"), the America's Cup Organizing Committee (ACOC), and the City, to host the 34th America's Cup and related events ("Event") in San Francisco. At the same time, the Board of Supervisors found the 34th America's Cup Event to be fiscally feasible, as required by Administrative Code Chapter 29 (File 10-1259). Subsequent to the Board of Supervisors approval of the original Host and Venue Agreement, the Mayor's Office and other City officials agreed to modifications to the Host and Venue Agreement, which are discussed further in this report. San Francisco was selected as the host city for the 34th America's Cup on December 31, 2012, and the Mayor, Event Authority, and ACOC executed the modified Host and Venue Agreement on January 4, 2011. The Host and Venue Agreement obligated the City, as host city for the Event, to conduct environmental review of the Event, provide waterfront venues for the Event at no cost to the Event Authority, and provide or facilitate the provision of certain services required to host a successful Event.

On March 16, 2011, the Board of Supervisors approved a resolution (File 10-1564), which approved a Memorandum of Understanding (MOU) between the City and the Port, authorizing General Fund support to replace lost Port revenues due to the Event. Under the proposed MOU, the City agreed to reimburse the Port approximately $6.38 million in General Fund monies to replace lost rent payments due to the Event. The ACOC had previously committed to raising $32 million to offset the City's expenses, including the estimated $6.38 million in General Fund monies, as discussed further below.

On December 15, 2011, the Planning Commission certified the final Environmental Impact Report (EIR) for the 34th America's Cup, Pier 27 Cruise Terminal, and Northeast Wharf Plaza projects. On December 16, 2011, the Port Commission approved the proposed Disposition and

Development Agreement (DDA) between the City, acting by and through the Port Commission, and the Event Authority.

On January 24, 2012, the Board of Supervisors heard the appeal to the EIR, and upheld the Planning Commission's certification of the EIR.

DETAILS OF LEGISLATION

File 12-0127 would (1) adopt the CEQA findings; (2) waive certain termination rights by the City under the Host and Venue Agreement; (3) approve the Development and Disposition Agreement (DDA) between the City and the Event Authority; (4) approve a Memorandum of Agreement regarding the City's and the Event Authority's respective obligations for certain mitigation measures contained in the Mitigation Monitoring and Reporting Program required by CEQA; and (5) authorize further actions and ratify prior actions consistent with the terms of the resolution.

File 12-0128 is a resolution of intent to establish an infrastructure financing district, consisting of eight project areas, on Port property. The proposed DDA requires the Port to submit the resolution of intent to establish an infrastructure financing district to the Board of Supervisors for approval. As discussed below, the Port will submit the financing plan for each project area in future legislation.

The proposed DDA provides more specific, and in some instances, modified terms and conditions, compared to the original Host and Venue Agreement previously approved by the Board of Supervisors on December 14, 2011. Under the Host and Venue Agreement, the Event Authority was granted long-term development rights to certain Port properties in exchange for the Event Authority's financing infrastructure and site preparation work for certain Port properties in advance of the 34th America's Cup Event. Under the proposed DDA, the Event Authority will be granted long-term leases or transfer rights, together with development rights, for Piers 26, 28, 29, and 30-32, and Seawall Lot 330 ("long term venues"), as discussed in detail below. The Attachment, provided by the Port, compares the original and modified Host and Venue Agreements and the proposed DDA.

Board of Supervisors approval of the proposed DDA is required because it replaces Sections 5, 6, 7, and 15 of the Host and Venue Agreement, as modified. These sections addressed:

(a) The venue leases between the Port and Event Authority;

(b) Infrastructure work to be performed by the Port or the Event Authority for the Event;

(c) The Event Authority's long term development rights; and

(d) Indemnity.

Event Venues

The proposed DDA defines the venues that the City must make available to the Event Authority for the 34th America's Cup Event. According to the Port Executive Director's report presented to the Port Commission at its December 16, 2011 meeting, Port Commission approval is required for the venue leases or licenses between the Port and the Event Authority because these leases will give the Event Authority rent-free access to the Port properties. These venue leases or licenses do not require Board of Supervisors approval. According to the Executive Director's report, the Port will submit the venue leases or licenses to the Port Commission for approval after the Board of Supervisors' final decision on the proposed DDA.

Short term venues

The Event Authority will have exclusive and non-exclusive use of the short term venues, which include Piers 19 and 19 ½, 23, 27, 29 and 29 ½, and 80. The Event Authority has use of piers and water areas generally for up to six months after the final series of races for the America's Cup in September 2013. Two short term venues have more defined uses and earlier return dates:

- Pier 27, for which the Event Authority has exclusive use for race viewing and team hospitality berths along the northern apron from March 1, 2013 through September 30, 2013. The Port will have the right to berth cruise ships from March 1, 2013 through May 31, 2013, with the Event Authority's consent.

- Pier 80, for which the Event Authority will have exclusive and non-exclusive use for storage, race operations and staging, and facilities for Event competitors and officials, with an obligation to make best efforts to return the venue to the Port's possession as soon as practical after the final series of races. The Port will continue its maritime operations along Pier 80.

Long term venues

The Event Authority has exclusive use of Piers 26, 28, 30-32, and Seawall Lot 330 for variable periods, from Spring 2012 up to six months after the final series of races. After that date, the Event Authority will be entitled to a 66-year lease for Piers 30-32, 26, and 28, and permanent title to Seawall Lot 330, assuming that the Event Authority has met certain spending threshold on infrastructure improvements, as discussed below.

Table 1 below compares the short term and long term venues contained in the Host and Venue Agreement and the proposed DDA.

Table 1
Short and Long Term Venues
Comparison of the Host and Venue Agreement, as Modified, and the Proposed DDA

Host and Venue Agreement	Proposed DDA
Short Term Venues [1]	**Short Term Venues** [1]
Piers 19 and 19 ½, 23, 27, 29, 80	Piers 19, 19 ½,23, 27, 29, 80 *Adds*: Pier 29 ½
Brannan Street Wharf	Brannan Street Wharf
Water areas surrounding: Piers 14 – 22 ½ Piers 32-38	Water areas surrounding: Pier 14 North and South Pier 32 to the edge of Pier 38 Pier 9 (subject to termination or renegotiation of existing tenancies)
Long Term Venues [2]	**Long Term Venues** [2]
Pier 26	Pier 26
Pier 28	Pier 28 Pier 29[3]
Piers 30-32	Piers 30-32
Seawall Lot 330	Seawall Lot 330

[1] Short term venues: Event Authority has exclusive and non-exclusive use up to six months after the final series of races.
[2] Long term venues: Event Authority has exclusive use for variable periods from Spring 2012 up to six months after the final series of races. Event Authority would (a) have the option of 66-year leases for Piers 26, 28, and 30-32, and (b) receive title for Seawall 330, as discussed in detail below.

Infrastructure Work to be Performed by the Port and Event Authority

Port Infrastructure Work

The proposed DDA requires the following infrastructure work to be performed by the Port:

- Demolish and remove Pier 36 shed by January 1, 2013. The Port entered into an agreement with the Army Corps of Engineers to demolish and remove Pier 36 for this purpose.
- Construction of Brannan Street Wharf by no later than June 30, 2013. The Port has entered into an agreement with a contractor for this purpose.
- Relocate Pier 27 shoreside power[4]. The Port has entered into an agreement for this purpose. Although this is a Port obligation, the proposed DDA requires the Event Authority to pay up to $2 million for shoreside power relocation.

[3] The Event Authority has long term development rights to Pier 29 if this site is necessary to reimburse investments, as noted below.

- Demolish the Pier 27 shed. This had been the responsibility of the Event Authority under the Host and Venue Agreement, but according to Port staff, was changed at the Port's request to accommodate the Port's construction schedule for the Pier 27 Cruise Terminal project.

- Completion of Pier 27 Improvements by the Port. Under the proposed DDA, if construction of Phase I of the Pier 27 Cruise Terminal falls behind schedule, the Port must present a plan to the Event Authority to expedite construction, such as funding additional construction shifts. If the Port has insufficient funds for that purpose, the Event Authority may fund the expedited construction, with reimbursement as part of Authority Infrastructure Work.

Infrastructure Work to be Performed by the Event Authority

Under the proposed DDA, the Event Authority must make certain infrastructure improvements to Port properties prior to the Event (or "Pre-Match Authority Infrastructure Work"), and has the option to make certain infrastructure improvements to Port properties after the Event ("Deferred Authority Infrastructure Work"). Infrastructure improvements to Port properties made by the Event Authority are fully reimbursable by the Port through the granting of long term leases and development rights to the Event Authority.

The Event Authority's infrastructure obligations under the proposed DDA are classified as:

- Pre-Match Authority Infrastructure Work;

- Dredging for spectator vessels prior to the Event (considered to be "Additional Work");

- Deferred Authority Infrastructure Work to Piers 30-32 performed up to ten years after the Event; and

- Deferred Additional Work to Piers 26 and 28 performed up to ten years after the Event.

Pre-Match Authority Infrastructure Work and Dredging for Spectator Vessels prior to Event

The proposed DDA requires the Event Authority to spend at least $55 million on Pre-Match Authority Infrastructure Work, all of which is fully reimbursable by the Port through the granting of long-term leases and development rights to Port property and other reimbursement mechanisms. Pre-Match Authority Infrastructure Work includes:

- Improvements to Piers 30-32, including pile replacements, substructure strengthening (which may include seismic strengthening) and deck repairs necessary to use the venue for the Event, consistent with the Host and Venue Agreement.

- Construction of a new Pier 29 end wall, previously included in the Host and Venue Agreement, and Pier 29 substructure repairs, which were not specifically included in the Host and Venue Agreement.

[4] Cruise ships can connect to shoreside power at Pier 27, using electricity generated by the Public Utilities Commission, rather than generate power on ship using diesel or other generators.

- Up to $2 million payment to the Port for relocation of Pier 27 shoreside power.

- Pile replacement, substructure strengthening, deck repairs, or superstructure strengthening or other improvements deemed necessary for the Event by the Event Authority at its discretion. This work must be pre-approved by the Port and is fully reimbursable.

- Dredging to accommodate the races and the racing boats (the "regatta").

In addition, the Pre-Match scope of work under the proposed DDA includes dredging and pile removal adjacent to Pier 9, Pier 14 North and South, and in the Brannan Street Open Water Basin to accommodate spectator vessels. The Event Authority's expenditures for such work generates rent credits that can be applied to offset rent at proposed marina leases between Piers 14 and 22 ½ and between Piers 30-32 and Pier 38 (Brannan Street Open Water Basin).

The proposed DDA includes the following work within the definition of Authority Infrastructure Work, which was not specifically listed in the Host and Venue Agreement, including:

- Improvements to Port property imposed as a regulatory condition of approval by the Bay Conservation and Development Commission (BCDC) or other non-City agencies.

- Mitigation measures, which result in improvements to Port property, and are included in the Mitigation Monitoring and Reporting Program, adopted by the Port Commission and proposed to be adopted by the Board of Supervisors, in accordance with the California Environmental Quality Act (CEQA).

- Pier 29 substructure repairs. According to Port staff, in the course of due diligence inspection, several pilings were found to be deteriorated or missing, requiring repairs prior to the Event.

Deferred Authority Infrastructure Work and Additional Work to be Performed by the Event Authority after the Event

The proposed DDA provides for:

- Deferred Authority Infrastructure Work for Piers 30-32, determined by the Event Authority to not be necessary to complete prior to the Event, up to 10 years after the Event. Authority Infrastructure Work deferred until after the Event is not included in the required $55 million expenditures by the Event Authority for infrastructure work prior to the Event, noted above. Any Event Authority expenditures for Deferred Authority Infrastructure Work to Piers 30-32 after the Event is in addition to the $55 million and is fully reimbursable by the Port through the granting of long term leases, development rights, and other reimbursement mechanisms.

- Deferred Additional Work for Piers 26 and 28, with estimated costs of $15 million and $10 million respectively. This work may be deferred up to 10 years after the Event. If any Piers 26 and 28 infrastructure work is conducted prior to the Event, costs for any part of this work will be included in the Event Authority's $55 million pre-Match expenditure for Authority

Infrastructure Work, and excluded when considering the Event Authority's post-Match investment at Piers 26 and 28.[5]

Table 2 compares the proposed DDA and Host and Venue Agreement requirements for infrastructure work to be performed by the Port and the Event Authority.

Table 2
Event Authority and Port Infrastructure Work
Comparison of the Host and Venue Agreement, as Modified, and the Proposed DDA

Host and Venue Agreement	Proposed DDA
Port Work	**Port Work**
Demolition of Pier 36 by January 1, 2013	Same
Completion Brannan Street Wharf by June 30, 2013	Same
Pier 27 shoreside power relocation with $2 million Event Authority contribution	Same
	Adds: demolition of Pier 27 shed
Authority Infrastructure Work prior to Event	**Authority Infrastructure Work prior to Event**
Piers 30-32 piles, substructure, decks	Same
Demolish portions of Pier 27 and Pier 29, including Pier 27 shed	*Removes*: demolition of portions of Pier 27 shed *Adds*: repair of Pier 29 substructure
Payment of $2 million for Pier 27 shoreside power relocation	Same
Other work required to host the Event	*Adds*: BCDC and other non-City regulatory conditions of approval, resulting in improvements to Port property *Adds:* CEQA Mitigation Monitoring and Reporting Program, , resulting in improvements to Port property
Dredging and pier improvements to accommodate the regattas	Same
Other repairs to Event venues with the Port's permission, excluding marinas; may include Piers 26 and 28	Same
Dredging and pile removal between Pier 14 and 22 1/2; and Piers 30-32 and 38 for marinas to accommodate spectator vessels	Dredging and pile removal adjacent to Pier 9, Pier 14 North and South, and between Pier 32 and Pier 38 (Brannan Street Open Water Basin) to accommodate spectator vessels

[5] Although the proposed DDA provides for infrastructure improvements to Piers 26 and 28 prior to the Event, and includes the Event Authority's expenditures for such work to be included in the reimbursement plan for Event Authority expenditures of at least $55 million prior to the Event, the proposed scope of work to be performed by the Event Authority prior to the Event does not include infrastructure improvements to Piers 26 and 28.

Table 2 (continued)
Event Authority and Port Infrastructure Work
Comparison of the Host and Venue Agreement, as Modified, and the Proposed DDA

Host and Venue Agreement	Proposed DDA
Additional Work to Piers 26 and 28	**Additional Work to Piers 26 and 28**
Repair, replace, and improve Piers 26 and 28	Same
Additional Work to Piers 26 and 28 counted toward $55 million Authority Infrastructure Work if conducted before Event	Same
Deferred Work to Piers 30-32 and Piers 26-28	**Deferred Work to Piers 30-32 and Piers 26-28**
Allows Piers 30-32 work to be deferred up to 5 years	Allows Piers 30-32 work to be deferred up to 10 years
Allows Piers 26 and 28 work to be deferred up to 10 years	Same

Long Term Leases and Development Rights

The proposed DDA gives the Event Authority long-term development rights to Port property in exchange for making infrastructure investments to Port properties. Tables 3 and 4 below compare the Host and Venue Agreement and proposed DDA provisions for long term leases and development rights.

Long Term Leases and Development Rights for Pre-Match Authority Infrastructure Work and Deferred Authority Infrastructure Work to Piers 30-32

Under the proposed DDA, in exchange for the $55 million in Pre-Match Authority Infrastructure Work, as well as dredging for spectator vessels or Piers 26 and 28 infrastructure work completed prior to the Event, the Port will:

- Enter into a rent-free 66-year lease with the Event Authority for Piers 30-32. The Port and Event Authority will negotiate a term sheet for the Piers 30-32 lease, which will be submitted to the Board of Supervisors for endorsement.[6] The final lease will be subject to Board of Supervisors approval under Charter Section 9.118.

- Transfer title to Seawall Lot 330, a 2.8 acre lot at the corner of Bryant Street and the Embarcadero, to the Event Authority with no cash contribution to the Port. According to the proposed DDA, the Port intends to submit the transfer of title to Seawall Lot 330 and

[6] In the Budget Analyst's 2004 *Management Audit of the Port of San Francisco,* we recommended that term sheets for development projects with costs greater than $10 million to be submitted to the Board of Supervisors for endorsement in order for the Board of Supervisors to consider the financial goals of the project prior to approval of the final lease.

approval of the formation of the infrastructure financing district (see below) to the Board of Supervisors for approval prior to September 30, 2012.[7]

If the Event Authority's investment in Pre-Match Authority Infrastructure Work exceeds $55 million, the Port will reimburse the Event Authority exclusively from the following sources in order of priority, until the rent credits or other reimbursements have fully reimbursed the Event Authority's investment:

(a) Infrastructure financing district tax-increment bond proceeds for these specific sites;

(b) 10 year leases for Piers 26 and 28 with rent credits;

(c) 10 year lease for Pier 29 with rent credits;

(d) 66-year lease for Pier 29 with rent credits; and

(e) Participation of 50 percent of the proceeds of a subsequent lease of Piers 30-32 payable by the Port to the Event Authority up to 15 years after the termination of the 66-year lease and return of Piers 30-32 to the Port.

These provisions represent a change from the original Host and Venue Agreement, as approved by the Board of Supervisors on December 14, 2010, which allowed for Port reimbursement only through rent credits on long term leases for Piers 30-32 and Piers 26 and 28, and transfer of title to Seawall Lot 330. Subsequent to the Board of Supervisors' approval of the Host and Venue Agreement, the Mayor and City officials modified the agreement to extend long term development rights to the short term venues, which included Piers 19 and 19 ½, Pier 23, and Pier 29.[8] Piers 19, 19 ½, and 23 were subsequently removed as long term lease sites under the proposed DDA.

[7] In September 2011, the State Legislature finally approved Assembly Bill (AB) 418, removing certain State restrictions from Seawall Lot 330, allowing for the transfer of title to the Event Authority.

[8] Although Piers 27 and 80 were short term venues but were subject to limitations due to the construction of the Cruise Terminal on Pier 27 and the Port's breakbulk cargo operations on Pier 80. Under the modified Host and Venue Agreement, the City had sole discretion over long term leases for Piers 19 and 19 ½ and Pier 23 but not over a long term lease for Pier 29.

Table 3
Development and Transfer Rights: Pre-Match Authority Infrastructure Work
Comparison of the Host and Venue Agreement, as Modified, and the Proposed DDA

Host and Venue Agreement	Proposed DDA
Piers 30-32 and Seawall Lot 330	**Piers 30-32 and Seawall Lot 330**
66-year lease for Piers 30-32 and transfer of Seawall Lot 330 free of public trust restrictions, contingent on $55 million investment in Pre-Match Authority Infrastructure Work	Same
Long-term leases for Piers 26, 28, and 29, marina leases, rent credits, and infrastructure financing in if Event Authority invests if Authority Infrastructure Work and Additional Work in excess of $55 million	Authority Infrastructure Work in excess of $55 million would be credited to the Event Authority exclusively from the following sources in order of priority:
If value of these leases, rent credits, and infrastructure financing are less than the Event Authority's investment in Authority Infrastructure Work and Additional Work in excess of $55 million, the balancing options are:	(a) tax increment bond proceeds from the proposed infrastructure financing district for Piers 30-32 and Seawall Lot 330[9],
(a) reduce the scope of work,	(b) short-term leases up to 10 years for Piers 26 and 28 with the rent credits against base rent starting at the Port's parameter rents with annual CPI adjustments,[10]
(b) receive increased rent credits,	(c) short-term lease up to 10 years for Pier 29 with the rent credits against base rent starting at the Port's parameter rents with annual CPI adjustments,
(c) revise the financial terms of the long-term leases subject to Port approval,	(d) 66-year lease for Pier 29 with rent against base rent commencing at $6 per square foot escalated to the lease commencement date with periodic CPI adjustments and reset to market rate after rent credits are exhausted, and
(d) obtain long-term leases for some of the short-term venues (to which rent credits would apply),	(e) If needed to reimburse the Event Authority, participation of 50 percent of the proceeds of a subsequent lease of Piers 30-32 payable by the Port to the Event Authority up to 15 years after the termination of the 66-year lease and return of Piers 30-32 to the Port
(e) obtain 66-year leases for Piers 26 and 28 without performing the required infrastructure work (estimated at $15 million and $10 million respectively), or	
(f) obtain shorter-term leases for Piers 26 and 28 in which the value of the Port's parameter rents for the leased properties equals the outstanding rent credits owed to the Event Authority	

Leases and Development Rights for Deferred Additional Work to Piers 26 and 28

Under the proposed DDA, if the Event Authority performs Deferred Additional Work, the Port will reimburse the Event Authority for those costs through 66-year leases for Piers 26 and 28, with payment of rent credits up to the amount of the Deferred Additional Work. Term sheets for long-term leases will be submitted to the Board of Supervisors for endorsement. Leases will be subject to Board of Supervisors approval under Charter Section 9.118.

[9] The Port estimates that the tax-increment bonds would be issued in approximately 2021.
[10] The Port Commission annually approves a schedule of rents (parameter rents) for each type of Port property and use.

If rent credits for the 66-year leases for Piers 26 and 28 are not sufficient to reimburse the Event Authority for Deferred Additional Work, the Port will reimburse the Event Authority in the following order of priority:

(a) Infrastructure financing district tax-increment bonds for these specific sites;

(b) Historic preservation tax credits for these specific sites;

(c) Marina leases for potential marina developments at Pier 54, Brannan Street Open Water Basin, or other locations (see below); and

(d) If necessary to reimburse the Event Authority for Deferred Additional Work, participation of 50 percent of the proceeds of subsequent leases of Piers 26 and 28 payable by the Port to the Event Authority up to 15 years after the termination of the 66-year leases and return of Piers 26 and 28 to the Port.

Pier 54 and Marina Rent Credits

Under the proposed DDA, the Event Authority has conditional rights to rent credits for marinas to be located at Pier 54 and Brannan Street Open Water Basin, or another location in exchange for dredging for spectator vessels (noted above), and repairs or improvements to the Pier 54 substructure. Rent credits for dredging work may be used to offset rents for potential marina leases, or to offset rent for 66-year leases for Piers 26 and 28. Rent credits for Pier 54 substructure repairs or improvements may only be used for a marina lease at Pier 54.

Table 4
Development Rights: Piers 26 and 28 and Marinas
Comparison of the Host and Venue Agreement and the Proposed DDA

Host and Venue Agreement	Proposed DDA
Piers 26 and 28	**Piers 26 and 28**
66-year lease for Piers 26 and 28 contingent on investments in Additional Work of $25 million;	Same
Event Authority reimbursed for Additional Work through rent credits	Same
Excludes any Piers 26 and 28 infrastructure work performed prior to the Event and reimbursed as part of the Authority Infrastructure Work (noted above)	Same
Additional Work would be credited to the Event Authority through (a) rent credits, (b) infrastructure district financing, (c) historic preservation tax credits, and (d) rent credits for proposed marinas	*Adds:* 50 percent participation rent payable by the Port to the Event Authority up to 15 years after the termination of the 66-year lease for Piers 26 and 28, or at the Port's election, a funding source to rehabilitate historic resources at these site with an equal value
Piers 26 and 28	**Piers 26 and 28**
Long-term leases and development rights to Piers 19, 23, and 29, and other short term venues, including, with some exceptions, Piers 27 and 80, in exchange for the Event Authority's investment in Authority Infrastructure Work or Additional Work	*Removes:* development rights for all piers other than Piers 26 and 28 and marina leases, including Piers 19-19 ½, and 23
Marinas	**Marinas**
Exclusive negotiating agreements for long-term marina leases in the areas between Piers 14 and 22 ½, and between Piers 30-32 and Pier 38; dredging costs reimbursed through rent credits	Exclusive negotiating agreements for long-term marina leases for Pier 54 and Brannan Street Open Water Basin; Pier 54 substructure repair costs, and dredging costs reimbursed through marina lease rent credits at Pier 54 only

Assignment of Long-term Leases

The Host and Venue Agreement allows the Event Authority to assign the long-term leases to Event Authority affiliates without further Port approval. The Port must approve the Event Authority's assignment of long-term leases to parties other than Event Authority affiliates. No Port consent is required for subleases. The Port does not participate in any revenues received by the Event Authority for assigning the long-term leases to other parties. Under the original Host and Venue Agreement, approved by the Board of Supervisors on December 14, 2010, the Port participated in 15 percent of the net proceeds of each assignment of the long-term leases after the first assignment.

Rents

Under the proposed DDA, the Event Authority has up to 10 years to enter into long-term leases for Piers 30-32, Piers 26 and 28, and if needed to offset the costs of Authority Infrastructure Work, Pier 29. Under the original Host and Venue Agreement approved by the Board of Supervisors on December 14, 2010, base rent for the long-term leases was to be set at a fair market rent established through an appraisal process. The modified Host and Venue Agreement and proposed DDA establish starting rents based on negotiated rates, as follows:

- $4 per square foot per year of gross building area for Piers 30-32, although Piers 30-32 would be delivered to the Event Authority rent-free under the terms of the proposed 66-year lease in exchange for the Event Authority's investment in Authority Infrastructure Work prior to the Event.
- $6 per square foot per year of gross building area for all other piers with long-term leases. Under the proposed DDA, rents may be adjusted every five years by the CPI with minimum increases of 10 percent and maximum increases of 20 percent.

The proposed DDA provides that if the lease commencement for Pier 29 is delayed for up to 10 years, the base rent for Pier 29 is increased by (or "indexed to") the CPI. No other leases covered under the proposed DDA provide for indexing base rents to the CPI if the lease commencement date is delayed up to ten years.

If applicable, rents in the 66-year leases for Piers 26, 28, and 29 are adjusted to fair market rental rates after 30 years or once rent credits have been fully applied, whichever is later.

Also, under the proposed DDA and consistent with the modified Host and Venue Agreement:

- The Event Authority does not pay construction period rent. According to Port staff, this provision is consistent with the original Host and Venue Agreement requirement that the long term leases be commercially reasonable, and provide terms comparable to other Port development leases, in which tenants do not pay construction period rent.

- The Port cannot collect participation rent. The original Host and Venue Agreement allowed the Port to collect transfer fees (a) equal to 1 percent of the sale price for the resale (i.e., excluding the first sale) of condominiums constructed on Seawall Lot 330, and (b) 15 percent of the net proceeds of each transfer or sublease of more than 55 percent of the Event Authority's interest in long-term leases from the Event Authority to other parties, excluding the first transfer.

Interim Leases

Under the proposed DDA, the Event Authority may retain exclusive use of any long-term development sites during the interim period up to 10 years after the expiration of the venue leases and commencement of long term leases. Interim uses allowed under the Host and Venue Agreement include any existing or prior use, such as parking, or other uses consistent with the Public Trust and CEQA.

Rent during the interim period is:

- $910,225, adjusted by annual CPI increases, for Piers 30-32; and
- The Port's then-effective parameter rental rate for pier warehouse sheds for Piers 26 and 28.

During the interim period of up to 10 years, the Event Authority will receive rent credits for Authority Infrastructure Work greater than $55 million, which can be used to offset the interim base rent at Piers 26, 28 and 29 but not Piers 30-32, as shown in Table 3.

Transferring Long Term Sites to the City

Under the proposed DDA, consistent with the modified Host and Venue Agreement, although the Event Authority retains rights to the long-term development sites, the Event Authority may return some or all of the long-term development sites to the Port at any time in the ten-year period after the Event. The Port must return these long-term development sites to the Event Authority within 180 days if the Event Authority requests the return.

This provision was not included in the original Host and Venue Agreement, approved by the Board of Supervisors on December 14, 2010. According to the Budget and Legislative Analyst's report, dated March 16, 2011, this provision would result in previously unanticipated costs to the Port and a likely loss of base rent revenue (or drawing down of rent credits owed to the Event Authority). After the venue leases expire, the Port would have to attract new tenants to the properties transferred back from the Event Authority to the City for an uncertain amount of time, cover maintenance cost on the properties during that period, and cause tenants to be moved of the properties upon request of the Event Authority. The Port would be unlikely to collect the same level of rent from tenants for these properties that the Port would otherwise have received from the Event Authority.

Infrastructure Financing and Community Facilities Districts

The Host and Venue Agreement and proposed DDA require creation of infrastructure financing districts to issue tax increment[11] bonds that will reimburse the Port and the Event Authority for (a) infrastructure repairs, replacement, and improvement costs not previously reimbursed by rent credits; (b) public improvements such as environmental remediation, shoreline improvements; and (c) substructure and other improvements to the piers. The State Legislature authorized San Francisco to establish infrastructure financing districts on Port property (SB 1085 in 2005, modified by AB 664 in 2011). Approval of the proposed resolution (File 12-0128) would confirm Board of Supervisors intent to establish an infrastructure financing district on Port property, which would designate initially eight project areas, covering Piers 30-32, Seawall Lot 330, Pier 26, Pier 28, Pier 48, Pier 70, Seawall Lot 337 and Seawall Lot 351. The Port will submit future legislation to the Board of Supervisors to approve financing plans for each project area.

[11] Tax increment is the increase in Property Tax due to the development of Piers 30-32 and Seawall Lot 330.

The Host and Venue Agreement and proposed DDA obligate the Event Authority and City to form a community facilities district comprising Piers 30-32 and Seawall Lot 330, and levy maintenance taxes to fund ongoing maintenance costs for the Brannan Street Wharf.

Successor Events

If the Golden Gate Yacht Club successfully defends the 34th America's Cup, and the City and the Golden Gate Yacht Club enter into a new host and venue agreement to host the 35th America's Cup, the Event Authority may extend its use of the venues. The proposed DDA adds a provision allowing either the Event Authority or the City to terminate further negotiations if they have not agreed to the terms of a new host and venue agreement, despite good faith negotiations, within six months after the Event.

Indemnity

Section 15 of the Host and Venue Agreement provided for the City and Event Authority to negotiate over mutual indemnity provisions to be included in the DDA. The proposed DDA includes provisions consistent with the Host and Venue Agreement. Section 2.6 of the proposed DDA states that the Event Authority and the City "must indemnify" each other for any losses resulting from the Event, unless the losses were caused by negligence or willful misconduct. According to the proposed DDA, the venue leases and licenses between the Port and the Event Authority for use of the Port's property will govern the Event Authority's and City's indemnification obligations relating to hazardous materials affecting any Port venue. According to Ms. Joanne Sakai, Deputy City Attorney, these provisions, along with each party's insurance requirements, as described in Section 2.7 of the DDA, are still under review and subject to further negotiations.

FISCAL IMPACT

The proposed DDA does not sufficiently cap the Event Authority's reimbursable costs for Authority Infrastructure Work or Additional Work. As a result, the Port could potentially reimburse the Event Authority for such costs up to 91 years after the Event.

Authority Infrastructure Work

Estimated Costs

Estimated costs for Authority Infrastructure Work and Additional Work performed by the Event Authority prior to the Event are approximately $111,306,520, which is $56,306,520 or 102 percent more than the original estimated costs of $55,000,000 under the original Host and Venue Agreement, as shown in Table 5 below.

Table 5
Pre-Match Authority Infrastructure Work, Dredging for Spectator Vessels, and Deferred Authority Infrastructure Work

	Host and Venue Agreement	Proposed DDA	Increase
Pre-Match Authority Infrastructure Work			
Piers 30-32 infrastructure repairs and seismic upgrades	At least $55,000,000, including $2,000,000 for Pier 27 shoreside power	$59,400,000	
Demolition of portions of Pier 27 and 29		n/a	
Piers 19, 23, 27 and 29 improvements as necessary		1,850,000	
Pier 27 shoreside power relocation		2,000,000	
Subtotal	55,000,000	63,250,000	8,250,000
BCDC and other regulatory conditions of approval	0	5,200,000	
CEQA Mitigation Monitoring, and Reporting Program	0	700,000	
Piers 32-36 dredging for regattas	0	2,500,000	
Fees, permitting, contingencies, design, engineering	0	3,856,250	
Subtotal		12,256,250	12,256,250
Subtotal Pre-Match Authority Infrastructure Work	**55,000,000**	**75,506,250**	**20,506,250**
Dredging for Spectator Vessels			
Pier 9, Piers 14 North and South, Pier 28 South, and portions of Piers 32-38 Basin dredging for spectator vessels	0	3,700,000	
Subtotal Dredging	**0**	**3,700,000**	**3,700,000**
Pre-Match Authority Infrastructure Work/ Dredging	**55,000,000**	**79,206,250**	**24,206,250**
Estimated Authority Infrastructure Work after the Event			
Seismic upgrades to Piers 30-32	0	32,100,000	32,100,000
Deferred Authority Infrastructure Work		**32,100,000**	**32,100,000**
Total	**$55,000,000**	**$111,306,250**	**56,306,250**

According to Port staff, estimated costs under the proposed DDA, compared to the Host and Venue Agreement, have increased due to more detailed cost information and inclusion of new Event Authority costs that were not specifically included in the Host and Venue Agreement, approved by the Board of Supervisors on December 14, 2012.

- Seismic piles and joints to Piers 30-32 prior to the Event; transfer of responsibility for demolishing the Pier 27 shed from the Event Authority to the Port; and substructure improvements to Pier 29 ($8,250,000);

- Improvements to Port property due to BCDC and CEQA requirements; and Piers 30-32 dredging for regattas included in the modified Host and Venue Agreement, which are costs that were not explicitly provided for in the previously approved Agreement. ($12,256,250);

- Dredging for spectator vessels, which according to Port staff, would result in long term benefits to the Port through development of new marina leases (see "Pier 54 and Marina Rent Credits" above) ($3,700,000); and

- Future seismic upgrades to Piers 30-32 to accommodate the Event Authority's long-term development, for which, according to Port staff, costs are currently being assessed, and which will require future seismic design and engineering work ($32,100,000).

The original Host and Venue Agreement, approved by the Board of Supervisors on December 14, 2010, provided for the Event Authority to make all pile replacement, substructure strengthening, and deck repairs on Piers 30-32, as may be required by applicable laws, and other work for staging of the Event, or as the Event Authority otherwise deems necessary or appropriate under the applicable venue leases. According to Port staff, improvements to Port property due to BCDC and CEQA requirements are consistent with this provision.

Reimbursement

The Port will reimburse the Event Authority for Pre-Match Authority Infrastructure Work of $55,000,000 through the 66-year rent free lease for Piers 30-32 and transfer of title to Seawall Lot 330, as shown in Table 6 below. The Port will reimburse the Event Authority for Pre-Match Authority Infrastructure Work and dredging for spectator vessels prior to the Event, which exceeds $55,000,000, through infrastructure financing bond proceeds, and rent credits. Interest accrues on the balance of the Event Authority's reimbursements owed through rent credits, at 11 percent per year.

Table 6
Reimbursement to Event Authority for Authority Infrastructure Work and Deferred Authority Infrastructure Work

	Net Present Value[12]
66-Year Lease for Piers 30-32 (rent free)	$31,000,000
Transfer of Title to Seawall Lot 330	24,000,000
Subtotal	55,000,000
Infrastructure Financing District Bond Proceeds	10,400,000
10-Year Lease Piers 26 and 28 (rent credits)	11,000,000
10-Year Lease Pier 29 (rent credits)	4,700,000
66-Year Lease for Pier 29 (rent credits)	7,600,000
Subtotal	33,700,000
Total	**$88,700,000**

If the value of the Pre-Match Authority Infrastructure Work, and Deferred Authority Infrastructure Work are greater than the value of the rent credits and other reimbursements shown in Table 6 above, the proposed DDA provides for the Port to pay a participation of 50 percent of the proceeds of a subsequent lease of Piers 30-32 to the Event Authority up to 15 years after the termination of the 66-year lease and return of Piers 30-32 to the Port.[13]

[12] Net present value discounts lease payments in future years to reflect the time value of money (i.e., the value of a dollar in the future is less than the value of a dollar in the present).

[13] If the scope of work prior to the Event were to include infrastructure work to Piers 26 and 28, defined as Additional Work, the expenditures for this work would be included.

The Port's Opportunity Costs

The long term leases for Piers 26, 28, and 29 result in opportunity costs of approximately $5,400,000[14] to the Port because the value of the rent credits to reimburse the Event Authority are less than the rents that the Port would otherwise receive from Piers 26, 28, and 29.

Deferred Additional Work to Piers 26 and 28

The proposed DDA grants the Event Authority 66-year leases for Piers 26 and 28 in exchange for infrastructure investments estimated to be approximately $15 million and $10 million respectively. These investments may be made up to 10 years after the Event. The Event Authority's actual expenditures for this work will be based on the scope of work approved by the Port. While the proposed DDA deems infrastructure work to Piers 26 and 28 to be "Authority Infrastructure Work" if it is necessary for and performed prior to the Event, the approved scope of work for the Event does not currently include this work.

Table 7
Reimbursement to Event Authority for Additional Work

	Net Present Value
66-Year Leases Piers 26 and 28 (rent credits)	$15,100,000
Infrastructure Financing District Bond Proceeds	3,700,000
Historic Preservation Tax Credits	20,000,000
Total	**$38,800,000**

If the value of the Additional Work performed is greater than the value of the rent credits and other reimbursements,sh own in Table 8 above, the proposed DDA provides for the Port to pay a participation of 50 percent of the proceeds from a subsequent lease for Piers 26-28 to the Event Authority up to 15 years after the termination of the 66-year leases and return of Piers 26 and 28 to the Port. Interest accrues on the value of the Event Authority's expenditures, reimbursable by rent credits and other reimbursement mechanisms, at 11 percent per year.

No-Fault Termination of DDA

If for any reason, other than a Port Event of Default or Event Authority Event of Default (such as major casualty), the DDA is terminated, the Event Authority will be able to recover its investment costs from the following exclusive sources, to the extent available:

(a) Insurance proceeds, including any FEMA (Federal Emergency Management Act) funds;

(b) 10-year (or longer if legally permitted) interim lease of Piers 30-32 for parking;

(c) 66-year lease of Piers 30-32 with base rent beginning at $4 per square foot, indexed every 5 years, and adjusted to fair market rent at the later of the date the rent credits are exhausted or 30 years; and

(d) Portion of infrastructure district financing proceeds from future development of Piers 30-32.

[14] Net present value of the difference between the value of the rent credits over 76 years (10 year leases plus 66 year lease) and the rents that the Port would otherwise have received.

Limits on Reimbursement Imposed by the DDA

According to Port staff, the proposed DDA better protects the Port financial interests than the Host and Venue Agreement because the Event Authority has defined long-term development rights to fewer Port properties. Under the proposed DDA, the Event Authority only has long-term development rights to Piers 30-32, 26, 28, and 29, while under the Host and Venue Agreement, the Event Authority also had long-term development rights to Piers 19, 19 ½, 23, and other short term venues, as well as non-exclusive repayment options. However, under the proposed DDA, the Event Authority receives rent credits or participation rent from the Port for up to 91 years after the Event, as discussed above.

Additionally, the proposed DDA contains a provision that allows the Port and the City to pay directly for or purchase improvements that exceed $55 million if the Port and City exercise this option within 180 days of the Port's approval Event Authority's scope of work.The P ort has five years to after completion of the infrastructure work to pay the purchase price for the infrastructure work, but the purchase price increases by 11 percent per year. The Port can also directly pay the contractors performing the infrastructure work. The value to the Port and the City to exercise this option is unclear and depends on (a) the Port's costs to borrow funds to pay for the work; and (b) the Event Authority's actual expenditures for the work and the amount of rent credits owed to the Event Authority.

The City's costs for hosting the Event may exceed (i) contributions from the America's Cup Organizing Committee (ACOC), and (ii) sales tax, hotel tax, and other revenues generated by the Event

The City's costs for hosting the 34th America's Cup are estimated to be approximately $51,670,810, as shown in Table 9 below. These costs include planning, environmental review, lost rent and other Port expenses, City departments' costs during the Event, and reimbursement to regional transit agencies. As of the writing of this report, City department expenditures are $3,576,298.

Memorandum of Agreement

The proposed resolution approves a Memorandum of Agreement (MOA) between the City and the Event Authority, allocating the respective responsibilities of the City and the Event Authority under the Mitigation Monitoring and Reporting Program. The Mitigation Monitoring and Reporting Program contains measures to be performed by the City and Event Authority to mitigate the environmental impacts of the Event and long term development projects. Under the MOA, the City is responsible for all mitigation measures directed to the City and the Event Authority is responsible for all mitigation measures directed to the Event Authority. In some instances, mitigation measures are directed to both the City and the Event Authority.

Under the proposed DDA, the Event Authority is only reimbursed by the Port for mitigation measures that result in improvements to Port property. These reimbursable costs of approximately $700,000 are shown in Table 5 above.

The MOA defines shared costs for (a) implementing shoreside power at Pier 70, for which legislation is pending before the Board of Supervisors, (b) protection of recreational and natural resources, including the National Park Service and the Recreation and Parks Department, and (c) providing information to visiting boaters. Under the MOA, the City is responsible for the Pier 70 shoreside power project; reducing City vehicle emissions; providing traffic coordinators and shuttle buses at Marina Green and National Park Service sites; and certain responsibilities for the public safety plan, water and air traffic plan, and waste management plan. The City's costs for these responsibilities are included in City department, regional transit, and waste management costs in Table 8 below.

Table 8
Estimated City Costs to Host the 34th America's Cup

Cost Category	Budget
Costs to Plan Event, Including City Staff	
Office of Economic and Workforce Development Project Management	$1,400,000
Environmental Review under CEQA	3,000,810
National Environmental Policy Act Compliance	2,200,000
Permitting	1,700,000
City Attorney and Other Legal	400,000
Other Federal Legislation	100,000
Subtotal, Planning	8,800,810
Port Costs	
Tenant Relocation	1,100,000
Lost Rent	6,380,000
Temporary Staffing, Security, Other	1,460,000
Subtotal, Port	8,940,000
Operational Fixed Costs	
Event Insurance	500,000
Communications	300,000
Bicycle Plan	600,000
Subtotal, Operational Fixed Costs	1,400,000
Operational Variable Costs	
Police	7,400,000
Fire	1,300,000
Emergency Medical Service	1,100,000
Muni	5,110,000
Parking and Traffic	3,200,000
Department of Public Works Clean Up	350,000
Reimbursement to Regional Transit	5,250,000
Waste Management	2,400,000
Subtotal, Operational Variable Costs	26,110,000
Total	**45,250,810**
Pier 27 Cruise Terminal General Fund Contribution	6,500,000
Total	**$51,750,810**

Source: Port and OEWD

The Environmental Impact Report estimated 5.4 million visitor days during the Event. The Office of Economic and Workforce Development (OEWD) has estimated City costs for the Event of $51,750,810, including City department, regional transit, and waste management costs during the Event, based on the EIR estimate of 5.4 million visitor days. City department, regional transit, and waste management variable costs of $26,110,000, shown in Table 9, could be less if the Event has fewer than 5.4 million visitor days.

City costs of approximately $51,750,810 will be offset by (a) additional hotel tax, payroll tax, sales tax, and parking tax revenues generated by 34th America's Cup activities, of approximately $22,034,929 [15] and (b) potential contribution of $32 million from the ACOC over three years under the Host and Venue Agreement. As shown below, the City will realize an estimated net benefit from hosting the Event of $2,284,119 if the ACOC contributes the full $32 million, which it has pledged to raise to offset the City's costs, and the Event generates the expected level of tax revenues. If the ACOC contributes only $8,000,000, which is the amount estimated by the Controller to be currently available without further fundraising, the City will realize an estimated net loss from hosting the Event of $21,715,881.

	If ACOC Contributes $32,000,000	If ACOC Contributes $8,000,000
Estimated Sales Tax, Hotel Tax, and Other Revenues	$22,034,929	$22,034,929
ACOC Contribution	32,000,000	8,000,000
Total Revenues to Offset City Costs	54,034,929	30,034,929
Estimated City Costs	(51,750,810)	(51,750,810)
Surplus/(Deficit)	$2,284,119	($21,715,881)

The estimated loss of $21,715,881 compares to the Budget and Legislative Analyst's estimates of potential net loss to the City from hosting the Event in the December 13, 2010 report to the Budget and Finance Committee of $11,959,846.

POLICY CONSIDERATIONS AND ALTERNATIVES

The proposed DDA should be revised to reduce the impact on the Port's finances while continuing to reimburse the Event Authority for their risk and costs to improve Port properties

The proposed DDA should further cap the costs for Authority Infrastructure Work and Additional Work for which the Event Authority will be reimbursed by the Port. For the Port to retain Pier 29, the proposed DDA should be revised to limit reimbursement costs, as follows:

[15] The Budget and Legislative Analyst's November 18, 2010 memorandum to the Board of Supervisors provided a range of tax revenue estimates, based on the number of race days and visitors, from a low of $17.3 million to a high of $30.4 million. $22.0 million represents the base scenario, based on approximately 55 days of racing and 3.6 million visitor days.

- Under the proposed DDA, the Event Authority is reimbursed for Authority Infrastructure Work and Additional Work based on actual expenditures. This provision should be revised to require that reimbursement for Authority Infrastructure Work and Additional Work is based on estimates provided by a third party engineer.

- Estimated costs for approved seismic upgrades to Piers 30-32, to be performed as Authority Infrastructure Work up to 10 years after the Event, are $32.1 million. The proposed DDA should be revised to require that the Port report to the Board of Supervisors prior to the future seismic upgrades to Piers 30-32 after the Event on the most fiscally effective options to perform such work, including whether the work should be performed by the Event Authority or the City.[16]

Additionally, the proposed DDA should be revised to eliminate the provisions in which the Port must pay participation rent of 50 percent up to 15 years after the termination of the 66-year leases for Piers 30-32, and 26 and 28 in order to reimburse the Event Authority for Authority Infrastructure Work and Additional Work that is not fully reimbursed by the respective leases. The net present value of these provisions is negligible, but these provisions will impact the Port up to 91 years into the future.

The Budget Analyst's 2004 Management Audit Recommendation

According to the Budget Analyst's 2004 Management Audit of the Port of San Francisco:

> The Port enters into lease agreements that provide the developer a preferred return on equity (of approximately 11 to 12 percent) to encourage developers to make substantial capital investments in face of the large risks inherent in large, complex projects. Because the developer receives the preferred return on equity before the Port participates in the project's surplus income, the Port's financial return from the project is less certain....To reduce the uncertainty in rental revenues to the Port from large development projects.... there should be caps on the developer's equity contribution for calculating the developer's preferred return on equity.

According to Port staff and as noted above, the proposed DDA limits the number of Port properties for which the Event Authority has long-term development rights as reimbursement for expenditures for Authority Infrastructure Work and Additional Work, The Port Commission, in its December 16, 2011 approval action, approved Authority Infrastructure Work in an amount not to exceed $75 million and spectator vessel dredging of $3.7 million. The Port should continue to monitor proposed expenditures and the Board of Supervisors should consider imposing a cap on the Event Authority's total expenditures that are reimbursable by the Port.

[16] For all proposed seismic work, the DDA requires the Event Authority to provide to the Port non-linear time history seismic analysis of Piers 30-32, to be peer-reviewed by the Port's consulting engineer. The Port's engineer must concur that the proposed upgrade meets, but does not substantially exceed, applicable code requirements, and the Chief Harbor Engineer must determine that the proposed work complies with the Port Building Code, before the work can proceed.

The Port should participate in the proceeds for future sales or property transfers

The original Host and Venue Agreement allowed the Port to collect transfer fees (a) equal to 1 percent of the sale price for the resale of condominiums constructed on Seawall Lot 330, and (b) 15 percent of the net proceeds of each transfer or sublease of more than 55 percent of the Event Authority's interest in long-term leases from the Event Authority to other parties, excluding the first transfer. These provisions do not significantly reduce the value of the Event Authority's investment in Port properties, are consistent with Port policy and industry standards, and would provide a fair return to the Port. The proposed DDA should be revised to restore these provisions.

The Event Authority should return short-term venues to the Port at the conclusion of the Event, but retain Piers 26 and 28 during the interim period between expiration of the venue leases and commencement of the longer term leases

The proposed DDA allows the Event Authority to retain use of Piers 19, 19 ½, 23, 29 and 29 ½ up to six months after the Event. The Event Authority does not have the right to longer term leases for Piers 19, 19 ½, and 23, and should return these venues to the Port immediately after the conclusion of the Event. This would reduce lost rent revenues to the Port, and reduce the City's potential General Fund reimbursement to the Port for lost rent revenues under the MOU between the City and the Port (File 10-1564).

Piers 29 and 29 ½ should also be immediately returned to the Port at the conclusion of the Event if the Event Authority does not incur Authority Infrastructure Work expenditures prior to the Event in an amount sufficient to enter into the 10-year lease for Pier 29, discussed above and shown in Table 6.

The proposed DDA allows the Event Authority to temporarily return 26 and 28 to the Port up to 10 years after the Event. If the Event Authority retains Piers 26 and 28, rent for these piers is based on the Port's parameter rents and will be offset by any rent credits owed to the Event Authority for Authority Infrastructure Work performed prior to the Event and exceeding $55 million. Unless the Event Authority is not owed rent credits for Piers 26 and 28, and does not intend to perform additional work to Piers 26 and 28 in order to obtain long-term development rights, the Event Authority should retain Piers 26 and 28 during the interim period. Temporarily transferring Piers 26 and 28 to the Port during the interim period potentially results in a loss of rent to the Port, but requiring the Event Authority to retain Piers 26 and 28 during the interim period does not harm the Event Authority, who has the option of renting the properties to other tenants.

According to Port staff, the temporary transfer of Piers 30-32, which is used for parking, during the interim period does not necessarily result in lost revenue to the Port.

The proposed DDA should escalate base rents for Piers 26 and 28, based on the CPI

Under the proposed DDA, initial base rent for Pier 29 of $6 per square foot per year is escalated by the CPI to the start date of the lease, then indexed every 5 years.. The proposed DDA should extend this provision, escalating initial base rents for Piers 26 and 28.

The ACOC has not met its fundraising target of $12 million in the first year to reimburse the City for a portion of the City's costs

According to the Host and Venue Agreement:

> The Committee (ACOC) will endeavor to raise up to $32 million over a three year period from private sources, to reimburse the City for a portion of the City's costs...and lost revenues, and City expenditures required to meet its obligations...(including resources from police, and public works departments, the Port, DPT and MTA). The Committee's fundraising targets for the three year period are $12 million for year one, and $10 million for years two and three. The Committee will endeavor to meet its fundraising target of $12 million for year one no later than seven working days after completion of the environmental review pursuant to CEQA.

According to the Controller's February 6, 2012 memorandum to the President of the Board of Supervisors, the ACOC has not paid the City any portion of the $12 million in revenue that is assumed in the City's FY 2011-12 budget. According to the Controller, "Given reported and projected ACOC expenditures and pledges received to date, it would appear that the ACOC will be financially positioned to make a payment of approximately $8 million to the City during the current fiscal year absent additional fundraising".

Under the Host and Venue Agreement, the City may terminate the Agreement if the ACOC fails to meet its year one fundraising target of $12 million by seven days after the completion of the environmental review. The subject EIR was approved by the Board of Supervisors on January 24, 2012, resulting in a target date of January 31, 2012 to raise the $12 million.

The proposed DDA would waive the City's termination rights

The proposed DDA includes a condition that all termination rights under Section 2 of the Host and Venue Agreement are waived. This includes the City's right to terminate the Host and Venue Agreement if the ACOC (a) fails to meet its year one fundraising target of $12 million by January 31, 2012, and (b) does not obtain a $32 million surety bond or other form of financial security required by the Host and Venue Agreement.

According to Ms. Sakai, under Section 9.3 of the Host and Venue Agreement, the ACOC is required to provide to the Event Authority a form of financial security satisfactory to the Event Authority in the amount of $32 million, which was to protect the General Fund from liability by providing the exclusive source for the Event Authority's recovery (other than insurance proceeds) of any claims against the City for any alleged failure by the City to meet its obligations under the Host Agreement. As of the January 31, 2012 deadline, the financial instrument was not in place.

Mr. Mike Martin, America's Cup Project Manager, Office of Economic and Workforce Development, reports that ACOC has proposed to satisfy this requirement by providing the Event Authority with an escrow account in combination with an insurance product, but that

negotiations are ongoing as of the date of this report. Mr. Martin further reports that he has communicated the City's expectation that these negotiations are to be concluded prior to Board of Supervisors consideration of the Disposition and Development Agreement.

RECOMMENDATIONS

The Board of Supervisors should request the Executive Director of the Port to negotiate with the Event Authority to revise the proposed DDA to:

- For purposes of controlling the City's costs, require that reimbursement for all Authority Infrastructure Work and Additional Work is based on estimates provided by a third-party engineer rather than on actual expenditures.
- Require that the Port report to the Board of Supervisors prior to the future seismic upgrades to Piers 30-32 after the Event on the most fiscally effective options to perform such work, including whether the work should be performed by the Event Authority or the City.
- Eliminate the provisions, not included in the Host and Venue Agreement, as previously approved by the Board of Supervisors on December 14, 2010, in which the Port must pay participation to the Event Authority of 50 percent on revenues from subsequent leases for Piers 30-32 and Piers 26 and 28 up to 15 years after the termination of the 66-year leases and return of Piers 30-32 and Piers 26 and 28 to the Port.
- Impose a cap on the Event Authority's total expenditures that are reimbursable by the Port.
- Reinstate the provision, included in the Host and Venue Agreement, as previously approved by the Board of Supervisors on December 14, 2010, to require (i) a transfer fee equal to 1 percent of the sale price for the resale of condominiums (after the initial sale) constructed on Seawall Lot 330, and (ii) Port participation of 15 percent of the net proceeds of each transfer or sublease of more than 55 percent of the Event Authority's, or successor party's, interest in long-term leases from the Event Authority, or successor party, to other parties, excluding the first transfer.
- Require the return of short-term venues (Piers 19, 19 ½, 23, and 29 ½) to the Port immediately after the conclusion of the Event.
- Require the return of Pier 29 to the Port immediately after the conclusion of the Event if the Event Authority's Pre-Match Authority Infrastructure Work does not qualify for longer term leases for Pier 29.
- Require the Event Authority to retain Piers 26 and 28 unless the Event Authority's Pre-Match Authority Infrastructure Work or Deferred Additional Work does not qualify for longer term leases for Piers 26 and 28.
- Escalate the initial base rents for Piers 26 and 28 by the CPI prior to the start date of the longer term leases.

Approval of the proposed resolutions (File 12-0127 and File 12-0128) is a policy matter for the Board of Supervisors.

Harvey M. Rose

cc: Supervisor Chu
Supervisor Avalos
Supervisor Kim
President Chiu
Supervisor Campos
Supervisor Cohen
Supervisor Elsbernd
Supervisor Farrell
Supervisor Mar
Supervisor Olague
Supervisor Wiener
Clerk of the Board
Cheryl Adams
Controller
Kate Howard

KEY REAL ESTATE TERMS OF HOST AND VENUE AGREEMENT (HVA) COMPARED TO

PROPOSED DISPOSITION AND DEVELOPMENT AGREEMENT (DDA)
between
CITY & COUNTY OF SAN FRANCISCO, THROUGH THE PORT COMMISSION (Port)
&
AMERICA'S CUP EVENT AUTHORITY, LLC (ACEA)

for

34TH AMERICA'S CUP EVENTS IN SAN FRANCISCO

America's Cup World Series, August 11 - August 19 & August 27 - September 2, 2012
Louis Vuitton Challenger Series, July 4 - September 1, 2013
America's Cup Match (Match) September 7 - September 22, 2013
Most Venue Leases expire 6 months after the Match

HVA as of 12/14/10	HVA AS OF 12/31/10	PROPOSED DDA
Long-Term (LT) Venues: • Piers 26, 28 & 30-32; SWL 330	**Long-Term (LT) Venues:** Same	**Long-Term (LT) Venues:** Same
Short-Term (ST) Venues: • Piers 29, 27, 19-23, 80 • Brannan Street Wharf • Water areas: Piers 14-22½, Piers 32-38	**Short-Term (ST) Venues:** Same	**Short-Term (ST) Venues:** Added Pier 29½ Water areas changed to: • Pier 9, Pier 14N+S, Pier 32-edge of Pier 38 water area (Brannan Street OWB)
Successive Defense Option: ACEA option to extend use of Venues if: • Successful defense at Match • No HVA Breach • New host agreement negotiated	**Successive Defense Option:** Same	**Successive Defense Option:** Added: • ACEA to provide notice of interest • Good faith negot'ns for 6 months • Mutual right to terminate if new HVA is not ready for Board approval in 6 months

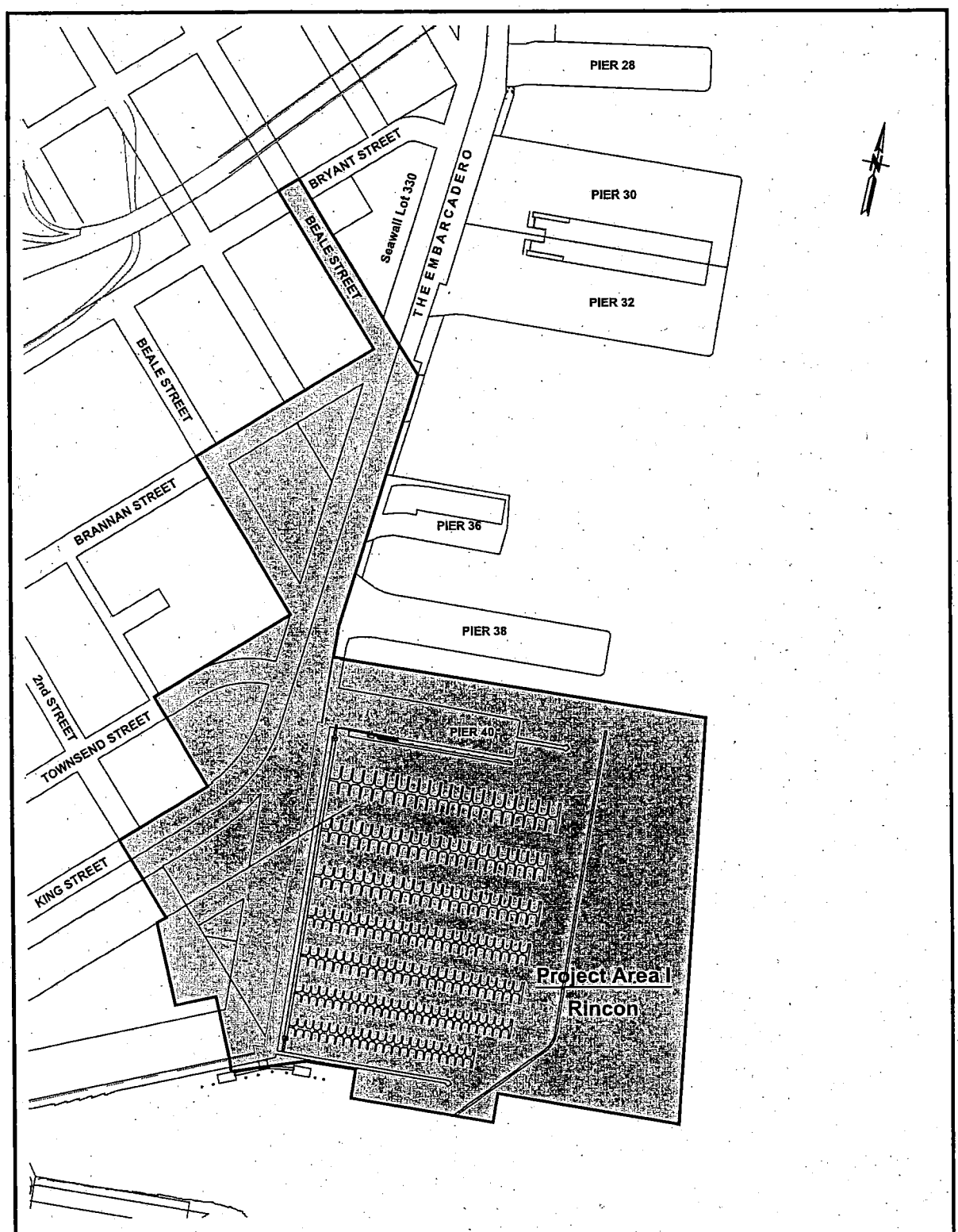
HVA as of 12/14/10	HVA AS OF 12/31/10	PROPOSED DDA
Authority Infrastructure Work (AIW): • Repairs to Piers 30-32 required by Law • Other work required for Event • Demo Pier 27 & other prep for cruise terminal (CT) project • Up to $2M of costs to relocate shoreside power at Pier 27 • Additional repairs to prepare waterfront for the Event with City's prior approval (excluding spectator vessel dredging)	**Authority Infrastructure Work (AIW):** Clarified: • Dredging to accommodate regattas is work required for Event Added: • Requirement to complete $55M in AIW Pre-Match for guaranteed right to Legacy Lease of Piers 30-32 and fee transfer of SWL 330	**Authority Infrastructure Work (AIW):** Revised: • Trust lifted from SWL 330 by AB 418 • Pier 27 work reduced to accommodate CT project Clarified: • Regulatory Conditions of Approval (eg BCDC reqs.) is work required for Event • MMRP measures assigned to ACEA is work required for Event
Deferred AIW: • Piers 30-32 AIW not required by code for Event • Election to defer up to 5 years after Venue Leases expire	**Deferred AIW:** Same	**Deferred AIW:** • Deferral extended to 10 years
Additional Work (AW): • Repairs to Piers 26 & 28 for Legacy Option Leases • $25M Port estimate of total repairs assumes no seismic upgrade	**Additional Work (AW):** Added: • Election to defer to start of leases, up to 10 years	**Additional Work (AW):** Clarified: • AW may include proposed seismic work if justified by proposed uses likely to receive approval of Port Commission, with State Lands concurrence on trust consistency
Dredging for Spectator Vessels (Dredging): Water areas: • Between Piers 14-22½ • Brannan Street OWB	**Dredging for Spectator Vessels (Dredging):** Added: • Other areas w/Port consent	**Dredging for Spectator Vessels (Dredging):** Water areas changed to: • Pier 9 • Pier 14N+S • Brannan Street OWB • Other areas w/Port consent

HVA as of 12/14/10	HVA AS OF 12/31/10	PROPOSED DDA
Development Rights for AIW: Port reimbursement obligation includes: • Unconditional obligation to remove trust from and convey SWL 330 or if not removed, 75-yr Legacy Lease • 66-yr Legacy Lease of Piers 30-32 • Other rights thru balancing • SWL 330 transfer agreement, Legacy Lease(s), Legacy Option Lease & term sheets subject to Board approval Port has Legacy Value: • FMV of development rights granted • IFD or other financing from Piers 26, 28, 30-32, SWL 330 • Value of HTCs • Amount of any City "buy-out" ACEA receives Investment Value: • Sum of AIW + AW based on 60% plans • Rent Credits in the amount by which Investment Value exceeds Legacy Value • Rent Credits increase by imputed rate of return of 11% per year from date of expenditure	**Development Rights for AIW:** Port reimbursement obligation unchanged ACEA receives for $55MM pre-Match AIW (including pre-Match work on Piers 26 & 28): • Legacy Lease of Piers 30-32 • Fee transfer of SWL 330 • Investment Value revised to: • AIW above $55M For Investment Value ACEA receives: • IFD proceeds from same sites • Balancing Rent Credits • Rent Credits increase by 11% annual rate of return, applied at beginning of each lease year • Transfer fees at SWL 330 removed • Participation in 2nd and subsequent lease assignments removed	**Development Rights for AIW:** Port reimbursement obligation unchanged • $55M AIW presumed based on Approved Scope, and will be included in Pre-Match AIW if completed by 10 years after Match

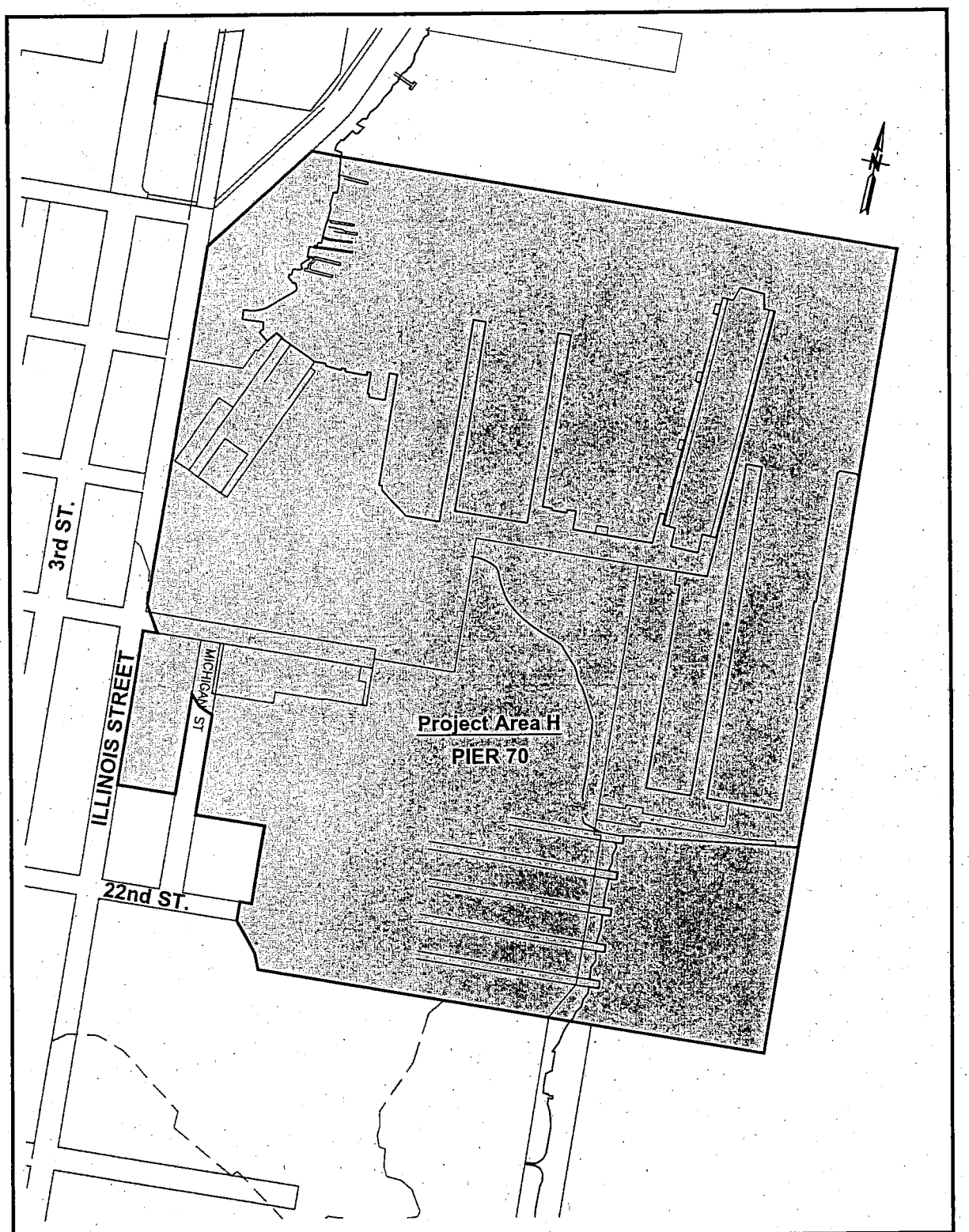
HVA as of 12/14/10	HVA AS OF 12/31/10	PROPOSED DDA
Development Rights for AIW (cont'd): ACEA may apply Rent Credits to: • FMV of Seawall Lot 330 • Legacy Lease(s) • Legacy Option Leases • Marina leases If Investment Value/Rent Credits remain, either party may make proposal for long term development rights to "balance" – no limitation on Port sites available under balancing v	**Development Rights for AIW (cont'd):** ACEA may apply Rent Credits to: • Legacy Option Leases • Marina leases • Pier 29 • Other Short Term Venues acceptable to the City in its sole discretion	**Development Rights for AIW (cont'd):** Investment Value reimbursed exclusively from the following sources, in order of priority: • IFD from Piers 30-32, SWL 330 • Piers 26 & 28: interim leases at parameter rent • Pier 29: interim lease at parameter rent • Pier 29: 66-yr lease, rent begins @ $6/sf escalated • Up to 50% of rent from subsequent lease at Piers 30-32 Limited recovery after no-fault termination (e.g., casualty) from following: • Insurance proceeds, including FEMA • Piers 30-32: interim lease for parking • Piers 30-32: 66-yr lease, rent begins @ $4/sf • Portion of IFD proceeds from future development of Piers 30-32

HVA as of 12/14/10	HVA AS OF 12/31/10	PROPOSED DDA
Development Rights for Piers 26 & 28 AW: • Piers 26 & 28 AW offsets rent under Legacy Option Leases • Legacy Option Lease & term sheets subject to Board approval	**Development Rights for Piers 26 & 28 AW:** Same	**Development Rights for Piers 26 & 28 AW:** All post-Match work at Piers 26 & 28 will be repaid solely by: • Piers 26 & 28: Legacy Option Leases, rent begins at $6/psf (indexed after 5 years),adjusted to FMR at later of date that credits are used or 30 yrs • IFD from Piers 26 & 28 • Historic tax credit proceeds • Marina Leases at ACEA's election • Up to 50% of rent from subsequent leases at Piers 26 & 28 for up to 15 years • The Port may substitute the rent participation with a source for financing historic rehabilitation with an equal NPV
Development Rights for Dredging: Marina sites: • Between Piers 14-22½ • Brannan Street OWB Marina Leases: • Commercially reasonable Marina Lease terms negotiated thru ENAs • Rent Credits for Dredging to offset rent under Marina Leases	**Development Rights for Dredging:** Same	**Development Rights for Dredging:** Marina Lease sites changed to: • Pier 54 • Brannan Street OWB or other site acceptable to parties • Commercially reasonable terms comparable to other West Coast marinas Marina Rent Credit conditions: • ENAs within 5 yrs after Match • Regulatory Approvals w/I 10 yrs • Close escrow on Marina Leases Add'l Pier 54 Marina Lease terms: • 66-yr term, beginning no sooner than 5 yrs after Match • ~425 recreational vessels • Rent credits for Pier 54 substructure repairs limited to Pier 54

HVA as of 12/14/10	HVA AS OF 12/31/10	PROPOSED DDA
Port Sources & Financing: • IFDs at Piers 26, 28, 30-32, SWL 330 • Rent Credits for unreimbursed Investment Value • Port buy-out election for AIW above $55M, payable within 5 years, plus 11% interest Additional benefit to Port: • BSW maintenance CFD over Piers 30-32, SWL 330	**Port Sources & Financing:** Same	**Port Sources & Financing:** Added: • Port right to form CFD that includes Piers 30-32 if needed to finance facilities to protect against sea level rise • Expanded buy-out election to all reimbursable work above $55M
Dispute Resolution: • HVA disputes referred first to JAMS for mediation • Fees awarded only for failure to participate in mediation • If not resolved, referred to ICC Int'l Court of Arbitration • No attorneys' fees clause	**Dispute Resolution:** Same	**Dispute Resolution for DDA:** • Limited right to arbitration of disputes • No right to damages in arbitration • No right to de novo review • Attorneys' fees only for failure to participate or frivolous action <u>Arbitrable Issues (Partial List)</u> • The Port's ability to meet the Pier 27 delivery date • Whether the Port wrongfully disapproved request to approve or amend a scope • Whether a replacement venue for a damaged venue is functionally equivalent • Repair estimates after casualty • Whether the Port wrongfully disapproved a construction drawing submittal • Whether ACEA costs are w/i an approved scope or commercially unreasonable



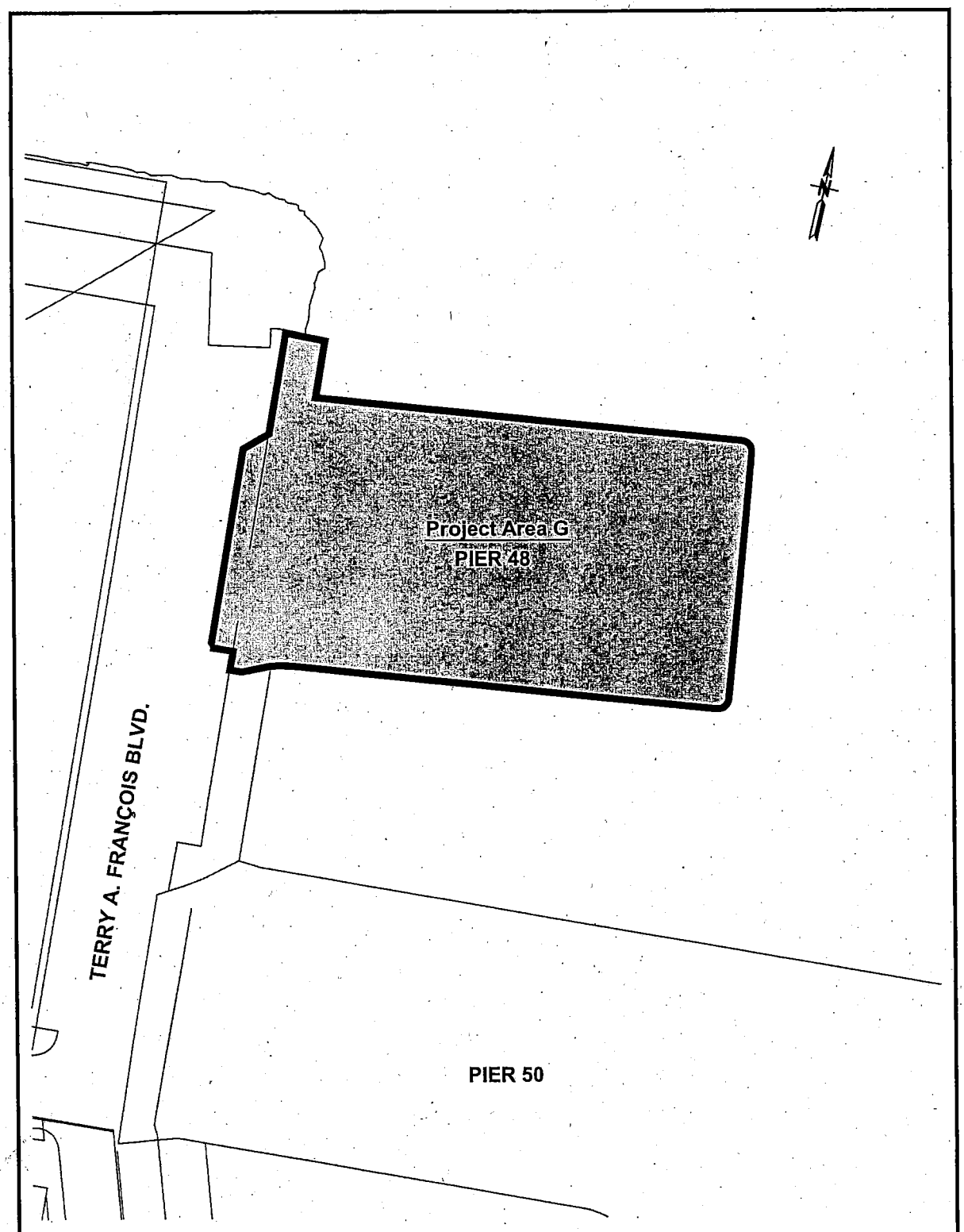
SAN FRANCISCO PORT COMMISSION PORT OF SAN FRANCISCO DEPARTMENT OF ENGINEERING	Proposed Boundaries of City and County of San Francisco Infrastructure Financing District No. 2 (Port of San Francisco), City and County of San Francisco, State of California	DATE: DEC. 09, 2011 SCALE: 1" = 500' SHEET NO. 10 OF 10 SHEETS



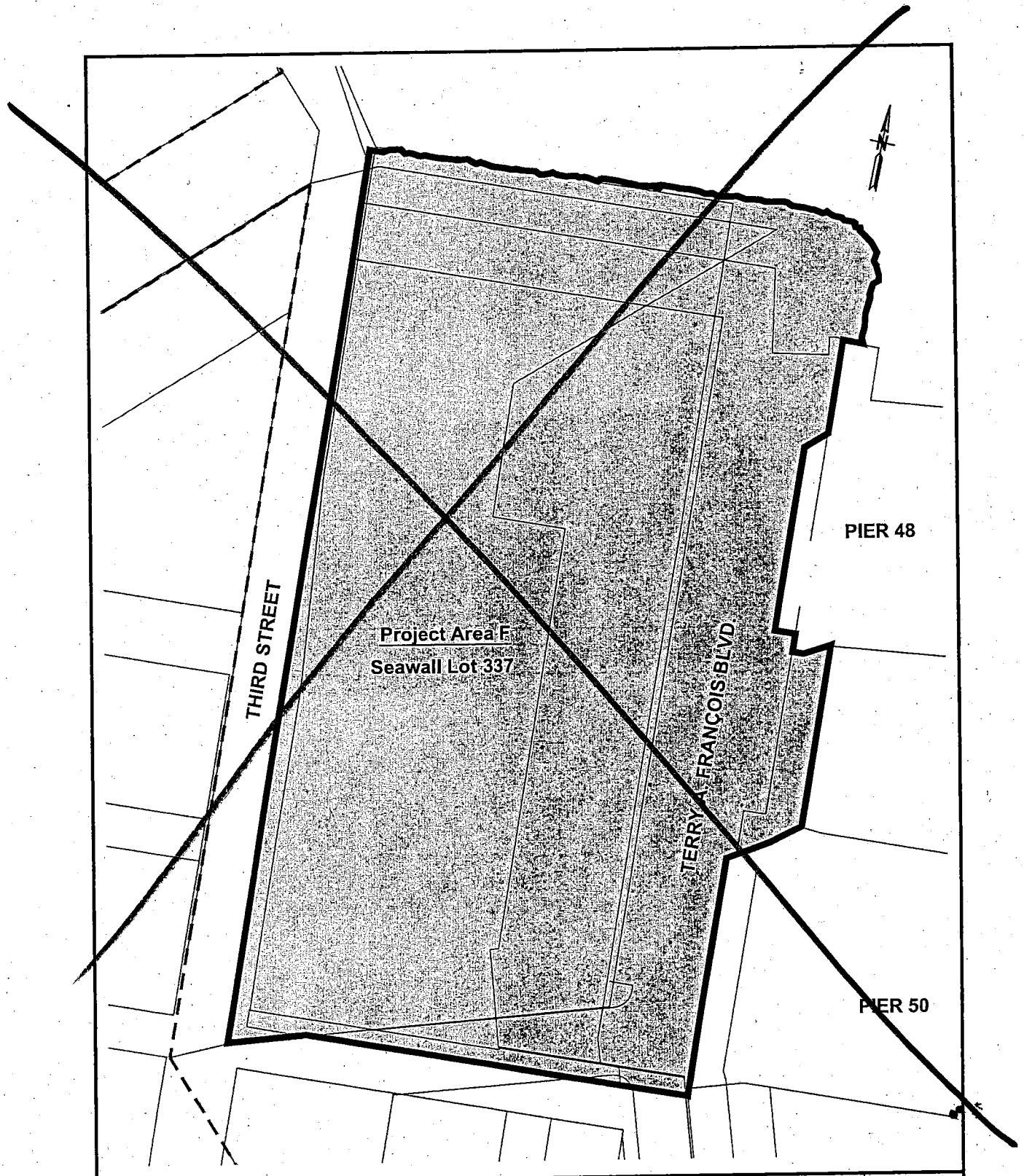
SAN FRANCISCO PORT COMMISSION
PORT OF SAN FRANCISCO
PORT - DEPARTMENT OF ENGINEERING

Proposed Boundaries of City and County of San Francisco Infrastructure Financing District No. 2 (Port of San Francisco), City and County of San Francisco, State of California

DATE: DEC. 09, 2011
SCALE: 1" = 500'
SHEET NO. 9
OF 10 SHEETS



SAN FRANCISCO PORT COMMISSION PORT OF SAN FRANCISCO DEPARTMENT OF ENGINEERING	Proposed Boundaries of City and County of San Francisco Infrastructure Financing District No. 2 (Port of San Francisco), City and County of San Francisco, State of California	DATE: DEC. 09, 2011 SCALE: 1" = 200' SHEET NO. 8 OF 10 SHEETS



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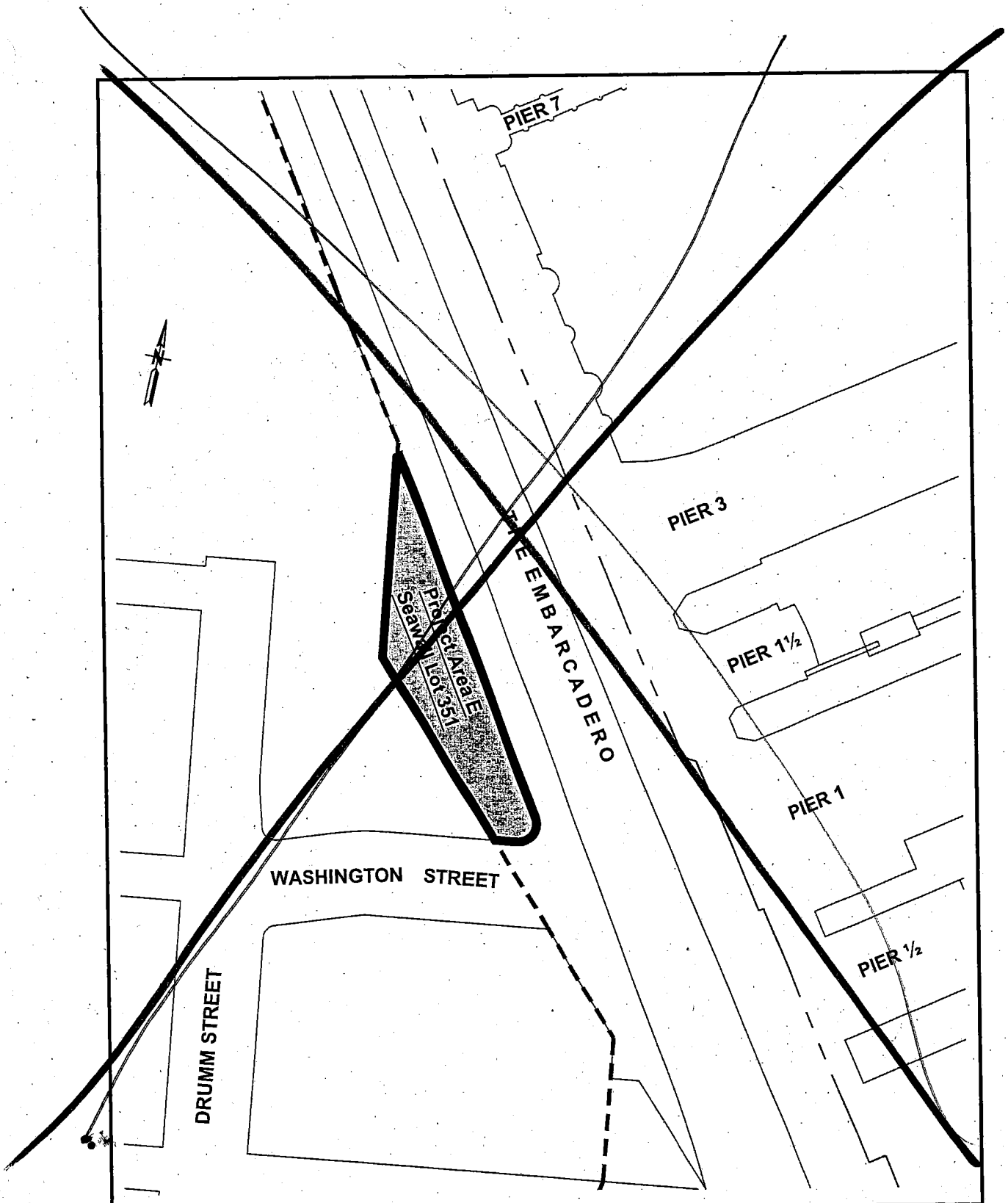

SAN FRANCISCO PORT COMMISSION PORT OF SAN FRANCISCO DEPARTMENT OF ENGINEERING	Proposed Boundaries of City and County of San Francisco Infrastructure Financing District no. 2 (Port of San Francisco), City and County of San Francisco, State of California	DATE: DEC. 09, 2011 SCALE: 1" = 150' SHEET NO. 6 OF 10 SHEETS

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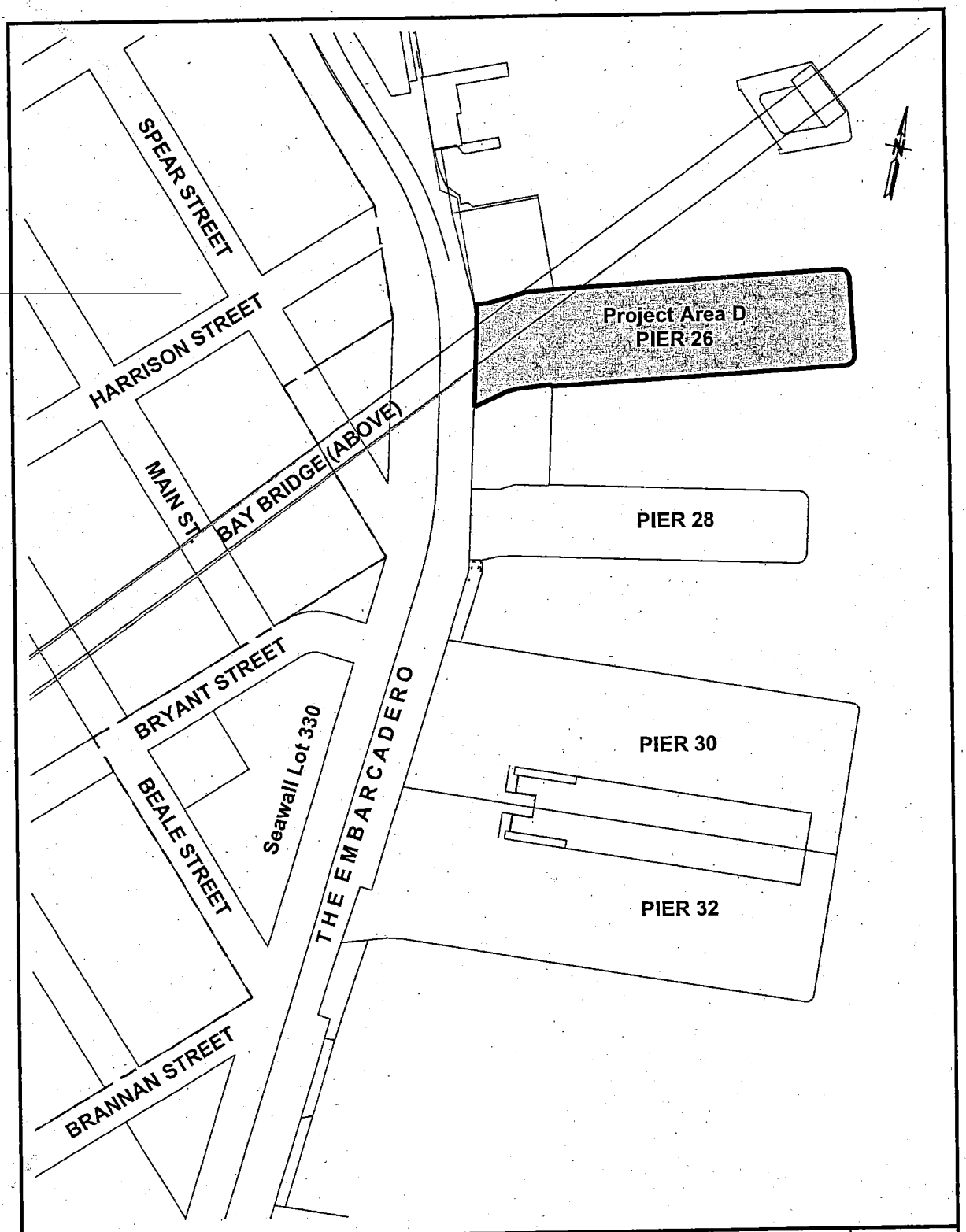
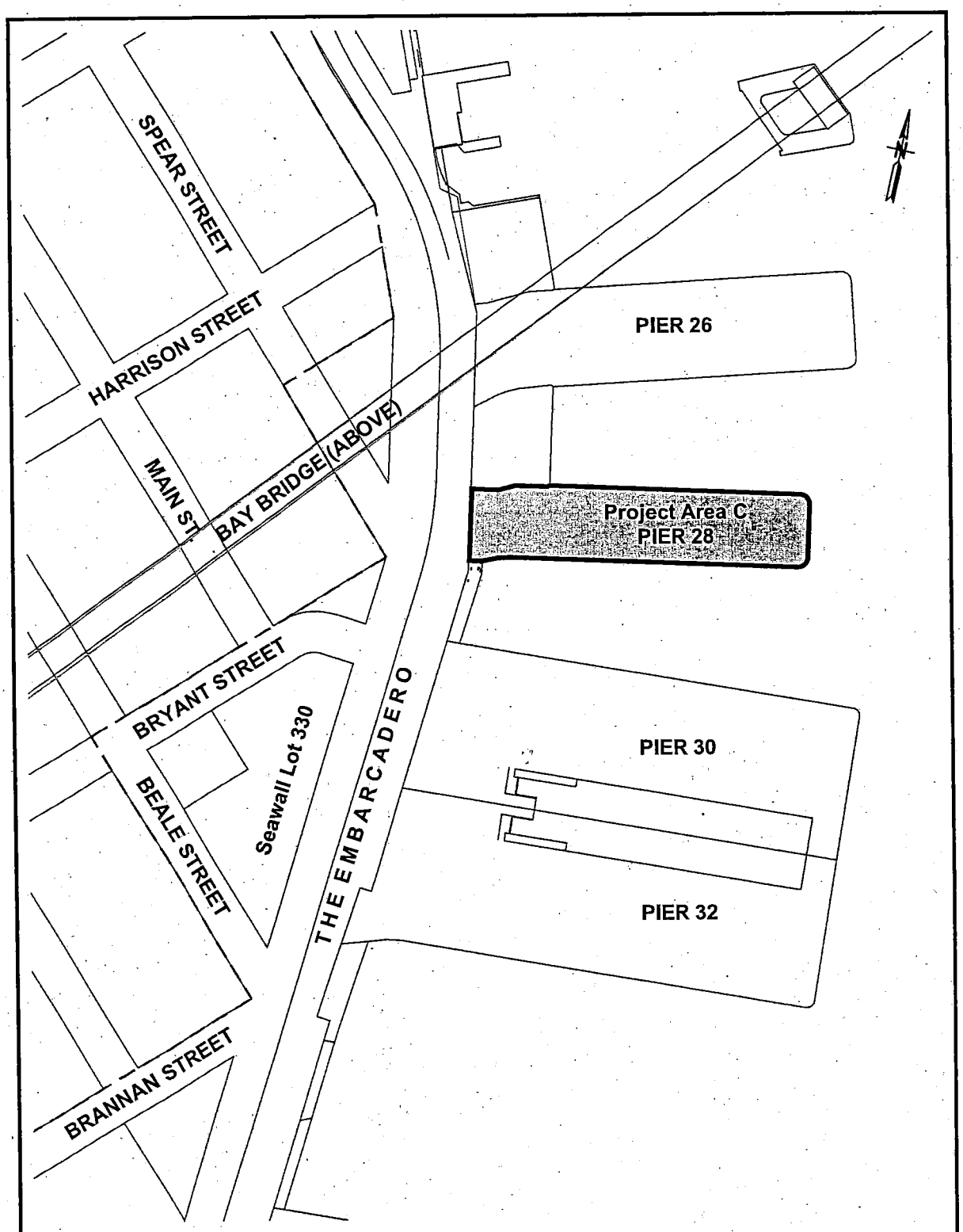


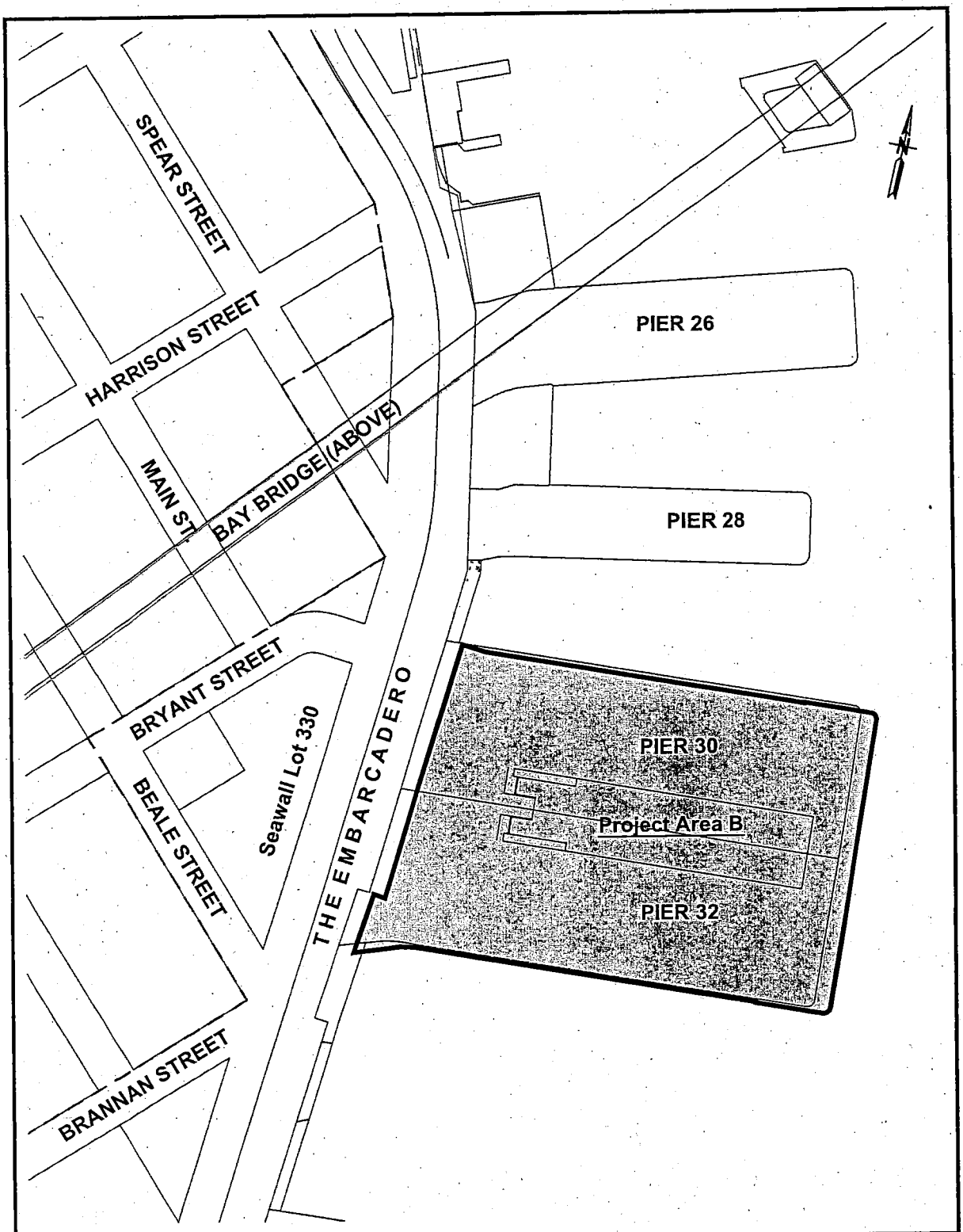
SAN FRANCISCO PORT COMMISSION PORT OF SAN FRANCISCO DEPARTMENT OF ENGINEERING	Proposed Boundaries of City and County of San Francisco Infrastructure Financing District No. 2 (Port of San Francisco), City and County of San Francisco, State of California	DATE: DEC. 09, 2011 SCALE: 1" = 300' SHEET NO. 5 OF 10 SHEETS



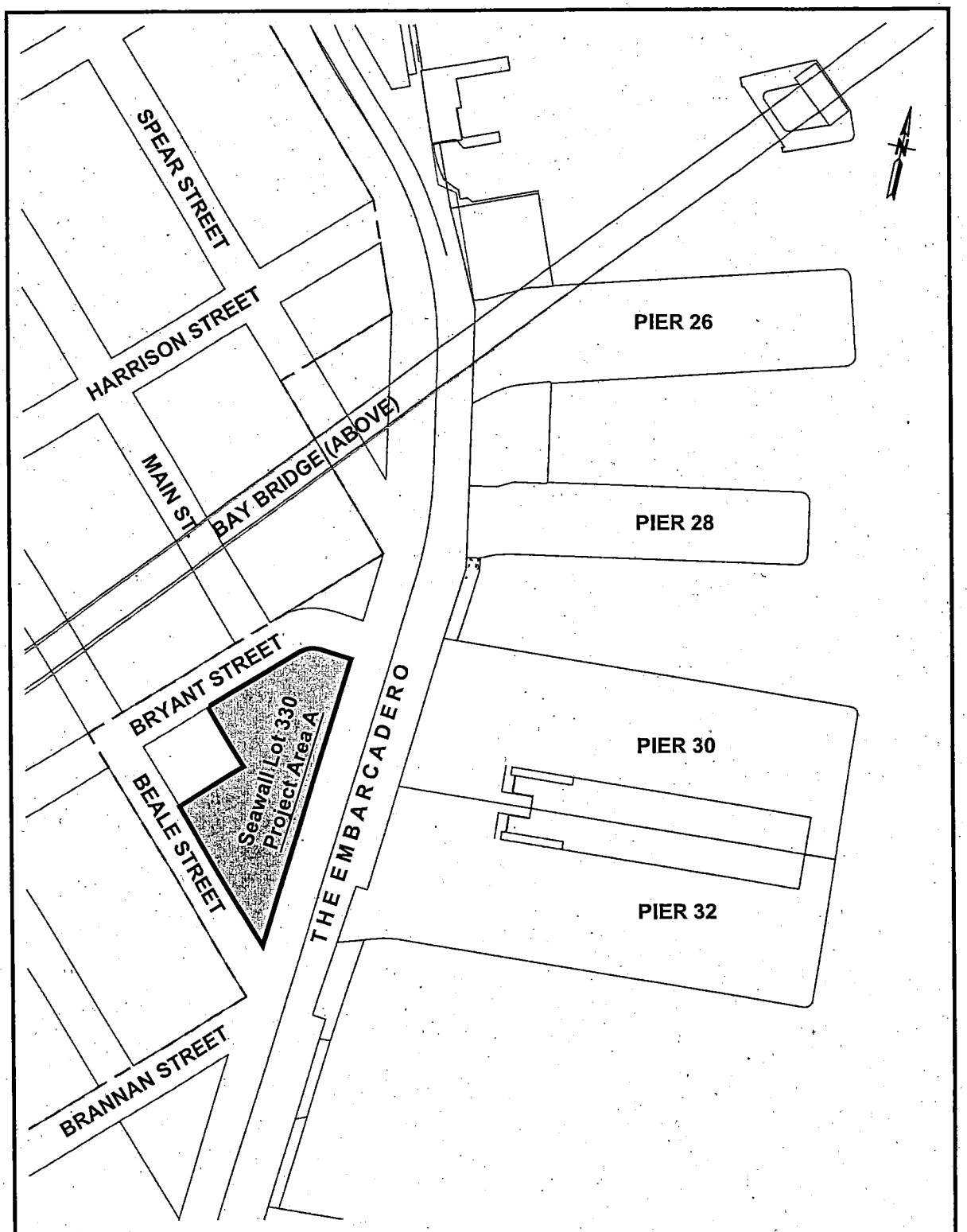
SAN FRANCISCO PORT COMMISSION
PORT OF SAN FRANCISCO
DEPARTMENT OF ENGINEERING

Proposed Boundaries of City and County of San Francisco Infrastructure Financing District No. 2 (Port of San Francisco), City and County of San Francisco, State of California

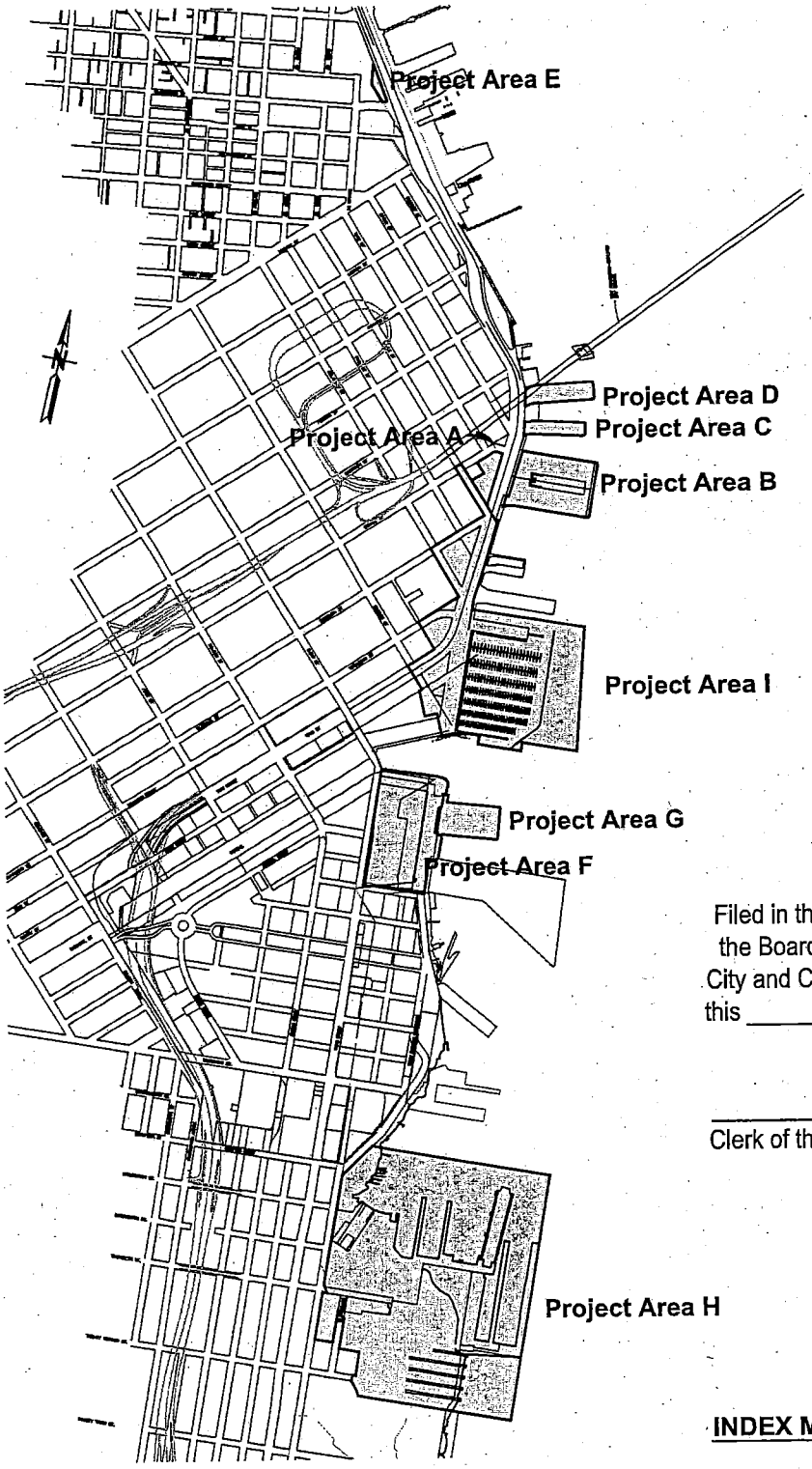
DATE: DEC. 09, 2011
SCALE: 1" = 300'
SHEET NO. 4
OF 10 SHEETS



SAN FRANCISCO PORT COMMISSION PORT OF SAN FRANCISCO DEPARTMENT OF ENGINEERING	Proposed Boundaries of City and County of San Francisco Infrastructure Financing District No. 2 (Port of San Francisco), City and County of San Francisco, State of California	DATE: DEC. 09, 2011 SCALE: 1" = 300' SHEET NO. 3 OF 10 SHEETS



SAN FRANCISCO PORT COMMISSION PORT OF SAN FRANCISCO DEPARTMENT OF ENGINEERING	Proposed Boundaries of City and County of San Francisco Infrastructure Financing District No. 2 (Port of San Francisco), City and County of San Francisco, State of California	DATE: DEC. 09, 2011 SCALE: 1" = 300' SHEET NO. 2 OF 10 SHEETS



Filed in the office of the Clerk of the Board of Supervisors of the City and County of San Francisco this _____ day of _____, 201_.

_____
Clerk of the Board of Supervisors

INDEX MAP

SAN FRANCISCO PORT COMMISSION PORT OF SAN FRANCISCO DEPARTMENT OF ENGINEERING	Proposed Boundaries of City and County of San Francisco Infrastructure Financing District No. 2 (Port of San Francisco), City and County of San Francisco, State of California	DATE: DEC. 09, 2011 SCALE: 1" = 2000' SHEET NO. 1 OF 10 SHEETS