



MEMORANDUM

February 19, 2021

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

FROM: Elaine Forbes
Executive Director 

SUBJECT: Request authorization to enter into an Exclusive Negotiation Agreement with San Francisco Waterfront Partners III, LLC for the lease and development of a project including commercial, retail, maritime, and public access uses for Piers 38-40 located along the Embarcadero.

DIRECTOR'S RECOMMENDATION: Approve Attached Resolution No. 21-10

Executive Summary

On August 11, 2020 the Port Commission authorized staff (Resolution 20-37) to negotiate with Pacific Waterfront Partners, LLC ("PWP") for an Exclusive Negotiating Agreement ("ENA") for the Piers 38/40 project ("Project").¹ PWP was the highest scoring respondent scored by a diverse five-member selection panel to Port's Request for Proposals ("RFP") for Piers 38 & 40. The offering included approximately 176,000 sq. ft. of interior bulkhead and shed space, 56,600 sq. ft. of outdoor pier apron space, a 20,000 sq. ft. surface parking lot and water area to support water-dependent activities (*See Exhibit 1, Site Location*). In issuing the RFP, the Port sought development partners to invest in redeveloping the two historic piers to realize the Draft Waterfront Plan's goals and objectives ("Waterfront Plan"), to make safety improvements to the facilities to withstand earthquake and flood risks, and to realize the values expressed by the community through the Port's citizens' advisory committees. PWP has formed San Francisco Waterfront Partners III, LLC ("Developer" or "SFWP") as the development

¹ See staff report and resolution here: [Item 9A Piers 38 40 PWP to ENA_final.pdf \(sfport.com\)](#)

entity for the Project. PWP owns all the membership interests in SFWP and is the managing member. SFWP will be the entity that enters into the ENA.

The ENA sets forth the process, terms, and conditions upon which the Port and Developer will negotiate for the disposition of the sites and the development and operation of the proposed Project. Upon the successful completion of a multi-year process to: complete negotiations, environmental review, and secure other project approvals, the ENA will be replaced by a lease disposition and development agreement, a long-term ground lease and other related agreements and documents required for the proposed Project. Throughout the ENA negotiations, the Port and SFWP will work with both community stakeholders and its regulatory partners to shape the project so that it aligns with policies and is an amenity to the Port, City and Region.

Since the August 11, 2020 Port Commission Authorization, Port and SFWP have been negotiating the ENA terms. The RFP included an ENA form for the Project; however, specific terms were revised to address the Project's attributes. They are as follows: 1) addition of Diversity, Equity, and Inclusion measures during the ENA; 2) increased length of the ENA term; and 3) provision that allows the Port Executive Director approval of certain transfers to institutional investors.

This staff report includes the following sections:

1. Alignment with the Port's Strategic Plan.
2. Background information on the Project and process.
3. Exclusive negotiations process and ENA key terms.
4. The proposed ENA performance benchmarks.
5. Next steps.

1. Strategic Plan Alignment

Entering an ENA with SFWP and ultimately redeveloping Piers 38 & 40 will provide a range of publicly-oriented uses, maritime uses, revenue-generating uses, and resilience improvements necessary for the facilities to withstand earthquake and flood risks, within a financially feasible project.

The Project's success will be defined by its redevelopment of assets, implementation of resilience and adaptation strategies, curation of a mix of uses that enliven the South Beach waterfront area, and advancement of the Port's goals and objectives of its Strategic Plan and Waterfront Plan.

If approved and implemented, this Project will achieve four of the Port's Strategic Plan objectives:

Productivity: Completed pier rehabilitation projects will make progress on the Productivity objective to restore Embarcadero Historic District piers with developer-funded improvements.

Stability: Maintain the Port's financial strength by addressing deferred maintenance at the subject piers using private capital and project-generated revenues and leaving the Port with more capital funds to address deficiencies at other facilities.

Resiliency: Completed projects will prepare the Port and City for natural and human-made risks and hazards through the seismic strengthening of the adjacent seawall and providing flood protection to the facilities and surrounding public property.

Engagement: Through the course of the project, we will increase the public's awareness of the purpose and benefits of Port functions and activities.

Equity: Completed Piers 38 & 40 project will be accessible, attractive and beneficial to a diverse group of people who live, work and/or use the recreational assets along the Waterfront. Further, the effort will deploy best practices in equity through Local Hire, LBE and other efforts aimed to ensure the project includes diverse businesses and workers.

2. Background

The Waterfront Plan recommendations developed through a 30-member stakeholder working group and public meetings between 2017 and 2019 produced Port-wide and Subarea Goals, Policies, Objectives, and Acceptable Uses for the Port's 7.5 miles of waterfront property. These provisions of the Waterfront Plan helped guide the Port's discussions with Port Advisory Groups and public members in 2019 regarding the RFP for the redevelopment of Piers 38 & 40. These community discussions resulted in a consensus of site-specific "Community Values" that emphasize maritime, urban design, quality-of-life, sustainability, public access, and equity benefits that Port staff incorporated in the Project RFP.

On October 22, 2019, the Port Commission authorized Port staff to issue an RFP for Piers 38 & 40. On July 9, 2020 Port staff provided the Port Commission an informational presentation on the two respondents who submitted complete proposals, demonstrated that they met the minimum qualifications, and were scored by a five-member panel. On August 11, 2020, the Port Commission authorized Port staff to negotiate an ENA with SFWP, the respondent that scored the highest by the panel.

SFWP Project Concept

The SFWP proposal meets the goals, objectives, and values described in the Port's RFP. SFWP recognizes the need for further discussions with the Port, regulatory partners and stakeholders to refine the concepts while still achieving the goals and objectives established in the Port's RFP. It is essential to recognize that the proposal received is at the conceptual level and the proposal will evolve through community dialogue, additional site due diligence, policy direction, and lease negotiations. Ultimately, a successful project will have an appropriate balance of uses and improvements that meet the Port's plans and programs' goals and objectives.

Vision

Exhibit 2 illustrates the SFWP land use and program proposal, which is set forth below. SFWP describes its vision for Piers 38 & 40 as:

- A waterfront public "playground" where families can engage in water-oriented recreation, welcoming and accessible for a diverse Bay Area population and visitors;
- Expansion and improvement of maritime facilities and related production distribution and repair (PDR) requirements (Maritime support) for a water-oriented transportation hub accommodating water taxis, ferries, and tour boats;
- Public-serving facilities supporting community functions and outdoor areas for picnics, fishing, or just promenading along a contiguous Port Walk by the Bay;
- History Walks that engage visitors in the history of the cultural heritage of South Beach and the shed and bulkhead buildings;
- A large-covered public area in the current parking lot in front of Pier 40 will be usable night and day, year-round for such activities such as a Latin food market, night markets, and affordable eating and entertainment venues;
- People Places created with thoughtful planning and design that both meet the Secretary of the Interior's Standards for Historic Rehabilitation and adapt the assets to maximize the public's accessibility to all areas of the project; and
- Swimming areas at east end of Pier 40; and
- A seismically strengthened seawall that will be the first public/private project to accomplish seismic stability of a segment of the seawall and improve resiliency and the impacts of sea-level rise on historic assets.

Uses and Community Benefits

The SFWP program's public-oriented uses include maritime recreation, a flexible, covered market and entertainment space in front of Pier 40, public access to both the pier interiors and around the piers. Another community benefit offered is free space for a nonprofit workforce development use. The use program includes general office within each of the sheds.

Maritime and Water Recreation Uses

The land use program SFWP proposes includes a variety of maritime uses, such as

- A youth sailing center and marina area on the north side of Pier 38 which would help activate the Brannan Street Wharf.
- A small human-powered craft center between Piers 38 and 40 and protected swim areas on the east end of Pier 40. The improvements include new docks and an extension of the Pier 40 breakwater, which would support water recreation and help with wave attenuation to address sea-level rise and project resilience.
- Docks and berths to support water-borne transportation area to serve the South Beach area and accommodating water taxis and ferries between Piers 38-40.
- A landing for other ticketed public vessels would be located at the Western half of the Northside of Pier 40, affording faster on and offboarding.

- A waterfront Promenade that would be aligned around and through the Piers and incorporated into the public spaces.

"People Places"

Support for community functions would be on the expanded aprons between the Piers and in the area of Pier 40 currently used for parking. A large covered public plaza area, which would be available night and day, year-round for such activities as a food market, night markets, affordable eating and entertainment, would be created in the place of existing parking and the Pier 38 Bulkhead along the Embarcadero. In order to provide amenities to the building tenants and to cultivate inspiring local offerings, common area charges from office and other commercial uses would subsidize infrastructure and maintenance costs for the "Plug and Play" food court food vendors.

Nonprofit Space

The project would include new office space on the second level of the bulkhead building and within the pier sheds to generate revenue and public benefits. The proposed nonprofit area consists of free learning space for Cornerstone Institute for Anointing (CIA), a sister company to Cornerstone Facilities Consulting (CFC), both of which are a Local Business Enterprise (LBE) and Disadvantaged Business Enterprise (DBE). CIA's mission is to provide training to produce the most optimum workforce to meet the current industry demand for the most relevant skills available worldwide. The Pier 38-40 Project would provide CIA with permanent space for learning facilities to pursue their mission. The project also proposes to integrate and maintain existing tenants on Pier 40 such as the nonprofit BAADS, support facilities for local enterprises such as South Beach Yacht Club, and other uses that serve a public purpose. Restaurant space would be on the ground level of the Pier 38 bulkhead and extend into the shed.

The project's proposed community benefits are to:

- Provide affordable rents, and in some areas, no minimum rents for public-serving uses such as restaurants, cafés, and food markets that strive to reduce menu pricing;
- Provide construction assistance by investing more in base building improvements to minimize tenant construction costs and enable emerging chefs to get a start toward ownership;
- Provide new areas of indoor and outdoor public access and to appreciate the historic resources;
- Provide free facilities for children and boaters;
- Provide free facilities for disadvantaged young people seeking skills training; and encourage participation and inclusion of all public stakeholders as we work together in developing preliminary designs and uses.

Proposed Investment in Port's Assets

The project would deliver seismically upgraded facilities, a perimeter barrier to address sea-level rise, extending the entire perimeter of the project from the Brannan Street Wharf Park to South Beach Harbor. The project also proposes necessary upgrades as required to address the seismic needs of the seawall.

SFWP is committed to diversity and to supporting local small business. SFWP is committed to meet and aims to exceed LBE goals to be set by the City's Contract Monitoring Division. SFWP will partner in the project management with an LBE, Cornerstone Facilities Consulting.

The estimated development cost of the proposed development is \$383 million, including all costs associated with the marina and new breakwater. SFWP will work with the Port to explore funding mechanisms, such as Community Financing Districts, Infrastructure Financing Districts, historic tax credits, and boating grants or loans for specific capital improvements. The project commits to a minimum rent and a participation rent, ensuring the Port has a steady revenue stream and participation in project upside.

3. Exclusive Negotiations Process and ENA Key Terms

The ENA will commit the Port to negotiate exclusively with SFWP for the duration of its term. During the ENA period, the parties will finalize transaction documents that will govern the disposition and development of the Project. It establishes time and performance benchmarks, provisions for time extensions to perform and termination for non-performance. It specifies negotiation fees payable to the Port and recovery of Port's costs associated with the Project.

During the ENA period, the following key events are anticipated to occur:

- Port and SFWP will work with regulatory partners to seek regulatory alignment and strategies to advance the Project.
- SFWP will work with Port to develop goals for inclusion of small, local, and diverse contractors, consultants, and other service providers for predevelopment work and will use its best efforts to maximize diversity, equity, and inclusion.
- SFWP will conduct community outreach to stakeholders.
- SFWP will negotiate a term sheet for Port Commission and Board endorsement.
- SFWP will complete preliminary architectural and engineering designs, finalize financial projections addressing lease payments to the Port, and the equity and debt required to completely finance the development's entitlement, construction, and operation.
- SFWP will complete, if required, an environmental impact report in compliance with the California Environmental Quality Act.
- The Port and SFWP will negotiate as applicable a lease disposition and development agreement, a form lease, and related documents governing the development and operation of the site.

Key Terms Differing from Form ENA

The RFP included a form ENA; however, each development project and development partner has unique attributes that require some ENA negotiations. The following summarizes three key terms that differ from the form ENA attached to the RFP:

- 1) *Diversity, Equity, and Inclusion* - During the ENA period, the Developer's expenditures associated with the Project are not subject to the Local Business Enterprise (LBE) policies. The proposed ENA includes Diversity, Equity and

Inclusion measures for the predevelopment process, which requires SFWP to work with Port to include small, local, and diverse contractors, consultants, and other service providers for predevelopment work during the ENA period.

- 2) *Term* – The ENA term is 2 years, with three 6-month extension options. The extended term is consistent with the scale and complexity of the Project, which will require comprehensive and extensive stakeholder and regulatory partner outreach and collaboration. The performance benchmark schedule negotiated between the parties is attached as **Exhibit 3** to this staff report.
- 3) *Transfer*- The Port is entering into this ENA based on the Developer's special skills, capabilities, and experience. However, there is a possibility that Developer may seek new investors for additional capital. The form ENA requires Port Commission approval of transfers of more than 50% of the ownership interest in Developer. The negotiated proposal is that only the Port Executive Director's approval is required if the transfer of more than 50% is to an institutional investor (such as a pension fund) with assets of at least \$500 million and SFWP has the authority to direct the day-to-day management of the Project.

The Port Commission, by approving the ENA is not approving a project, nor committing either party to a project. Rather, the ENA establishes the parameters for consideration of a possible project or development.

4. Project Timeline

If the Port Commission approves the ENA, **Exhibit 3 - Performance Benchmarks** provides a schedule of various Project milestones that SFWP must meet. The schedule includes a "target date" that both the Port and SFWP will strive to reach, and a "performance date", which is the outside date for SFWP to achieve the milestones. The early focus is to conduct community and regulatory outreach to help shape a project that has Port, SFWP, community and regulatory partner alignment and to begin term sheet negotiations.

5. Next Steps

Port staff will work with SFWP, stakeholders, and regulatory partners to advance the Project. Staff will return to the Port Commission with regular updates on the Project progress or as required to seek input during negotiations on key deal points.

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Senior Development Project Manager
Real Estate and Development

For: Rebecca Benassini
Deputy Director
Real Estate and Development

- Exhibits:**
1. Site Location
 2. Site and Land Use Program
 3. Performance Benchmarks

**PORT COMMISSION
CITY AND COUNTY OF SAN FRANCISCO**

RESOLUTION NO. 21-10

WHEREAS, Charter Section B3.581 empowers the Port Commission with the authority and duty to use, conduct, operate, maintain, manage, regulate and control the lands within Port jurisdiction; and

WHEREAS, Piers 38 & 40 is an approximately 252,600 square foot pier site located along the Embarcadero; and

WHEREAS, Piers 38 & 40 (collectively, the "Site") are within the Port's South Beach - China Basin sub-areas area under the Port's Waterfront Land Use Plan; and

WHEREAS, On August 7, 2020, pursuant to Resolution No. 20-37, the Port Commission authorized Port staff to initiate negotiations for an Exclusive Negotiating Agreement with Pacific Waterfront Partners, LLC ("PWP"); and

WHEREAS, PWP has formed San Francisco Waterfront Partners III, LLC ("Developer" or "SFWP") as the development entity for the Project with PWP as its managing member; and

WHEREAS, SFWP is proposing to develop a project at Piers 38 & 40, that includes (i) adaptive reuse of the historic pier sheds and bulkhead buildings consistent with Secretary Standards for commercial, retail, maritime support, public access, and public serving uses, and (ii) maritime recreation, excursion, berthing, and transportation uses within the water areas, all as further described in the Memorandum accompanying this resolution; and

WHEREAS, SFWP and Port have negotiated the terms of the ENA, as further described in the Memorandum accompanying this resolution; now therefore be it

RESOLVED, That the Port Commission authorizes the Executive Director of the Port ("Executive Director") or her designee to execute the ENA and any additions, amendments, or other modifications thereto that are necessary and advisable to complete the ENA consistent with the terms and conditions set forth in the Memorandum accompanying this resolution and in a form approved by the City Attorney and, be it further

RESOLVED, That the Port Commission reserves the right, if negotiations with SFWP are unsuccessful and do not lead to approval of a lease disposition and development agreement, lease, and related documents, or if the ENA is terminated before expiration of its term, to undertake other efforts, which

may include selecting a developer/tenant by any other means, or issuing a developer solicitation, all in the Port Commission's sole discretion; and, be it further

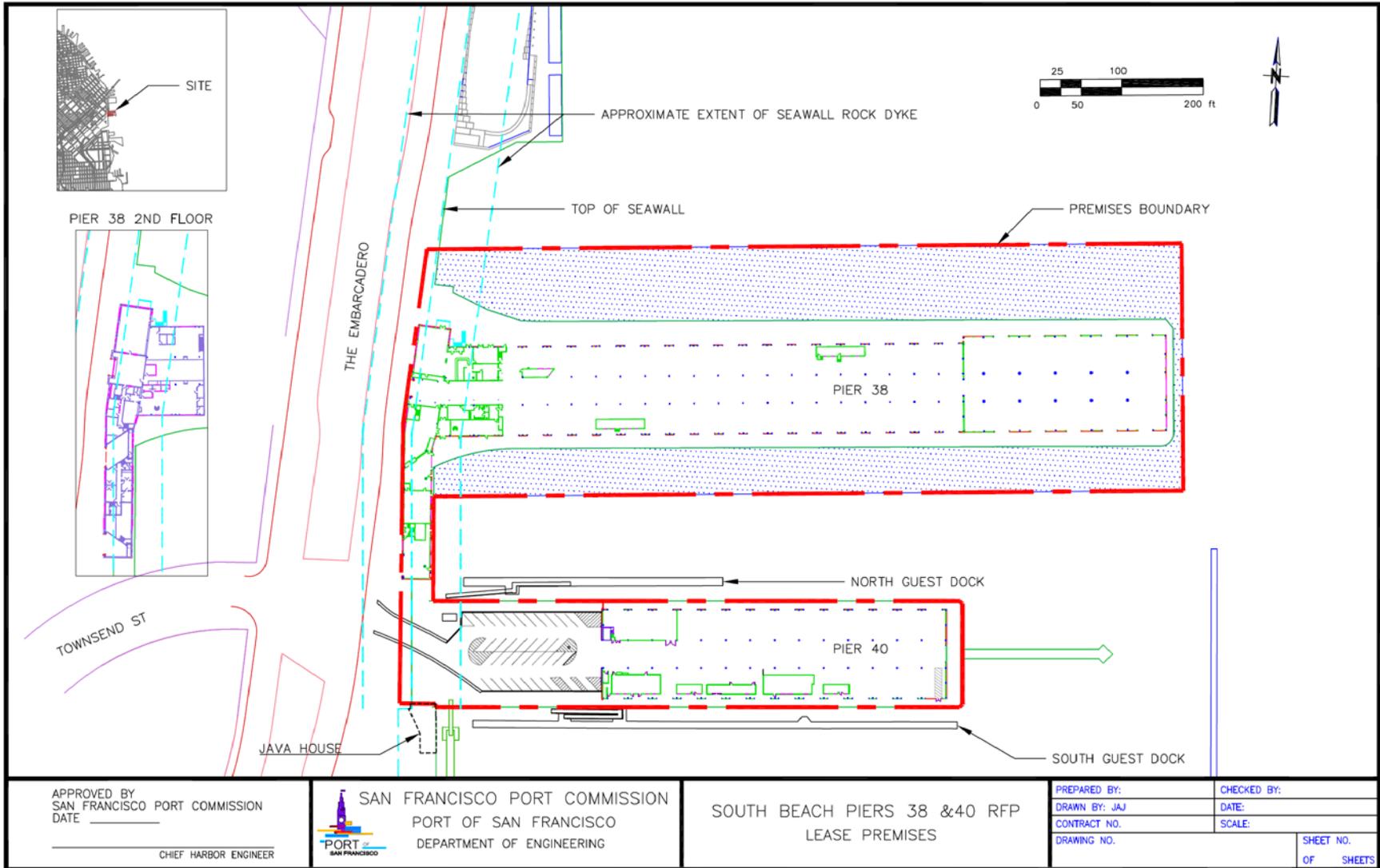
RESOLVED, That the ENA does not commit the Port Commission to approval of any specific development concept or project proposal, nor does the ENA foreclose the possibility of alternative development concepts, mitigation measures, or deciding not to grant entitlements or approve the lease and development of the proposed concept; and, be it further

RESOLVED, That entering into exclusive negotiations does not commit the Port Commission to approval of a final lease or related documents and that the Port Commission shall not take any discretionary actions committing it to the proposed development until it has reviewed and considered environmental documentation prepared in compliance with the California Environmental Quality Act.

I hereby certify that the foregoing resolution was adopted by the Port Commission at its meeting of February 23, 2021.

Secretary

Exhibit 1 Site Location



APPROVED BY
SAN FRANCISCO PORT COMMISSION
DATE _____

CHIEF HARBOR ENGINEER

 SAN FRANCISCO PORT COMMISSION
PORT OF SAN FRANCISCO
DEPARTMENT OF ENGINEERING

SOUTH BEACH PIERS 38 & 40 RFP
LEASE PREMISES

PREPARED BY:	CHECKED BY:
DRAWN BY: JAJ	DATE:
CONTRACT NO.	SCALE:
DRAWING NO.	SHEET NO. OF SHEETS

Exhibit "1," Site Location

Exhibit 2 Site and Land Use Program

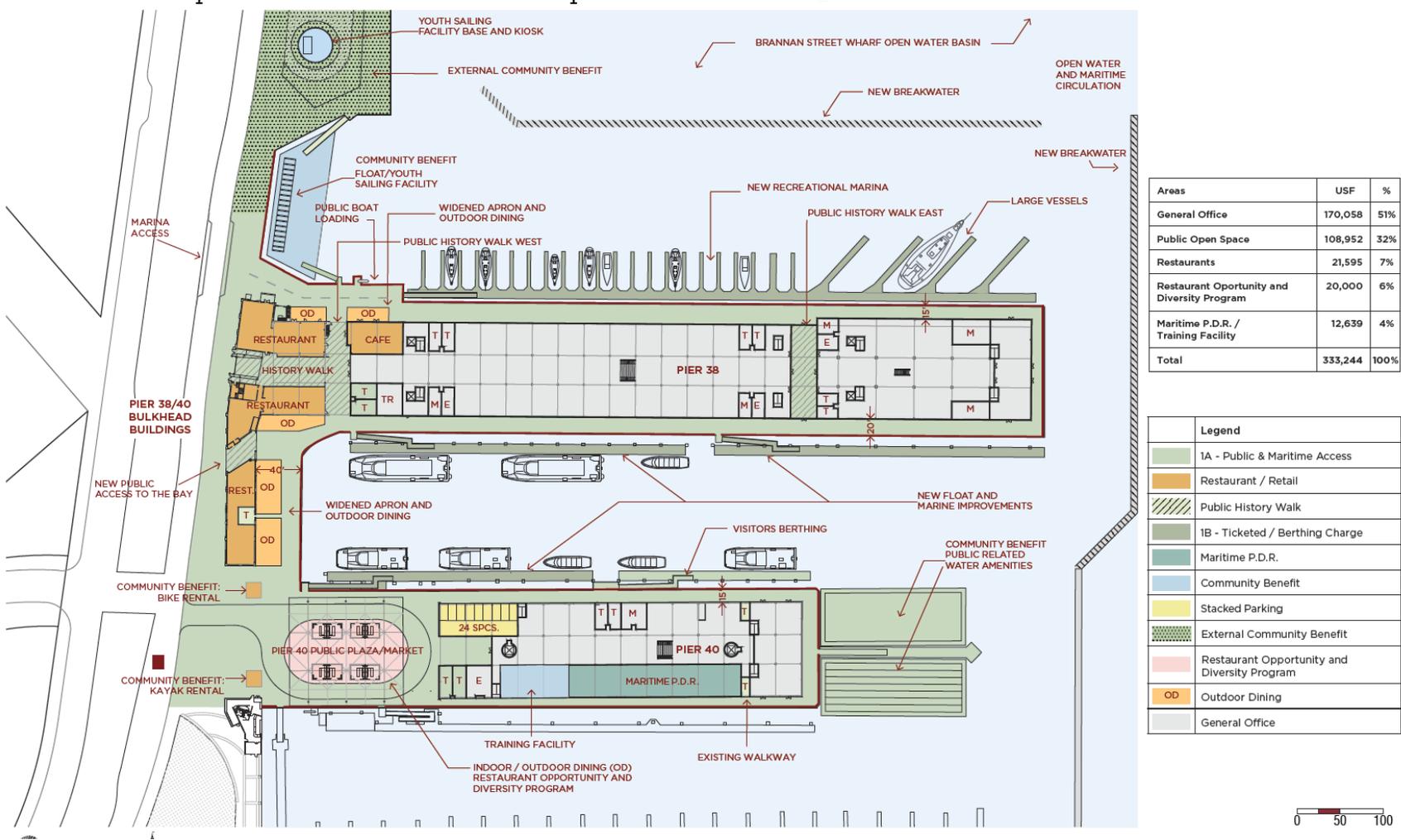


Exhibit 2. Site and Land Use Plan

**Exhibit 3
Performance Benchmarks**

Performance Benchmarks	Target Date	Performance Date
1. Developer Formation Documents: Developer must submit a copy of its Operating Agreement and a description of its affiliates (any person or entity controlling Developer, any entities controlled by Developer, or any entities under common control with Developer)	February 3, 2021	February 3, 2021
2. Submit Community Outreach Program	April 1, 2021	April 1, 2021
3. Submit Diversity, Equity & Inclusion Program	April 16, 2021	May 7, 2021
4. Submit Revised Development Concept for Term Sheet, based upon outreach and site due diligence.	July 1, 2021	July 1, 2021
5. Port Endorsement: Port Commission to adopt a resolution endorsing the Term Sheet	August 1, 2021	October 1, 2021
6. Board Endorsements: Board to take the following actions: (a) endorsing the Term Sheet; and (b) making a fiscal feasibility determination, if necessary	August 1, 2021	October 1, 2021
7. Final Transaction Documents: Developer and Port must reach final agreement on the form of LDDA, Lease and all related Transaction Documents	March 21, 2022	April 18, 2022
8. Final CEQA Determination: By Planning Department or Planning Commission, as required.	April 18, 2022	April 18, 2022
9. Port Commission Approval of Final Transaction Documents: Port Commission to make Public Trust Determination and approve final Transaction Documents and recommend Board approval.	May 1, 2022	June 1, 2022
10. Board of Supervisor Approvals: Board to approve the Lease and other Transaction Documents and City Regulatory Approvals that require Board approval.	June 1, 2022	July 1, 2022
11. Regulatory Approvals: Developer to obtain necessary Regulatory Approvals by outside agencies.		Within timeframe set forth in LDDA