



## MEMORANDUM

TO: Members of the Bayview Hunters Point Project Area Committee

FROM: Michael Cohen

DATE: April 19, 2010

RE: Draft Disposition and Development Agreement for the Hunters Point Shipyard Phase 2-  
Candelstick Point Integrated Development Project.

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Please find enclosed a copy of the draft Disposition and Development Agreement (“DDA”) for the Hunters Point Shipyard Phase 2 and Candlestick Point Project (“Project”). In early February the CAC and members of the public were provided with an Executive Summary for the Project, which outlined the history, primary public benefits and key implementing agreements and documents for the Project. Building off of this Executive Summary, presentations on the framework, structure and purpose of the DDA and its related components have been presented in over 40 meetings to the full PAC and its respective subcommittees including: Land Use, Housing and Economic Development, Health and Environment, Education and Executive over the past two years.

The DDA is the primary legally binding document between the Agency and the Project’s Developer that connects the various Project documents such as the Below Market-Rate Housing Plan, Financing Plan, Transportation Plan, Infrastructure Plan, Community Benefits Plan, Design for Development Documents, Open Space Plan and Sustainability Plan. The DDA ensures that the vision, goals and priorities for the development of the Shipyard and Candlestick Point that were set forth in the Conceptual Framework and Proposition G are implemented in accordance with the priorities that the community has previously articulated. The various plans and many of the documents incorporated into the DDA have already been extensively vetted in numerous public forums over the past three years.

In summary, the DDA governs the Developer’s rights to develop the Project in phases in accordance with the related Project documents, including: the Financing Plan, Design for Development Documents, Open Space Plan, Below Market-Rate Housing Plan, Community Benefits Plan, Infrastructure Plan, Transportation Plan and Sustainability Plan and amendments to the Redevelopment Plans, which have previously been reviewed with the CAC and the public. The DDA sets forth a phasing road map for development of the Project, including the Major Phases and Sub-Phases, and establishes the linkages between the Developer's build out of Major Phases and Sub-Phases of the Project, and the Developer's obligations to complete the parks, transportation and other infrastructure required for that build-out and to deliver affordable housing parcels and

other public benefits corresponding to that build out. These linkages are articulated in the Phasing Plan and the Schedule of Performance, and include outside dates by which the Developer must submit applications and commencement and complete major components of infrastructure to serve Major Phases and Sub-Phases.

The Developer’s role under the DDA reflects a “horizontal” land development model. Under this model, land is the asset that is being improved and sold. The DDA is designed to transform the Project site into finished parcels that are improved with streets, sidewalks, parks, and other public infrastructure and certain community facilities. In this structure, the Developer's role is to build the horizontal infrastructure improvements, together with the provision of various community amenities and other public benefits. In return, the Developer receives the right to develop and to sell land for “vertical” development.

The DDA also sets forth conditions for the transfer of land within the Project to the Developer that mirrors the phasing requirements. Generally, the Agency will not convey title to any parcel within the Project to the Developer until a Sub-Phase Application for such Sub-Phase has been approved and the Developer has satisfied the conditions to close of escrow under the DDA and the Design Review and Document Approval Procedure (the “DRDAP”) and provides financial guarantees to the Agency for the completion of all infrastructure and related public benefits included in that Sub-Phase.

Land transferred to the Developer within a given Sub-Phase will be subject to a “right of reverter” under which the Agency may re-take ownership of the land if the Developer fails to substantially complete the infrastructure allocated to that Sub-Phase within the time frame set forth in the Project Documents and corresponding Major Phase and Sub-Phase approvals.

Please find below an outline that summarizes each section of the DDA in greater detail. We look forward to reviewing and discussing this document with you and other members of the community in the coming month.

Should you have any questions, please contact Tiffany Bohee at (415)554-6162 or by email at [Tiffany.Bohee@sfgov.org](mailto:Tiffany.Bohee@sfgov.org) or myself at (415)554-6972 or by email at [Michael.Cohen@sfgov.org](mailto:Michael.Cohen@sfgov.org).

**Draft DDA Summary Outline**

<b><u>Document Section</u></b>	<b><u>Summary of Content and Purpose</u></b>
Table of Contents - List of Exhibits and List of Attachments	<p>In addition to containing a listing of all sections of the body of the DDA, the Table of Contents includes a list of all of the Exhibits and Attachments to the DDA.</p> <p>Exhibits are requirements of the Developer and the Agency and have been separated from the</p>

	<p>body of the DDA for convenience. These include many of the agreements and documents that have been thoroughly reviewed and discussed with the community, such as the Below-Market Rate Housing Plan and the Community Benefits Plan.</p> <p>Attachments are documents that are attached for reference, such as forms of documents that will be used in the future and copies of separate legal documents that are referred to in the body of the DDA or in the Exhibits.</p>
Recitals	The purpose of this section is to provide background information on the Hunters Point Shipyard and Candlestick Point and the key milestones in the planning process for the project to date.
Section 1 (“The Project”)	<p>This section is designed to provide an overview of the Project and the process for its development. It includes:</p> <ol style="list-style-type: none"> <li>1) A list of the improvements that the Developer and the Agency expect will be developed in both the Stadium and Non-Stadium Alternatives.</li> <li>2) A summary of the process by which the Developer will apply for and become obligated to construct improvements in Major Phases and Sub-Phases.</li> <li>3) The parameters under which the Developer and the Agency may agree to modify the Major Phases and Sub-Phases and related information.</li> </ol>
Section 2 (“Term of this DDA”)	<p>This section describes the term of the DDA, or the period of time during which the DDA will remain legally binding on the Developer, Vertical Developers and the Agency. Generally, the term of the DDA equals the term of the redevelopment plans. In addition, this section references other sections of the DDA under which the DDA may be terminated.</p>
Section 3 (“Project Phasing”)	The DDA provides a framework under which

	<p>the Developer will apply for and then develop the Infrastructure for the Project in phases. The Project includes 4 Major Phases and within each Major Phase a certain number of Sub-Phases.</p> <p>This section, together with Design Review and Document Approval Procedure (the “DRDAP”), describes the process under which the Developer will submit Major Phase Applications and Sub-Phase Applications and the Agency will give or deny Major Phase Approvals or Sub-Phase Approvals.</p> <p>Finally, this section discusses what happens if the Developer does not apply for a Major Phase or Sub-Phase by the outside date established in the Schedule of Performance. In short, the primary remedy is that the Developer loses the right to proceed with the rest of the Project.</p>
<p>Section 4 (“Vertical Approvals; Assignment and Assumption Agreements; Vertical Construction”)</p>	<p>Consistent with the horizontal land development model, the DDA governs the Developer’s construction of Infrastructure and sale of finished lots to “Vertical Developers” (including Developer and its Affiliates) who will build new homes and retail and commercial development.</p> <p>This section addresses the process by which Vertical Developers will become bound by the terms of the DDA and the process by which it will obtain Vertical Approvals permitting construction of homes, retail or commercial space or other vertical improvements.</p>
<p>Section 5 (“Stadium and Non-Stadium Alternatives”)</p>	<p>The Project provides an opportunity site for a New Stadium for the San Francisco 49ers on the Shipyard. This section addresses the conditions under which the Developer will be obligated to prepare the site and related infrastructure for the New Stadium. This section also sets forth the date on which the Agency and the Developer will pursue the Non-Stadium Alternative, should the 49ers choose not to relocate to the Shipyard.</p>

Section 6 (“Land Assemblage and Acquisition”)	This section provides a summary of the process under which the Agency and Developer will acquire portions of the Project Site for development. The Project Site includes land currently owned by various governmental entities, including the Navy, State Lands Commission, State Parks Department, the City (both Port and Recreation and Park Department), the Housing Authority and the Agency, as well as land owned by private parties.
Section 7 (“Construction of Infrastructure”)	This section includes the conditions under which the Developer will Commence and Complete the construction of Infrastructure in a Sub-Phase for which it has obtained a Sub-Phase Approval.
Section 8 (“Construction of Vertical Improvements”)	This section includes the conditions under which a Vertical Developer will Commence and Complete the construction of buildings for which it has obtained a vertical approval.
Section 9 (“Issuance of Authorizations; Issuance of Certificates of Completion”)	<p>This section describes the process under which the Developer or Vertical Developers will obtain all permits, authorizations or agreements necessary in order to construct the Infrastructure and buildings.</p> <p>In addition, this section describes the process under which the Developer or Vertical Developer will obtain Certificates of Completion from the Agency signifying that they have completed the specified work under the DDA.</p>
Section 10 (“Terms for Conveyances to Developer”)	This section describes the process under which the Agency will convey property that it acquires in the Project Site to the Developer after the satisfaction of certain conditions.
Section 11 (“Property Condition”)	This section addresses the condition of the property that will be transferred to the Developer by the Agency, including acknowledgments regarding the current status and discussion regarding the effect of any applicable development restrictions or

	<p>environmental conditions.</p> <p>The section also contains obligations of the Developer to comply with all Environmental Laws and any Remediation Agreements.</p>
Section 12 (“Amendments to Redevelopment Documents”)	This section limits the Agency’s ability to revise certain governing documents related to the Project, including the redevelopment plans, without the consent of the Developer if such revisions would be inconsistent with the development contemplated in the DDA, would impact the ability to obtain contemplated public finance or would impair the ability to reconstruct the Project after any damage or destruction.
Section 13 (“Project Financing”)	This section obligates the parties to comply with the Financing Plan attached to the DDA, which is consistent with the financing plan that was previously approved by the CAC-PAC, Agency Commission and the Board of Supervisors.
Section 14 (“Community and Public Benefits; Agency Policies; Relocation”)	<p>This section obligates the Developer, Vertical Developers and the Agency to comply with the applicable provisions of the Community Benefits Plan, Below-Market Rate Housing Plan, Parks and Open Space Plan, and certain Agency policies.</p> <p>This section also obligates the Developer to comply with any relocation requirements under law, including the Artist Relocation Plan.</p>
Section 15 (“Arbitration Matters”)	This section establishes procedures for the resolution of certain disputes between the Agency the Developer or Vertical Developers by mediation and arbitration.
Section 16 (“Event of Default; Remedies”)	<p>This section establishes the procedures and remedies if the Developer, Vertical Developer or the Agency fails to satisfactorily perform their respective obligations under the DDA.</p> <p>Depending upon the nature of a failure, if a failure is not cured after notice, the remedies</p>

	<p>available include:</p> <ol style="list-style-type: none"> <li>1) An action to require performance</li> <li>2) An action against guaranties or other financial assurances, monetary damages, termination of the DDA, and/or repossession of property conveyed to the Developer.</li> </ol>
Section 17 (“Sale of Lots”)	<p>This section addresses the procedures under which the Developer will sell finished Lots to Vertical Developers.</p> <p>This section specifies that at least 25% of the Lots must be sold through an auction or similar public process that is approved by the Agency.</p> <p>Under the Community Benefits Plan, certain Lots are designated as Community Builder Lots. This section, together with the Community Benefits Plan, establishes the procedures under which selected Community Builders are afforded the opportunity to acquire or participate in the development of a Community Builder Lot.</p> <p>Finally, this section establishes the procedures under which the Developer’s Affiliates may acquire a Lot or sell a Lot to a third-party, subject to a third-party appraisal process.</p>
Section 18 (“Mitigation Measures”)	<p>This section requires the Agency, Developer and Vertical Developers to comply with the Mitigation Measures established for the Project under the Environmental Impact Report.</p>
Section 19 (“Agency Costs”)	<p>This section establishes the procedures under which the Developer and Vertical Developers will pay costs incurred by the Agency in connection with its obligations under the DDA, and provides for an annual fee to be provided to the Agency for its ongoing obligations in connection with the Project.</p>
Section 20 (“Financing; Rights of Mortgagees”)	<p>This section addresses the Developer and Vertical Developer’s ability to mortgage property in the Project Site and provides certain</p>

	rights and obligations for mortgagors if they foreclose on portions of the property.
Section 21 (“Transfers and Assignment”)	This section establishes the procedures and conditions under which the Developer may transfer or assign some or all of its rights and obligations under the DDA to another Developer or Vertical Developers.
Section 22 (“Developer and Vertical Developer General Indemnity; Insurance”)	This section requires Developer and Vertical Developers to indemnify the City and the Agency for losses that the City or the Agency may incur. This section also obligates the Developer to carry certain insurance policies.
Section 23 (“Agency Indemnity”)	This section requires the Agency to indemnify the Developer from Losses that arise from the Agency’s non-compliance with certain requirements under the California Community Redevelopment Law.
Section 24 (“Excusable Delay”)	<p>The Developer’s rights and obligations under the DDA, and certain rights and obligations of certain Vertical Developers, are governed by dates set forth in the Schedule of Performance.</p> <p>This section establishes procedures under which the Schedule of Performance may be extended by the Developer following certain events, including litigation, acts of god, or extreme economic changes.</p> <p>The Developer is also given a 6 year extension (2 years for each Major Phase except for the Stadium Major Phase) that it may use at its discretion. In addition to the Stadium, the Developer is not permitted to use this discretionary extension for Alice Griffith.</p>
Section 25 (“Cooperation”)	This section requires the Agency to take certain actions to cause the City to cooperate in the development of the Project and to take certain actions under agreements that relate to the acquisition of land for the Project.
Section 26 (“Adequate Security”)	This section establishes the requirements for the Developer to provide certain guarantees and

	other financial assurances for its development of the Project.
Section 27 (“Miscellaneous Provisions”)	This section includes certain provisions of general applicability in the DDA, including among other things, addresses for notices, an obligation to comply with non-discrimination provisions, rules for interpretation and construction of the DDA and procedures for amendment or termination.
Exhibit B	This exhibit includes the definitions of a number of capitalized terms that are used throughout the DDA and an index of certain terms that are defined in the body of the DDA or the Exhibits to the DDA.