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Work Session: Building a Sports Facility in Your Community

Title: The Making Of A Successful Public-Private Development Partnership To Build A New Ballpark For The San Francisco Giants At China Basin (AT&T Park)

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THE MAKING OF A SUCCESSFUL PUBLIC-PRIVATE DEVELOPMENT PARTNERSHIP TO BUILD A NEW BALLPARK FOR THE SAN FRANCISCO GIANTS AT CHINA BASIN (AT&T PARK)

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I. History

A. 1950s:[1] In the early 1950s, San Francisco Mayor George Christopher and Supervisor Francis McCarthy, working with many of the City's business leaders, begin a quest to bring a major league baseball team to San Francisco; at the time, there was no major league team on the West coast. Christopher contacts Horace Stoneham, owner of the New York Giants, and in August 1957 they reach a tentative deal for Giants to move to San Francisco premised on the ability of the City to build a new 45,000-seat stadium. The City selects Candlestick Point, a waterfront area at the southeastern corner of San Francisco, as the site for the new stadium. The City and State owned most of the land; Charles Harney, Inc. owned much of the remainder. The City purchases the private land and in 1958 contracts with Harney, Inc. to build the new stadium. The City breaks ground in 1958 and excavates dirt from the hill overlooking Candlestick Point to fill in the Bay to prepare the site for the baseball stadium and associated parking. The stadium development is financed through the City's issuance of bonds that the San Francisco voters had approved in 1954.

B. 1958: Having moved from New York, the Giants play their first San Francisco home baseball game. The team plays for two seasons at the old Seals Stadium, a minor-league park, at 16th and Bryant Streets in the Mission, while the new stadium is under construction.

C. 1960: The Giants move to a permanent home, the new baseball stadium at Candlestick Point. The stadium opens on April 12, 1960, and Vice President Nixon throws out the first pitch. The new stadium, which is christened as the eighth wonder of the world, almost immediately is criticized by fans and players for its wind and cold and for its traffic problems.

[1] The main source for this background on the original stadium is a 1973 thesis paper entitled "Bay Fill in San Francisco: A History of Change" by Gerald Robert Dow.

D. 1961: Candlestick Park's reputation for wind and cold is sealed during the All Star Game when a gust of wind shakes pitcher Stu Miller so severely during his delivery that the umpire calls him for a balk.

E. Early 1970s: The stadium is renovated to make it the new home for the San Francisco 49ers football team. The stadium becomes a dual-purpose facility for professional baseball and football.

F. 1976: A Toronto syndicate tries to buy the Giants and relocate the team to Canada. That effort fails and a group of local owners headed by Bob Lurie buys the team. George Moscone is the Mayor.

G. 1984: Lurie puts the team up for sale, citing continuing losses.

H. 1987: The first ballot proposition to build a new San Francisco ballpark as an alternative to Candlestick fails. The proposed location is Seventh and Townsend Streets, near the Caltrain depot. The ballot measure, Proposition W, loses by 11,000 votes. Lurie says he will move the team out of the City. Diane Feinstein is the Mayor.

I. 1989: The Giants propose a second ballot measure, Proposition P, to build a new ballpark in San Francisco, this time at China Basin – on the same site as Pacific Bell Park's present location. The Giants go to the World Series but are swept by their across-the-bay rivals, the Oakland A's. Weeks before the election the measure looks like it will pass. But on October 17th, during the World Series, the Loma Prieta earthquake intervenes. The ballot measure loses by fewer than 2,000 votes. Art Agnos is the Mayor.

J. 1990: Lurie seeks to move the Giants to a new stadium down the peninsula, at a location near Highway 237 and the Great America Parkway. But Santa Clara voters reject the proposal. This is the third defeat at the polls for a new Giants stadium.

K. 1992: Lurie turns to planning to build a new ballpark in San Jose. The fourth ballot measure to build a new stadium fails. San Jose voters reject a proposal to raise the utility tax to finance a new ballpark at the northern edge of the city. Lurie then tries to sell the team to a group that would move the Giants to St. Petersburg, Florida. Frank Jordan is the Mayor.

L. 1993: In cooperation with Mayor Jordan, a group of local investors lead by Safeway chairperson Peter Magowan proposes to buy the Giants. To induce the local buyers to make their offer, San Francisco acts quickly to agree to indemnify the buyers against lawsuits by the Florida investors for interference with contract. The Florida group sues the local buyers and the City. As a result of legal work by City Attorney Louise Renne and various San Francisco law firms that represented

the City on a pro bono basis, the Florida lawsuit fails, and the local investors succeed in buying the team. The City Attorney also successfully defends a taxpayer suit challenging the City's indemnification of the local buyers. The court rejects the plaintiffs' arguments that the indemnity amounted to a gift of public funds and that the City should have approved the indemnity by ordinance rather than resolution. Under the City's Charter ordinances are reserved for legislative acts that unlike resolutions are subject to referendum and that require more time than resolutions to become effective.

M. 1996: On March 26, San Francisco voters approve – by a 66%-34% margin – Proposition B, which changes City laws to allow the Giants to construct privately a new baseball park with up to 45,000 seats on the waterfront at China Basin. Specifically, the measure amends the City's zoning ordinances to increase allowable building heights from 40 feet to 150 feet, eliminate on-site parking requirements for the ballpark, and create a special use district allowing the ballpark and associated pavilion building. This election ends a long history – including four failed ballot measures and several attempts to move the team out of town – of the quest for a secure new home for the Giants in San Francisco.

N. 1997: The governmental approvals needed to begin building the ballpark are granted. During June through August (a little over one year after the election), the City and the San Francisco Redevelopment Agency approve the various land use entitlements and real estate and financing agreements required for the project to proceed. In August, the State Lands Commission determines that the lease of Port land for the ballpark and related uses is consistent with the public trust, which governs use of the site since it is filled tidelands. And, in September, the San Francisco Bay Conservation and Development Commission ("BCDC") grants a required permit to improve the pier and build the ballpark, so long as the Giants agree to build a shoreline park across McCovey Cove. Earlier in the year – in February – the California Transportation Commission approves the terms for the sale to the City of a Caltrans-owned portion of the site, which included the site of home plate. The real estate and financing transactions close on November 26 and construction begins on December 11. Willie Brown is the Mayor.

O. 2000: The first game in the new ballpark (an exhibition game) is played on March 31, and the ballpark officially opens on April 11 for the first home baseball game of the season. The Giants' new ballpark comes 40 years after the team played its first game in San Francisco. All home games during the first season are sold out. Over 3.1 million people visit the ballpark in its first year.

II. Advantages of the China Basin Site: location, location, location – and timing

A. The site: Approximately 12.5 acres in land area, bounded generally by King Street, Second Street, the China Basin Channel and Third Street (including Piers

46B and C, Seawall Lot 336). Located about a mile south of the Ferry Building along the Embarcadero Roadway, and downtown San Francisco. Small site for a ballpark. Constrained by water on two sides. Little room for on-site parking.

B. Other sites considered and dismissed:

1. Mission Bay.

2. Rincon Hill (proposed basketball arena).

3. Seventh and Townsend (Caltrain depot).

C. Advantages of China Basin site.

1. Unique urban waterfront location.

2. All publicly owned land – City owned about ¾ of the site and State owned the remainder subject to a statutory right of the City to purchase the State's land.

3. Underutilized buildings, surface parking lots, and no historic structures.

4. Some initial hazardous materials concerns due to prior uses but no major known or suspected problems.

5. Tremendous investment by the City in public infrastructure.

a. Mid-Embarcadero roadway project (over $125 million) – result of opportunity created by the demolition of the Embarcadero Freeway following the 1989 Loma Prieta earthquake, to reunite public with the waterfront.

(1) PortWalk/pedestrian promenade down the Embarcadero (renamed "Herb Cain Way").

(2) Extension of MUNI along the waterfront to King Street

b. Next to South Beach Park and Marina, redevelopment project.

c. Across the street from then proposed Mission Bay North redevelopment area and close to proposed Mission Bay South redevelopment area (new housing, retail and commercial uses, public parks and infrastructure, etc.) (those redevelopment project areas were approved by the City in November 1998).

6. Within walking distance of downtown (about 15 minutes).

7. Access to public transit, including adjacent MUNI metro stop, nearby CalTrain and BART stations, and ability to build a new ferry terminal at the ballpark.

8. Favorable wind and sun conditions.

III. Ballpark Facts and Figures[2]

A. Opened with 40,800 seats (now up to 41,503 seats), including 15,000 charter seats and 67 luxury suites.

B. Opened as "Pacific Bell Park." Since renamed twice. In April 2006 renamed "AT&T Park."

C. First game played was a pre-season game on March 31, 2000.

D. 1,077,000 square feet of development.

E. Urban ballpark with old-time feel, and the amenities of a modern ballpark (including premium seating and all seats in the park facing the baseball diamond to ensure good sight lines, retail shops, wider concourses, high technology ticketing, and expanded concessions). Has a brick façade fronting on Third and King Streets. The design is inspired by Wrigley Field and Fenway Park and modeled after Oriole Park at Camden Yards, Jacobs Field in Cleveland, and Coors Field in Denver. Designed by Joe Spear of HOK Sport, which is a subsidiary of Kajima Urban Development. Icon project on the waterfront.

F. $319 million to construct. Constructed using private financing. In addition, the City, through the San Francisco Redevelopment Agency, provided $15 million in property tax increment financing from a portion of the new property taxes generated by the ballpark, to finance a variety of public infrastructure improvements.

1. First privately financed sports facility since Joe Robbie Football Stadium in Miami in 1987, and first privately financed baseball park since Dodger Stadium in 1962, which was built on redevelopment land that the City provided essentially for free.

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[2] A source for much of this information about the ballpark is materials prepared by Jack Bair, Vice President and General Counsel of the San Francisco Giants, and former Deputy City Attorney in San Francisco; additional sources are information on the Giants' website at http://sanfrancisco.giants.mlb.com and articles from the *San Francisco Chronicle* and *San Francisco Business Times*.

G. 16 months from voter approval on March 26, 1996 to final City approval on July 28, 1997 of the ground lease and related transaction agreements and land use entitlements; 20½ months from voter approval to ground breaking.

H. 28 months to construct, from December 11, 1997 to opening day on April 11, 2000. Built by more than 2,000 construction workers.

I. Pile-supported construction, using 2,103 piles (34 miles of piles).

J. Includes enough concrete to build a sidewalk from AT&T Ballpark to Dodger Stadium.

K. Also constructed with 653,284 bricks, 4,066 tons of structural steel, 10,199 tons of rebar, eight miles of railing and 17 miles of caulking sealant.

L. Kajima provided a turnkey design and completion guaranty to the Giants. Kajima developed the project under a guaranteed maximum price contract. Huber, Hunt & Nichols (HHN) served as the contractor.

M. Field measurements: left foul line is 335 feet; right foul line is 307 feet, center field is 404 feet; left-center field alley is 364 feet and right-center field alley is 420 feet; unique, irregular outfield wall configuration with 8-foot high wall forms left field to center, up to 11-foot high wall at left-center, and 25-foot high wall in right field.

N. 5,000 parking spaces on lots leased from the City and Catellus, south of the ballpark along Third Street.

O. Pavilion Building, including restaurant, specialty retail, communications center and the Giants' offices.

P. Children's playground built by Coca-Cola, including children's mini playing field, giant three-finger mitt, and 80-foot long, and 40-foot high Coke Bottle slide, located above the left-field bleachers. (Approved by the City in October 1998.)

Q. Water orientation: "Splash Landing" in McCovey Cove, where home runs can fall into the Bay, public promenade along the waterfront with belvederes (cantilevered outlooks) and also a free viewing gallery of ballgames (the "Knothole Gallery"), ferry landing alongside ballpark, public plazas with views of waterfront, and seat orientation with stunning views of China Basin Channel and the Bay.

R. About 20% of the site is devoted to public access, including public plaza named "Willie Mays Plaza" (which has as a centerpiece a large bronze statue of Willie Mays surrounded by 24 palm trees) and PortWalk along China Basin channel.

S. Project agreements included MBE/WBE subcontracting goals and minority and local hiring requirements.

T. The City, through its Port owns the land, and an entity controlled by the Giants owns the ballpark and leases the land from the City.

U. McCovey Point and China Basin Cove – built on the other side of China Basin from the ballpark, three years after the ballpark opened, as part of improvements to the shoreline. Includes a public park and picnic areas, large bronze statue of Willie McCovey, a Jr. Giants baseball playing field, and walkway with Giants history plaques. Dedicated on May 4, 2003.

V. Beginning in 2004, over 100 wireless internet access points were installed throughout the ballpark, making it one of the few sports venues in the country to have a full-service wireless network.

W. In 2005, the Giants installed a bronze statute of Juan Marichal at the Lefty O'Doul entrance.

IV. Real Estate Transaction and Related Agreements with City Agencies

A. Parties: The transaction involves agreements among the City, through its Port Commission, owner of the site; San Francisco Baseball Associates L.P., owner of the Giants franchise (the "Team Owner"); the China Basin Ballpark Company LLC ("CBBC"), an entity established by the Giants to develop, own and operate the ballpark; and the Redevelopment Agency of the City and County of San Francisco.

1. The main individual owners of CBBC and the team are Peter Magowan, chairperson of Safeway; Harmon Burns, chief counsel of Franklin Funds; Allan Byer, owner of a garment manufacturing and real estate company; Charles Johnson, chairperson and CEO of Franklin Funds; and William Neukom, general counsel of Microsoft. There are 18 other individual owners.

B. Transaction documents: The five principal transaction documents are: (1) a Lease Disposition and Development Agreement ("DDA"); (2) a Ground Lease; (3) a Non-Relocation Agreement and related Guaranty; (4) a Purchase and Sale Agreement for the Caltrans-owned parcel located within the ballpark site; and (5) an Owner Participation Agreement ("OPA").

1. <u>The Leasehold Disposition and Development Agreement (DDA)</u>: The DDA is an agreement between the City, through its Port Commission, and CBBC. The DDA provides the road map for the transaction. The DDA

has two main parts: (1) an agreement to lease and (2) an agreement to build the improvements. As to its first main part, the DDA sets forth the terms and conditions for the parties to later enter into the Ground Lease. The form of the Ground Lease is attached to the DDA. Among the conditions that must be satisfied before the Ground Lease transaction closes under the DDA are that CBBC provide evidence to the City that it have adequate financing to build the ballpark, that CBBC obtain all required regulatory approvals for development of the project and that the City complete actions necessary to assemble and deliver the site, including completing the street vacations, acquiring the Caltrans parcel, obtaining possession from existing tenants, and relocating the Port maintenance facility. When the conditions to closing are satisfied, the Port and CBBC are obligated to enter into the Ground Lease, and the Port is obligated to deliver possession of the site to allow CBBC to begin construction. As to its second main part, the DDA governs CBBC's obligation to construct the ballpark and related improvements from delivery of the site through completion of construction. The DDA requires that CBBC build the ballpark according to a scope of development and schedule of performance. Under the DDA, CBBC agrees to a program for hiring minority and women-owned subcontractors in the construction of the ballpark and related improvements, and also agrees to prevailing wage provisions. A list of mitigation measures that are required under the EIR and other improvement measures related to the construction of the ballpark are attached to the DDA. To the extent those measures are identified as the responsibility of the developer, they constitute contractual obligations of CBBC under the DDA.

2. The Ground Lease: The Ground Lease between the City, through its Port Commission, and CBBC is the principal document governing the use and occupancy of the site. Under the Ground Lease, the City leases the land comprising the China Basin site, and CBBC builds, owns and operates the ballpark and related improvements during the lease term. The initial lease term is 25 years; the maximum term is 66 years with options to renew. Consistent with Proposition B and the mandates of the Tidelands Trust, the Ground Lease sets the fair market rent, which CBBC is required to pay the City for use of the property (a fixed sum, initially $1.2 million per year and adjusted upwards by certain increases in the consumers price index). The Ground Lease also defines the leased premises, establishes the term and delineates the permitted uses and limitations on uses. Limitations on uses include restrictions required under the Tidelands Trust, the product of negotiations with the State Lands Commission. The Ground Lease specifically provides for the payment of possessory interest taxes (which are necessary to support issuance of the tax allocation bonds) and obligates CBBC to assume sole responsibility for the condition, maintenance, repair and operation of the project. The Ground Lease contains provisions

requiring the approval of the Port for major alterations to the ballpark and imposing a number of requirements on how those improvements may be made. The Ground Lease permits CBBC to mortgage its leasehold interest (but not the City's ownership interest) as needed to obtain financing for development of the ballpark. Under the Ground Lease, CBBC agrees to a program to afford opportunities to minority and women-owned businesses and San Francisco residents, including the development of a welfare-to-work and youth employment training program, in the operation of the project. A list of mitigation measures that are required under the EIR and other improvement measures related to the operation of the ballpark are attached to the Ground Lease. To the extent those measures are identified as the responsibility of the tenant, they constitute contractual obligations of CBBC under the Ground Lease.

3. The Non-Relocation Agreement and Guaranty: As an essential inducement for the City to lease the site to CBBC and for the City to approve the overall ballpark transaction, including the issuance of the property tax allocation bonds to finance certain infrastructure to support the ballpark, the Team Owner entered into two main agreements for the benefit of the City: a Non-Relocation Agreement and a Guaranty. Execution and delivery of the Non-Relocation Agreement, Guaranty and related documents are a condition to the City's obligation to close on the Ground Lease.

   a. Under the Non-Relocation Agreement, the Team Owner agrees to cause the Giants to play its home baseball games at the ballpark from completion of the Ballpark through December 2022, which is the end of the initial term of the Ground Lease (23 baseball seasons). The Team Owner's agreement not to relocate is subject to a baseball lease and use agreement between CBBC and the Team Owner (the "Baseball Sublease") for the playing of San Francisco Giants baseball games in the new ballpark, once construction by CBBC is complete. Under the DDA, the Baseball Sublease must be approved by the Port and in place before the Ground Lease closes. The Team Owner's agreement not to relocate is also subject to an Intercreditor Agreement between the City and the lenders to the Team Owner. The Intercreditor Agreement allows the City an opportunity to find a local buyer for the team before the lenders can compel a sale of the Giants baseball franchise to an outside buyer, if there is a default under the loan. Also related to the Non-Relocation Agreement is a Nondisturbance and Attornment Agreement, which governs in the event of a default by CBBC under the Baseball Sublease. Under the Nondisturbance Agreement, if the Ground Lease is terminated due to CBBC's default, the City agrees not to disturb the Team Owner's

occupancy of the ballpark and to be bound by the terms of the Baseball Sublease so long as the Team Owner performs all of its obligations directly to the City.

b. Under the Guaranty, the Team Owner agrees to guarantee certain obligations of CBBC to the City and the Redevelopment Agency if the Team Owner defaults under the Non-Relocation Agreement. The guaranteed obligations include CBBC's obligation to pay rent to the Port and demolish the improvements under the Ground Lease and its obligation to pay debt service on the tax allocation bonds to the Redevelopment Agency under the OPA.

4. The Caltrans Parcel Purchase and Sale Agreement: Special State legislation (Section 2.6 of Chapter 1333 of the Statutes of 1968, known as the Burton Act), gave the Port the right to negotiate directly with the State for the purchase of the Caltrans-owned parcel bounded by King, Berry, Second and Third Streets. The State legislation required that the property be held by the City's Port Commission subject to the Burton Act, upon acquisition of the property. The Caltrans parcel – about 3.6 acres – comprised about 28% of the total ballpark site. (The State had acquired this site in 1969 for a southern bridge crossing but later abandoned that project.) The City entered into an agreement to acquire the parcel for $3.6 million. The City and CBBC agree to indemnify the State for any pre-existing soil contamination associated with the site. As a condition to the closing of the Ground Lease under the DDA, the City, through its Port, had to acquire the Caltrans Parcel and terminate the tenancies.

5. The Owner Participation Agreement (OPA): The Rincon Point-South Beach Redevelopment Plan was amended to add the ballpark site to the project area to accommodate development of the ballpark and related improvements. In furtherance of the redevelopment plan amendment, the San Francisco Redevelopment Agency entered into an OPA with CBBC. The OPA sets forth the terms and conditions for the use of property tax increment financing. The property tax increment financing must be in place before the closing of the Ground Lease in order for CBBC to obtain its private loan to finance construction of the ballpark. The OPA specifies the permitted uses of the property tax increment, including construction of the Waterfront Promenade along the China Basin Channel and other public infrastructure improvements. Under the OPA, the Redevelopment Agency committed to use its best efforts, subject to Board of Supervisors approval, to issue property tax allocation bonds in a principal amount sufficient to produce net proceeds not to exceed $15 million, based on the estimated portion of property tax increment revenues from the ballpark that will be available to pay debt service on the bonds. The issuance of the bonds is a condition to the closing of the Ground Lease under the DDA. No property

tax increment proceeds may be made available to CBBC in amounts exceeding the capacity of the "possessory interest taxes" (property taxes paid by private entities for using publicly owned land) generated by the ballpark development itself to pay debt service on the bonds. No tax increment may be drawn from other project areas. In addition, under the OPA, CBBC agrees to pay any shortfall in tax increment revenues from the site needed to pay debt service on the bonds, including shortfalls due to any reassessment of the ballpark improvements. Failure by CBBC to pay any such shortfalls constitutes a default under the Ground Lease, and could result in forfeiture of the Ground Lease unless CBBC or the lenders for the ballpark cure the default. In addition to the property tax allocation bonds, the OPA addresses the responsibilities of the Agency and CBBC for the area where the ballpark and South Beach Park meet.

V. Site Assembly

A. Acquisition of Caltrans parcel (3.5 acres).

1. Purchase price.

a. Legislation giving the City, through its Port, the right of first negotiation to purchase the property from Caltrans.

b. Negotiations over price.

2. Relocation of tenants from Port building and Caltrans buildings.

a. Special CEQA legislation: In April of 1997, the State legislature adopted SB 181, which amended the California Environmental Quality Act (CEQA) to allow the City to relocate uses and occupancies from the ballpark site if the relocation of those uses and occupancies, considered independently from the ballpark project, would be exempt from CEQA. The legislation also did not affect the requirement that an EIR be prepared for the ballpark project or modify the standards applicable to the EIR. The legislation only allowed the City to proceed with the relocation of tenants and the Port maintenance facility before completion of the EIR for the ballpark.

b. Relocation assistance to tenants.

c. Indemnification of Caltrans for early termination of leases with its tenants and subtenants/letters of credit.

d. Relocation of Port maintenance facility to Pier 48.

(1) Port bank loan.

B. Street vacations – portion of Berry Street and Second Street run through middle of the site.

C. Parking leases south of Channel.

1. Mission Rock homeless shelter relocation located in middle of main parking lot; a difficult land use to relocate.

2. Negotiations among Catellus, City and CBBC.

VI. Financing

A. First privately financed Major League ballpark in 30 years.

B. Construction loan: $170 million from a private placement of senior secured notes with a syndicate of lenders (mostly insurance companies), lead by Chase Securities.

1. Financing based on contractually obligated income to the Giants, including sales of stadium naming rights ($50 million over 24 years to Pacific Bell), charter seat license rights (about $40 million) and corporate sponsorships, including in part advertising and pouring rights for beverages.

2. Coca Cola pays CBBC $25 million over 12 years for the Coca Cola playground, including the giant Coke Bottle.

C. Property tax increment financing of $15 million for public infrastructure.

1. Traditional tool of redevelopment.

2. Possessory interest taxes on ground lease and improvements.

3. Structured as escrow bonds to help ensure lenders that proceeds would be available. (Bonds issued and sold up front, with proceeds held in escrow and released as incremental assessed value is built up as a result of construction.)

4. Obligation of CBBC and Team Owner to pay shortfalls due to risk of possible future downward reassessment of the ballpark improvements.

VII. Entitlement Process

A. Context: Midst of a major planning process, including process for Port Waterfront Land Use Plan, which is finally adopted by the Port in 1997, and for amendments to the Bay Conservation and Development Commission (BCDC) San Francisco Special Area Plan, which are adopted by BCDC in 2000.

1. Waterfront Land Use Plan: The Waterfront Plan defines acceptable uses, policies and land use information applicable to all seven miles of waterfront real property under the Port's jurisdiction. Developed through a 5-year public planning process, the Waterfront Plan has enabled the Port, the City and the community to jointly define locations for new mixed-use public-private partnership projects, coordinated with major public open space, maritime, and historic preservation improvements along the waterfront. It envisioned the new ballpark as an acceptable land use option for the China Basin mixed-use opportunity area.

2. BCDC Special Area Plan Agreement: This landmark agreement represented a break through in dealing with the State statutory requirements for public access to waterfront and limits on improvements to piers, on an overall plan basis, rather than a project-by-project basis.

3. Port projects must comply not only with the Waterfront Land Use Plan, but also adopted plans of the City's Planning Commission and BCDC, and undergo public trust review by the State Lands Commission in coordination with the State Attorney General's Office.

B. EIR/ CEQA review: Long lead time – analysis of physical impacts on the environment, principally transportation and visual impacts.

C. Amendment to the Rincon Point-South Beach Redevelopment Plan to include the project site.

1. Statutory physical and economic blight findings.

2. Elaborate procedural steps for adoption of a new redevelopment plan.

3. Capture of property tax increment.

D. City approvals, including conforming General Plan amendments, design approvals (Port and Redevelopment Agency), street vacation and approval of real estate transaction and related agreements.

E. State approvals.

1. BCDC (design, maximum feasible public access)

2. State Lands Commission (endorsement of Ground Lease as consistent with public trust)

3. California Transportation Commission (sale of Caltrans parcel).

F. Other approvals: U.S. Army Corps.

VIII. Challenges

A. Site assembly.

1. Purchase of Caltrans parcel and relocation of Caltrans commercial tenants.

2. Relocation of Port maintenance facility and Port commercial tenants.

3. Addressing possible hazardous materials (fill, former coal gasification plant, industrial uses).

a. Permit to enter to test – allocation of risks/responsibilities.

b. Clean up – capping vs. hauling dirt off site; storm water issues.

c. Dirty dirt – disposal of lead-contaminated dirt removed from the ballpark at Altamont landfill (ended up shipping dirt to Utah at extra cost of $1 million)

4. Securing rights to surface parking south of the Channel.

B. Regulatory hurdles.

1. Multiple, overlapping jurisdictions (Port, Redevelopment Agency, Planning, BCDC, State Lands, Regional Water Quality Control Board, etc.).

2. Numerous public hearings.

3. BCDC.

a. Bay fill for improvements to PortWalk.

b. 100-foot shoreline band jurisdiction.

c. On site and off site conditions.

d. End of process.

4. State Lands and Attorney General/Public Trust issues – ballpark and ancillary uses.

5. Hazardous materials/Regional Water Quality Control Board.

a. Environmental site investigation and risk evaluation and Soil Management Plan – installation of soil cap (concrete foundation below clean, imported fill).

b. Recorded covenant and environmental restrictions (including no residential uses or wells).

c. Parking lot leases.

C. Infrastructure – transportation infrastructure, streets and sidewalks, parking, plazas and promenades, new Ferry Landing.

D. Real estate transaction – agreement on ground rent, CPI adjustments, fair market value resets.

E. Non-relocation agreement from Giants team.

F. Assurances of performance by limited liability ballpark company/doubts about feasibility of private financing.

1. Construction guaranty/guaranteed maximum price contract.

2. Financial wherewithal/capitalization.

3. Private lenders.

G. Skepticism by third parties about financial viability of plan for a privately financed ballpark.

H. Mortgagee protection provisions/lender rights and remedies.

I. Potential impacts on neighborhoods, including traffic, parking, noise, light, non-baseball events, etc.

J. Possible impacts on South Beach Marina.

K. Seismic retrofit and historic rehabilitation of Lefty O'Doul Bridge (designed by Joseph Strauss, same architect who designed the Golden Gate Bridge) – move bridge vs. fix in place. Closes in July 1999 for estimated 4-month project.

L. Disabled access - seating.

M. Card check neutrality for restaurants – union issues.

N. Timing – lots of moving pieces and small margin of error for April 2000 opening (practical and financial impediments to opening after beginning of the season).

O. Lawsuits – threat to schedule.

1. In October 1997, settlement reached with San Francisco Baykeeper (a non-profit waterkeeper organization) over threatened lawsuit challenging environmental approvals based on concerns about bay pollution. Ballpark plan called for capping dirt on site. Baykeeper wanted CBBC to dig and haul the dirt and also was concerned about storm water runoff from the parking lots south of the Channel. CBBC agreed to dig and haul some dirt from a specific location near home plate and Port agreed to provide for public hearings to allow input on environmental issues in designing the parking lots.

IX. Why The Ballpark Is A Success As An Urban Waterfront Revitalization Project

A. Started with voter approval.

1. Key decisions: privately finance ballpark construction (and pay market value for the lease of the land) and locate the ballpark on the water.

2. Mandate by the voters.

3. Effect in the future of *Sierra Madre* decision by the California Supreme Court; requirement to undertake CEQA review before City may submit project measure to the voters.

B. Built widespread community consensus through careful and lengthy process for public input.

1. Outreach by Giants.

2. Citizens advisory committee established by the City.

3. Neighborhood improvement measures, beyond mitigation measures required through CEQA process.

C. **Fit in a comprehensive land use plan, took advantage of substantial public infrastructure investment and was the product of good design** – right project, right place, right time.

1. Served as an anchor in the then recently adopted Waterfront Land Use Plan – catalyst for a broader waterfront revitalization plan, reuniting the City and its waterfront. The Waterfront Plan was the result of a 7-year public planning process by the City for the land under the jurisdiction of its Port. The ballpark project was an icon project that was oriented to take advantage of its proximity to the water and brought people to the waterfront to enjoy the Bay, waterfront parks, Embarcadero promenade, and waterfront restaurants, cafes and recreation areas: over 3.1 million people per year. The ballpark opened up to the public an area that was long in derelict condition and fenced off, and was a means to revitalize the waterfront south of the Ferry Building.

2. Leveraged Broader Economic Development Plan. Studies show that sports recreation projects are a net fiscal benefit to the local community only when they are a part of a comprehensive economic development plan for a larger blighted or underutilized area.

3. Capitalized on substantial public investment in infrastructure – especially the Embarcadero Roadway project (following the 1989 Loma Prieta earthquake and the subsequent decision to demolish the elevated freeway structure that had separated the City from its waterfront).

4. Helped provide connections between Ferry Building and Mission Bay.

5. Shows the importance of good design on a tight site, taking advantage of the water and its urban surroundings.

D. **Structured as a financially self sufficient project** – the only public financial assistance for development is the allocation of a portion of the property tax increment generated by the project itself, for the construction of public infrastructure such as public plazas and walkways; the majority of the project was privately financed.

E. **Benefited from leadership and expertise on both public and private sides.** Project led on the public side by the Mayor's Office, which coordinated a number of agencies and was aided significantly by a dedicated team of senior project managers from the Port, Redevelopment Agency and City lawyers. Private side relied on a first-rate team of project design, construction and project management

consultants, lawyers, and staff, who had experience in and understood public sector interests and local concerns.

F. **Adhered to a fast-track but realistic schedule from the start** – the ballpark had to open by April 2000.

1. Importance of charting out a critical path schedule of approvals at the outset of the project.

2. Identified critical timing issues early on and stayed focused on addressing them.

G. **Amended State law when necessary to meet critical project goals** – e.g., narrow CEQA legislation to meet required 2000 opening.

H. **Reached agreement on a non-binding term sheet at a critical juncture, giving project momentum and basic shape to a complex transaction.**

1. Main terms (December 1996): $1.2 million in rent per year, adjusted by periodic capped increases in CPI, initial 25-year term with successive 5-year options to renew up to 66 years; Giants responsible for toxics cleanup; Giants agree to non-relocation agreement through initial term of lease; City to relocate its maintenance facility (about $7.1 million) and acquire Caltrans land ($4.1 million); and City will provide tax increment from the development of the ballpark up to $15 million for public infrastructure improvements.

2. Early public review and input.

3. Comfort for prospective private lenders for ballpark construction.

I. **Designed to encourage the use of public transit including MUNI extension, BART, Caltrain and Ferry landing; well-functioning transportation management program.** Downtown location, proximity to well-functioning transit services, and site constraints that limit parking Importance of public outreach and education to use transit, walk and ride bicycles. Management plans for automobile parking and pedestrian access.

J. **Project approval was the result of leadership, persistence, focus, flexibility, vision, trust, good communication, and a shared commitment to solve problems by staying attuned to underlying interests and significant risks, on the part of both public and private sector partners.**

Attachments:

#1 Map of Ballpark Project Location and South of Channel Parking Areas
#2 Photo of Site Before Development of the Ballpark
#3 Map of Site Configuration Before Development of the Ballpark
#4 Site Plan for the Ballpark (compare to Attachment #3)
#5 HOK Rendering of the Ballpark From Corner of King and Third Streets

About the Author:

Jesse C. Smith has been a real estate attorney for over 20 years and was named in 2005 as one of Northern California's "Super Lawyers." He serves as the Chief Assistant City Attorney for San Francisco, where he oversees all the office's advice divisions. He has acted as the City's lead lawyer on numerous major public-private partnership development projects, including the Giants ballpark at China Basin, the proposed 49ers stadium mixed-use project at Candlestick Point, the redevelopment of Mission Bay, and the revitalization of the former Emporium buildings in the mid-Market area with the new Westfield SF Centre project.

Before joining the City Attorney's Office in 1992, Smith did legal work for a year in the San Francisco office of The Nature Conservancy (TNC), a non-profit land conservation organization, where he advised on transactions across TNC's western region. He also co-wrote on behalf of TNC an extensive handbook on land conservation tools, for the State of Alaska trustees of the Exxon Valdez oil spill. Before TNC, Smith was an associate for four years in the San Francisco office of Morrison & Forester, where he had experience in a wide range of sophisticated real estate transactions.

Smith is the President of the Golden Gate Chapter of Lambda Alpha International (LAI), an honorary real estate economics and land use professional organization, and a member of the Executive Committee of the San Francisco District of the Urban Land Institute (ULI), a non-profit research and education organization devoted to responsible leadership in the use of land to enhance the total environment. In the community, Smith serves as a board member of the Metropolitan Jewish Community Relations Council, the central public affairs arm of the organized Jewish community in the San Francisco Bay Area.

He holds a Bachelor of Arts in Economics and Political Science from Stanford University and a J.D. from Stanford Law School.

Smith is a frequent speaker and writer on legal issues relating to public-private development partnerships. He wrote a feature article in *Urban Land* magazine entitled "Revitalizing Urban Property" (July 2005), which includes a discussion of a dozen tips for success in negotiating a joint development.

Acknowledgments:

Like all complex projects, the ballpark project was a team effort. Smith wishes to give special acknowledgment to the following colleagues and other individuals, who among others (including elected officials and appointed policymakers) played instrumental roles on behalf of the City and its Redevelopment Agency in the project's success:

The City Attorney legal team, including Deputy City Attorneys Julie Van Nostern (then Port General Counsel), Neil Sekhri, Noreen Ambrose, John Rakow, Judy Boyajian, Kate Stacy, Elaine

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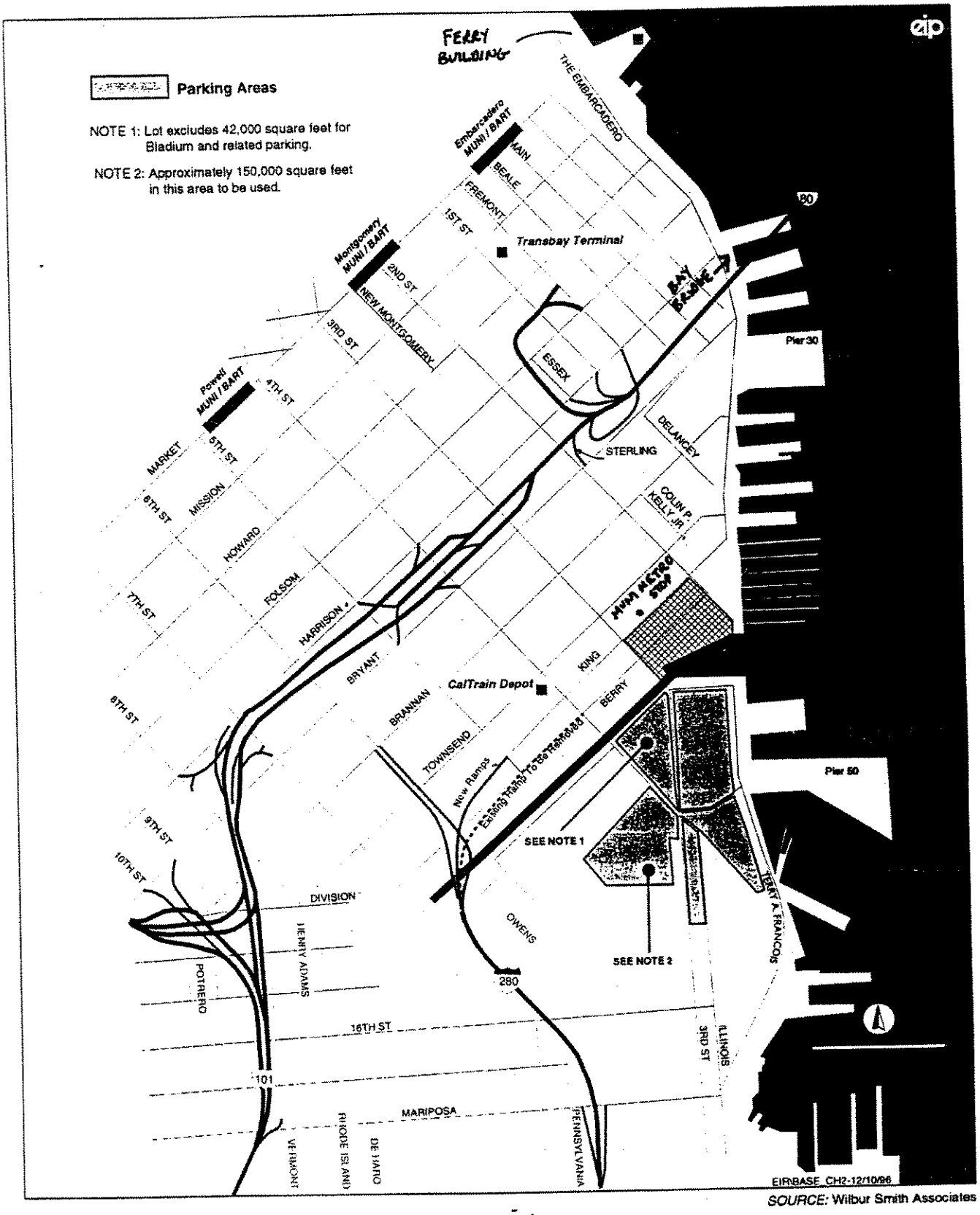


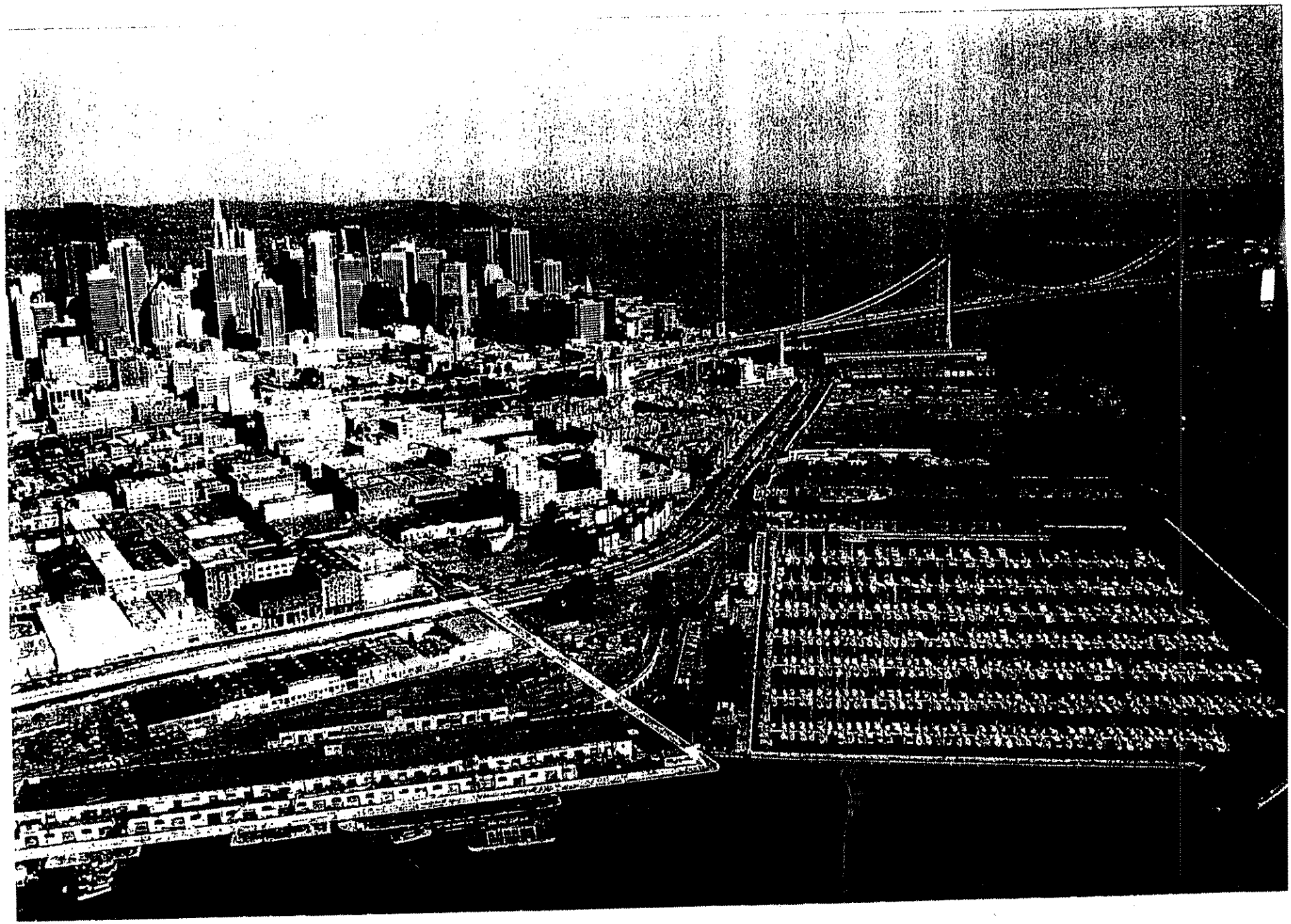
SOURCE: Wilbur Smith Associates

PROJECT LOCATION

GIANTS BALLPARK

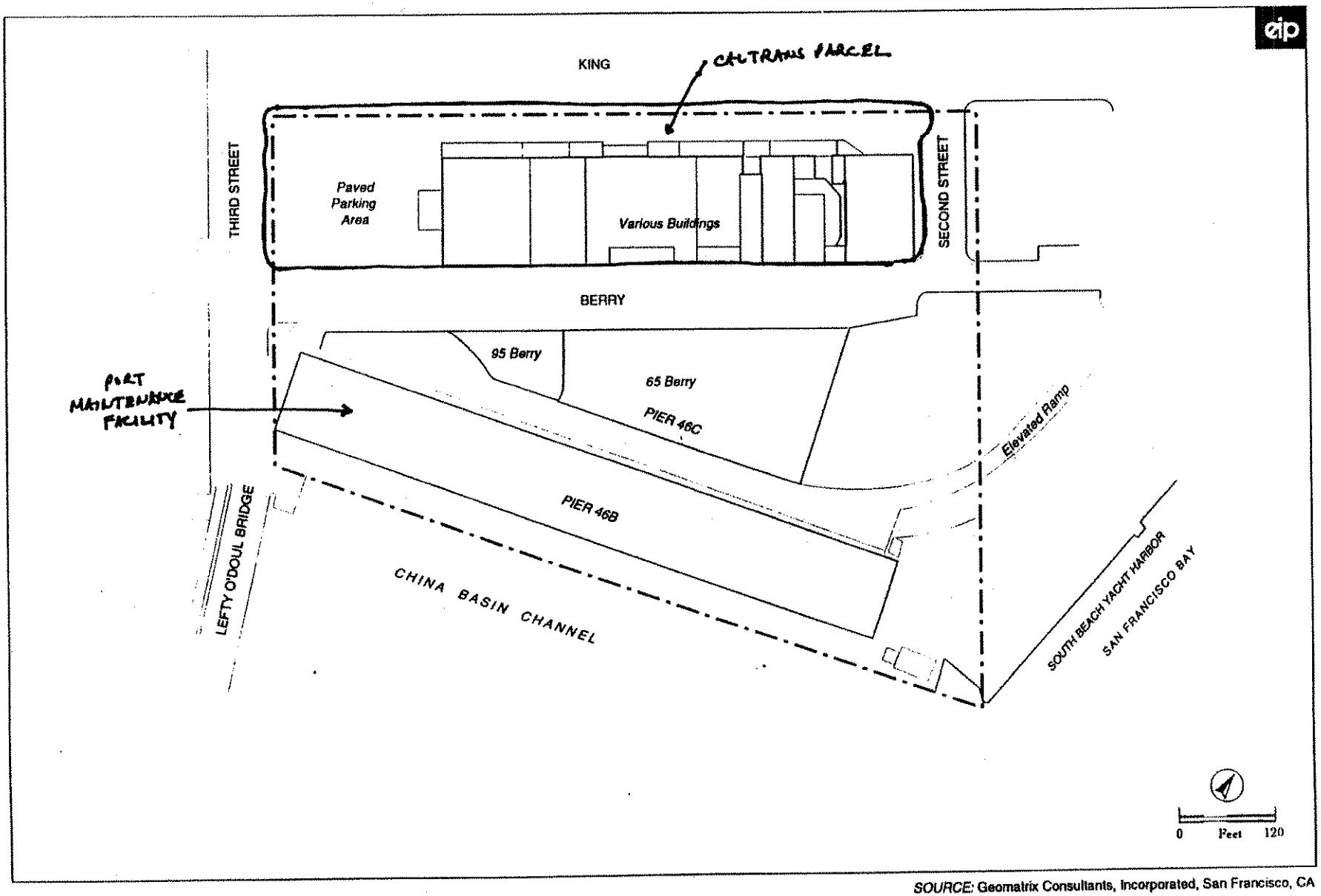
#1

Figure II.D.5 Proposed South of Channel Parking Areas



DEVELOPMENT: EXISTING SITE / PRE-BUILDING CONSTRUCTION

#2

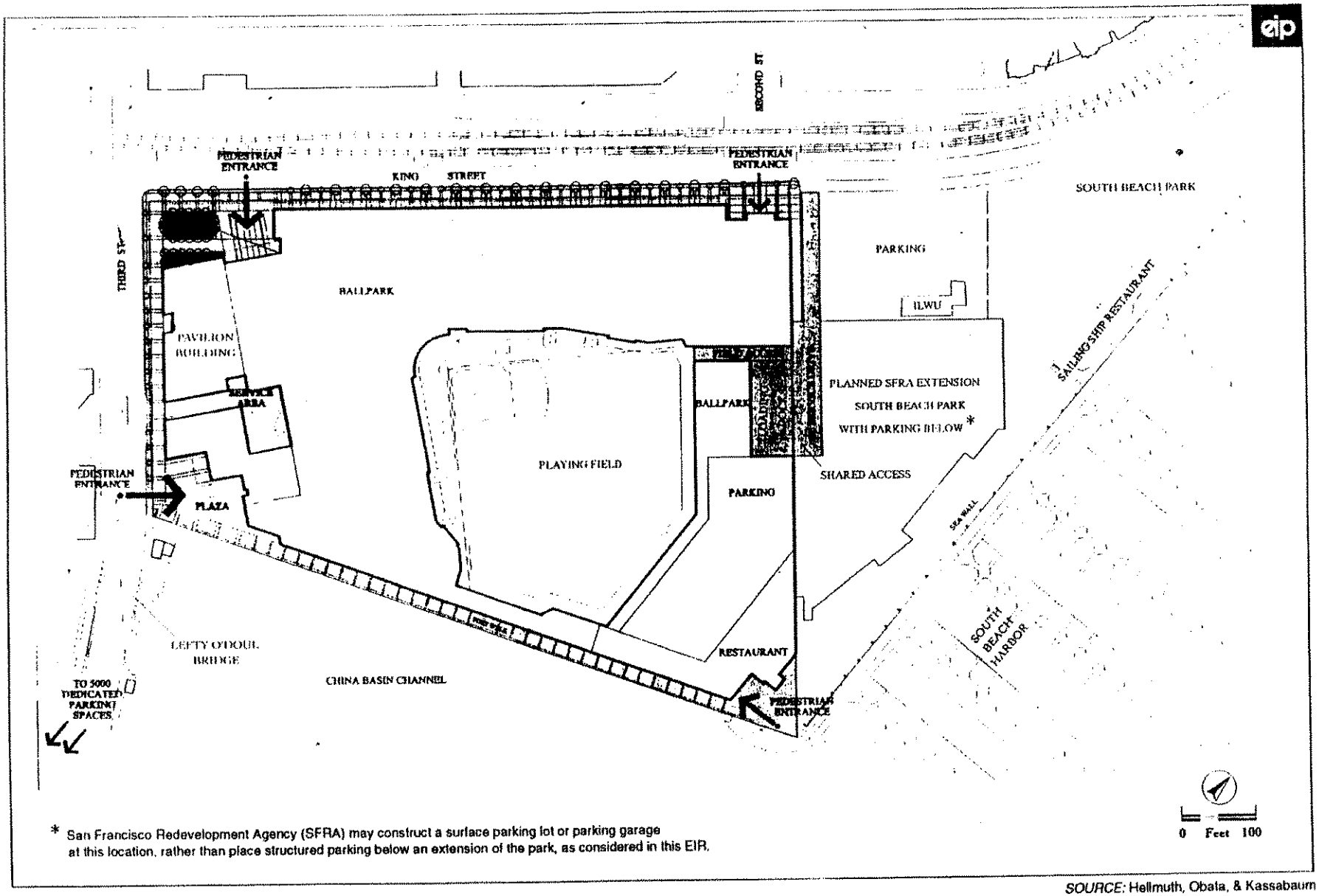


SOURCE: Geomatrix Consultants, Incorporated, San Francisco, CA

GIANTS BALLPARK

Figure II.C.2 Existing Site

*3



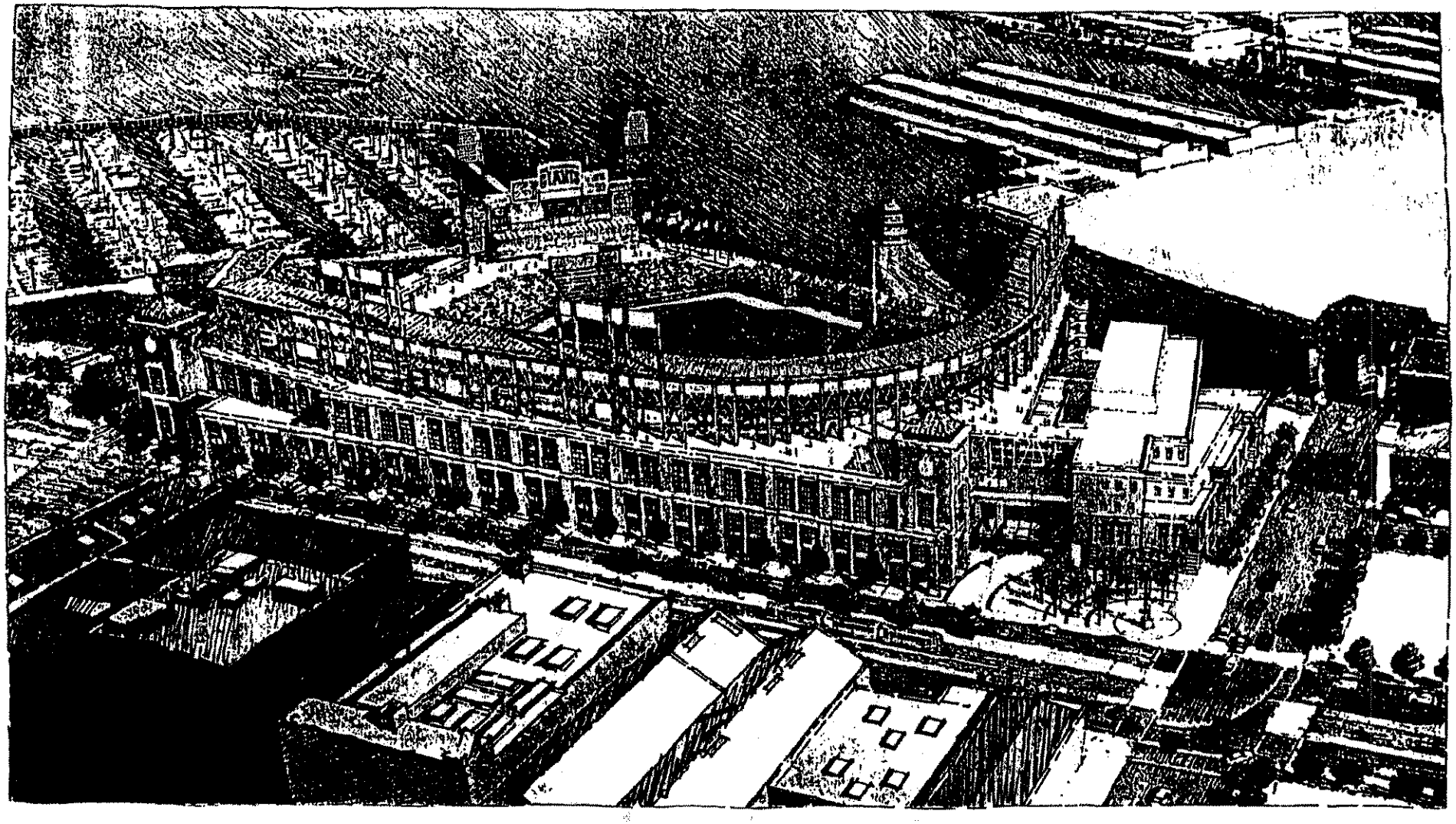
* San Francisco Redevelopment Agency (SFRA) may construct a surface parking lot or parking garage at this location, rather than place structured parking below an extension of the park, as considered in this EIR.

SOURCE: Hellmuth, Obata, & Kassabaum

GIANTS BALLPARK

● Figure II.D.2 Site Plan for Proposed Project and Adjacent Area

#4



San Francisco Giants
Pacific Bell Park
HOK Sport

#5