File No. 120615

Committee Item No. 2
Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS

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Board of Supervisors Meeting **Date** _____

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Completed by: Linda Wong **Date** 6/11/12
Completed by: _____ **Date** _____

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

[Settlement of Lawsuit – Waterfront Watch - $225,000]

Ordinance authorizing settlement of the lawsuit filed by Waterfront Watch against the City and County of San Francisco for $225,000; the lawsuit was filed on February 23, 2012, in San Francisco Superior Court, Case No. CPF-12-511968; entitled Waterfront Watch, et al., v. City and County of San Francisco, et al.; other material terms of said settlement are establishing a process for review of Pier 29 rehabilitation work, Port technical assistance to reduce air emissions at Pier 27, agreement not to place a Jumbotron on the water in Aquatic Park Lagoon.

NOTE: Additions are *single-underline italics Times New Roman*; deletions are ~~*strike-through italics Times New Roman*~~. Board amendment additions are double-underlined; Board amendment deletions are ~~strikethrough normal~~.

Be it ordained by the People of the City and County of San Francisco:

The City Attorney is hereby authorized to settle the action entitled Waterfront Watch, *et al.*, v. City and County of San Francisco, *et al.*, San Francisco Superior Court, Court No. CPF-12-511968 by the payment of $75,000 for attorneys' fees and $150,000 to conduct a bird study, and on such other material terms as set forth in the Settlement Agreement and General Release contained in Board of Supervisors File No. 120615, or such amended terms as do not materially increase the City's obligations or decrease the City's benefits.

Section 2. The above-named action was filed in San Francisco Superior Court on February 23, 2012, and the following parties were named in the lawsuit: Petitioners Waterfront Watch and Does 1 – 10; Respondents City and County of San Francisco, and numerous Real Parties in Interest including America's Cup Event Authority, San Francisco America's Cup Organizing Committee, America's Cup Race Managmeent, potential racing

teams including Golden Gate Yacht Club of San Francisco, Oracle Racing, Inc, Club Nautico di Roma, Mascalzone Latino, Kungliga Svenska Segel Sallskapet, Artemis Racing, Royal New Zealand Yacht Squadron, *et al.*, and the United States Army Corps of Engineers, Winzler & Kelly Constructors & Structus Inc. Joint Venture, Dutra Construction Co. Inc., Kaplan McLaughlin, Diaz Architects & Pfau Long Architecture Joint Venture, and Turner Construction Company.

APPROVED AS TO FORM AND RECOMMENDED:

DENNIS J. HERRERA
City Attorney

KATE H. STACY
Deputy City Attorney

RECOMMENDED:
SAN FRANCISCO PORT COMMISSION

MONIQUE MOYER
EXECUTIVE DIRECTOR

FUNDS AVAILABLE:

BEN ROSENFIELD
Controller

APPROVED:

AMY QUESADA, SECRETARY
PORT COMMISSION

SAN FRANCISCO
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The 34th America's Cup & James R. Herman Cruise Terminal and Northeast Wharf Plaza Projects

DATE:	June 8, 2012
TO:	President David Chiu and Members of the Board of Supervisors
FROM:	Bill Wycko, Environmental Review Officer — (415) 575-9048 Joy Navarrete, Case Planner — (415) 575-9040
RE:	BOS File No. 120615, Planning Department Case No. 2010.0493E, Settlement of Lawsuit - Waterfront Watch
PROJECT SPONSORS:	**34th America's Cup Project**: America's Cup Event Authority and City and County of San Francisco **James R. Herman Cruise Terminal and Northeast Wharf Plaza Project**: Port of San Francisco
HEARING DATE:	June 14, 2012

This Board has reviewed The 34th America's Cup and James R. Herman Cruise Terminal & Northeast Wharf Plaza Final Environmental Impact Report (FEIR) (Planning Department Case No. 2010. 0493E) and approved the 34th America's Cup Project in Resolution No. 109-12, which Resolution included environmental findings required by the California Environmental Quality Act, including findings regarding alternatives to the project, mitigation measures to address the Projects' significant impacts, and a statement of overriding considerations. This Board is now considering approval of a settlement agreement to settle a lawsuit filed by Waterfront Watch, San Francisco Superior Court Case No. CPF-12-511968 (Settlement Agreement) (Board File No. 120615), which Settlement Agreement would, among other things, revise the treatment of the historic Pier 29 shed building.

The proposed Settlement Agreement includes payment of attorney's fees, payment for a bird study, modification of the treatment of the historic Pier 29 shed building, and technical assistance to tenants and users of the northern waterfront to replace older, high emitting, gasoline powered harbor craft engines with newer, cleaner engines or power sources during the installation of shoreside power facilities, installation of shoreside power. None of these proposals require additional environmental review and all would involve actions that do not trigger environmental review under CEQA, would have no effect on the environment, would have a beneficial effect on the environment, or are within the scope of the Projects as analyzed in the FEIR.

Specifically with regard to the modifications of the treatment of the Pier 29 shed, the design of the Pier 29 shed would be revised such that approximately 75 additional feet of the east (outboard) section of the shed would be retained, with an angled northeast corner cut (Settlement Agreement Modifications), compared to Pier 29 shed design proposed for the FEIR project. As described in the FEIR, Pier 29, built in 1915-1918, is a contributing resource to the Embarcadero Historic District despite having experienced

substantial modification with the construction of the Pier 27 Terminal in 1965.Similar to the project as analyzed in the FEIR, the Settlement Agreement Modifications would not remove historically significant elements of the Pier 29 shed. The Settlement Agreement Modifications would retain more of the historic fabric of Pier 29 and the proposed redesign of the north-end walls would be consistent with the *Secretary of the Interior's Standards for the Treatment of Historic Properties* (Secretary's Standards). In addition, all permanent improvements to Pier 29 would be subject to Port Commission Resolution 04-89, which requires review by Port staff for consistency with the Secretary's Standards.

The Planning Department concludes that the analyses conducted and the conclusions reached in the EIR certified on December 15, 2011, and effective January 24, 2012, remain valid, and that no supplemental environmental review is required for the proposed Settlement Agreement Modifications. The Settlement Agreement Modifications would neither cause new significant impacts nor result in the substantial increase in the severity of previously identified significant impacts, and no new mitigation measures would be necessary to reduce significant impacts. No changes have occurred with respect to circumstances surrounding the projects that would cause significant environmental impacts to which the Settlement Agreement Modifications would contribute considerably, and no new information has been put forward which shows that the Settlement Agreement Modifications would cause significant environmental impacts. Consequently, the project change does not require major revision of the EIR, and the project sponsors may implement the Settlement Agreement Modifications without additional CEQA review, consistent with California Public Resources Code Section 21166 and California Code of Regulations (CEQA Guidelines) Section 15164. Therefore, no additional environmental review is required beyond this memorandum.