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2 [Approval of Public Trust Exchange]

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4 **Resolution approving an Exchange Agreement with the State Lands Commission that**
5 **would remove the public trust and Burton Act trust from approximately 22,600 square**
6 **feet of unimproved real property located on Seawall Lot 330 at the corner of Bryant and**
7 **Beale Streets, and would place the public trust and Burton Act trust on an**
8 **approximately 10.34 acre site located between Maryland Street, Cesar Chavez Street,**
9 **and 24th Street, on the eastern portion of the Western Pacific parcel.**

10 WHEREAS, On March 25, 2003, by Resolution No. 03-28, the San Francisco Port
11 Commission approved a Lease Disposition and Development Agreement and Lease with San
12 Francisco Cruise Terminal, LLC ("SFCT") relating to the development of a mixed-use Cruise
13 Terminal project at Pier 30-32 ("Cruise Terminal Mixed Use Project") and development of the
14 Brannan Street Wharf, and approved a Purchase and Sale Agreement (the "Sale Agreement")
15 relating to the sale to SFCT of an approximately 22,600 square foot parcel located at Seawall
16 Lot 330 (the "Condo Site") as shown on Exhibit A to the Memorandum to Port Commissioners,
17 dated June 18, 2003 (the "Port Memo"), a copy of which is on file with the Clerk of the Board
18 of Supervisors in File No. which is hereby declared to be a part of this resolution as if
19 set forth fully herein, for development of a condominium project; and

20 WHEREAS, On July 15, 2003, the Board of Supervisors pursuant to its authority under
21 Section 9.118(c) of the City's Charter adopted Resolution No. 460-03, approving the Lease
22 and Sale Agreement; and

23 WHEREAS, Under the terms of the approved Sale Agreement, the City would sell the
24 Condo Site to SFCT for its appraised fair market value for construction of a condominium
25 tower, and the Port would participate in sales proceeds from individual condominium units, all

1 of which funds would contribute towards SFCT's construction of the Brannan Street Wharf
2 and development of the Cruise Terminal Mixed Use Project on Piers 30-32; and

3 WHEREAS, The Condo Site consists of filled tidelands that the State of California
4 transferred to the Port of San Francisco in 1968 by authorization under the Burton Act (Stats.
5 of 1968, Ch. 1333), and is therefore encumbered with the public trust for commerce,
6 navigation and fisheries as well as the Burton Act trust (collectively, the "Trust"), which
7 prohibits the sale of the Condo Site and development of residential uses thereon; and

8 WHEREAS, As a condition precedent to the sale of the Condo Site to SFCT, the Sale
9 Agreement requires the City, acting through the Port Commission, to remove the Trust from
10 the Condo Site; and

11 WHEREAS, In 1987, the State legislature adopted Chapter 310, Statutes of 1987
12 ("Chapter 310") which, among other matters, authorizes the City, subject to State Lands
13 Commission approval, to exchange City property subject to the Trust with public or private
14 entities for property not subject to the Trust if the City determines that the land to be
15 exchanged out of the Trust (1) has been filled and reclaimed; (2) is cut off from access to the
16 waters of the Bay; (3) represents a relatively small portion of the granted tide and submerged
17 lands; (4) is no longer needed or required for the promotion of the Trust; and (5) can be
18 removed from the Trust without causing any substantial interference with Trust uses and
19 purposes, and further requires that the land to be exchanged into the Trust must have a value
20 equal to or greater than the value of land to be exchanged out of the Trust; and

21 WHEREAS, The Port has identified a piece of real property held by it that is not
22 currently subject to the Trust, which would serve as the receiving parcel for the Trust, which
23 parcel (the "Receiving Parcel") consists of an approximately 10.34 acre portion of the property
24 commonly referred to as the Western Pacific Parcel, shown on Exhibit B to the Port Memo;
25 and

1 WHEREAS, The Board of Supervisors finds that the proposed exchange would satisfy
2 the requirements of Chapter 310 for the following reasons:

3 1. The Condo Site is located on the landward side of the 100-foot wide Embarcadero,
4 across from Piers 30-32. The property was filled in the early part of the twentieth century, as
5 part of the Port's program of reclaiming lands between the new seawall and the previously
6 existing City waterfront, for the purpose of moving the shoreline toward deeper waters and
7 generating revenues used to support the improvement of the harbor. The property has no
8 access to the waters of the Bay and is currently in interim use for surface parking to support
9 downtown office and neighborhood housing. At approximately 22,600 square feet, the Condo
10 Site encompasses a relatively small portion (approximately 0.06%) of the tide and submerged
11 lands granted to the City.

12 2. The Condo Site comprises the portion of Seawall Lot 330 that is furthest
13 removed from the waterfront, with inland frontage on Bryant and Beale Streets, and is
14 surrounded by residential and residential-serving commercial uses. The adjacent high density
15 apartment and condominium development was constructed as part of the Rincon/South
16 Beach Redevelopment Plan following the Legislature's enactment of Chapter 310, which
17 declared Seawall Lots 331, 332, and 333 to be free of the public trust and the use restrictions
18 of the Burton Act. The Condo Site does not currently provide an opportunity for the
19 development of a Trust-related use and is not anticipated to do so in the future. The site is in
20 an undesirable location for open space or park use, being cut off from the water, immediately
21 adjacent to the Bay Bridge, and adjoining two major roadways. The primary potential
22 compatible Trust use of the property, as a hotel serving cruise patrons and other visitors to the
23 waterfront, has been found to be economically infeasible because of the site's distance from
24 the City's financial district or tourist areas such as Fisherman's Wharf, the limited duration of
25 the cruise season, and the economics of hotel development in the City. The most appropriate

1 and economically viable use for the Condo Site is residential use. The development of
2 housing would be the land use most compatible with surrounding uses. Residential
3 condominium development would also maximize the revenue to the Trust necessary to
4 finance the Cruise Terminal Mixed Use Project and Brannan Street Wharf if the Trust were
5 lifted off the site pursuant to the Exchange.

6 3. The Receiving Parcel was freed of the Trust in 1998 pursuant to an exchange
7 involving the redevelopment of Mission Bay. In exchange for the Port's agreement to restrict
8 the use of certain lands in the Mission Bay area to open space, disputed Trust claims on the
9 Western Pacific Parcel were settled by consolidating the Trust on a 125-foot shoreline band
10 and transferring the remainder of the parcel, then owned by Catellus Development
11 Corporation, to the Port free of the Trust. The Receiving Parcel comprises the area
12 immediately adjacent to the shoreline band. The remaining 17 upland acres of the Western
13 Pacific Parcel are currently occupied by the San Francisco Municipal Railway's Metro East
14 maintenance and storage facility pursuant to an MOU with MUNI approved by the Port.
15 At the time of the 1998 exchange, the areas of the Western Pacific Parcel landward of the
16 shoreline band appeared to be of questionable value to the Trust, and the Port seriously
17 considered these areas for non-Trust commercial and residential development. Since the
18 exchange, however, the Port has made significant progress in its maritime marketing activities
19 along the southern waterfront. Over the last five years, the Port has reoriented its marketing
20 approach to target small container carriers and non-container carriers, which can be handled
21 in combination through the Pier 80 terminal adjacent to the Western Pacific Parcel. This
22 marketing strategy has been further enhanced by the partnership and close coordination
23 between the Port and Marine Terminals Corporation, which manages the Pier 80 facility. As a
24 result of this strategic shift, the Port now contracts with 12 different carriers that call at Pier 80.
25 This has resulted in an increased demand and new markets in the surrounding area for

1 maritime and other waterfront-related industrial activities. In view of these changed
2 circumstances, the Receiving Parcel is considered useful and necessary for Trust purposes.
3 Port staff has prepared a report discussing the changing trust needs for the Western Pacific
4 Property entitled "The Pier 80 Terminal Complex: Meeting Cargo Growth Needs at the Pier 80
5 Omni Terminal and former Western Pacific Site." A copy of that report is attached as Exhibit
6 C to the Port Memo, and additional materials updating that report are on file with the Clerk of
7 the Board of Supervisors in File No. _____ which materials are hereby declared to be a part
8 of this Resolution as if set forth fully herein.

9 4. The Condo Site and the Receiving Parcel were each appraised at their fair
10 market value by Clifford & Associates in "Appraisal Report – Development site, Seawall
11 Lot 330, Bryant Street/The Embarcadero, San Francisco, CA (February, 2003)" and
12 "Appraisal Report, 10.34 Acre portion of Western Pacific Site, San Francisco, CA (May 2003)"
13 (collectively, the "Appraisal"). The Appraisal concludes that the Receiving Parcel has a total
14 net present value of \$10,700,000, and that the Condo Parcel has a total net present value of
15 \$9,300,000, for a net surplus of \$1,400,000 in increased market value for the Trust. The
16 Board has reviewed and concurs with the conclusions set forth in the Appraisal, copies of
17 which are on file with the Clerk of the Board of Supervisors in File No. _____ and are
18 hereby declared to be a part of this resolution as if set forth fully herein; and

19 WHEREAS, Charter Section 9.118(c) requires Board of Supervisors approval of sales
20 or other transfers of City-owned real property; and

21 WHEREAS, In order to accomplish the proposed Trust exchange, the Board of
22 Supervisors wishes to approve the exchange of the Trust on the material terms set forth in the
23 Port Memo (the "Exchange"), and in substantially the form of the Exchange Agreement which
24 is on file with the Clerk of the Board of Supervisors in File No. _____, which is hereby
25 declared to be a part of this resolution as if set forth fully herein; and

1 WHEREAS, As part of its approval of the Lease and Sale Agreement, the Board of
2 Supervisors by Resolution No. 461-03 reviewed and considered the information contained in
3 the Waterfront Land Use Plan FEIR and the Revised FSEIR (as those terms are defined in
4 such Resolution) and adopted findings under CEQA; and

5 WHEREAS, The environmental review files for the San Francisco Cruise Terminal
6 Mixed-Use Project and the Brannan Street Wharf, the Waterfront Plan SEIR, and all
7 correspondence and other documents have been made available for review by the Board of
8 Supervisors and the public, which files are available for public review at the Planning
9 Department offices at 1660 Mission Street and at the Port offices at Pier 1, and are made part
10 of the record before the Board of Supervisors by this reference herein; and

11 WHEREAS, the proposed Exchange is not a land use approval for development at the
12 Receiving Parcel, no development at the Receiving Parcel is currently proposed, and any
13 future development at the Receiving Parcel would require future approval by the Port
14 Commission, and the Board of Supervisors to the extent required under the City's laws and
15 regulations, after completion and consideration of any environmental review required by
16 CEQA; now, therefore, be it

17 RESOLVED, That for purposes of compliance with the California Environmental Quality
18 Act ("CEQA"), approval of the matters and actions approved by this Resolution are within the
19 scope of Alternative 5, the Reduced Building Height Alternative (the "Preferred Alternative")
20 examined in the Revised FSEIR for which the Board of Supervisors by Resolution No. 461-03
21 has adopted findings as required by CEQA, including a Mitigation Monitoring and Reporting
22 Program, which findings are on file with the Clerk of the Board of Supervisors under File No.
23 030379 and which findings are incorporated herein by this reference; and be it

24 FURTHER RESOLVED, That based on the foregoing, the Board of Supervisors
25 hereby finds that: (1) the Exchange is within the scope of the Preferred Alternative and does

1 not raise any important new issues about the significant effects on the environment not
2 previously considered in the Revised FSEIR and the Waterfront Plan Final EIR; (2) no
3 changes are proposed or have occurred in the Preferred Alternative that would require major
4 revisions to the Revised FSEIR and the Waterfront Plan Final EIR due to the involvement of
5 significant new environmental effects or a substantial increase in the severity of previously
6 identified significant effects; (3) no substantial changes have occurred with respect to the
7 circumstances under which the Preferred Alternative is being undertaken that would require
8 major revisions to the Revised FSEIR and the Waterfront Plan Final EIR due to the
9 involvement of significant new environmental effects or a substantial increase in the severity
10 of previously identified significant effects; and (4) no new information of substantial
11 importance has become available since the Revised FSEIR was certified indicating that: (a)
12 the Preferred Alternative will have one or more significant effects not discussed in the Revised
13 FSEIR and the Waterfront Plan Final EIR; (b) significant effects examined in the Revised
14 FSEIR and the Waterfront Plan Final EIR would be substantially more severe; (c) mitigation
15 measures or alternatives previously found not to be feasible would in fact be feasible and
16 would substantially reduce one or more significant effects of the Preferred Alternative; or (d)
17 mitigation measures or alternatives which are considerably different from those analyzed in
18 the Revised FSEIR and the Waterfront Plan Final EIR would substantially reduce one or more
19 significant effects on the environmental; and be it

20 FURTHER RESOLVED, For the reasons set forth herein, this Board finds that (1) the
21 Exchange will maximize the overall benefits to the Trust and will not interfere with Trust uses
22 or purposes; (2) the Condo Site has been filled and reclaimed, is cut off from access to the
23 waters of San Francisco Bay, constitutes a relatively small portion (approximately 0.06%) of
24 the tide and submerged lands granted to the City, and is no longer needed or required for the
25 promotion of the Trust; (3) removing the Trust from the Condo Site will not result in substantial

1 interference with Trust uses and purposes, and would promote Trust purposes by generating
2 sufficient funds to allow the development of the Cruise Terminal Mixed Use Project, including
3 the Brannan Street Wharf, augment a resident population situated to take full advantage of
4 the public amenities located along the Port, and better ensure the success of Port projects on
5 the northern waterfront; and (4) the Receiving Parcel has greater value than the Condo Site,
6 both in terms of fair market value and usefulness to the Trust; and be it

7 FURTHER RESOLVED, That the Exchange is in conformance with the Burton Act
8 and Ch. 310, subject to approval by the State Lands Commission; and be it

9 FURTHER RESOLVED , That the Commission hereby approves the transactions
10 contemplated by the Exchange and the Exchange Agreement materially on the terms and
11 conditions set forth in the Port Memo and in such final form as is approved by the City
12 Attorney; and be it

13 FURTHER RESOLVED , That the City's Director of Property and the Port's Executive
14 Director are hereby authorized and urged, in the name and on behalf of the City and County
15 and the Port, to execute and deliver all conveyance deeds and instruments as may be
16 necessary to implement the Exchange in accordance with the terms and conditions of the
17 Sale Agreement and Exchange Agreement, and to take any and all steps (including, but not
18 limited to, the execution and delivery of any and all certificates, agreements, notices,
19 consents, escrow instructions, closing documents and other instruments or documents) as
20 they deem necessary or appropriate in order to consummate the Exchange, or to otherwise
21 effectuate the purpose and intent of this resolution, such determination to be conclusively
22 evidenced by the execution and delivery by the Director of Property and Executive Director of
23 any such documents; and be it

24 FURTHER RESOLVED , That this Board of Supervisors approves, confirms and
25 ratifies all prior actions taken by the officials, employees and agents of the Port Commission

1 or the City with respect to the Cruise Terminal Mixed Use Project, the Brannan Street Wharf
2 and the Condo Site.

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