

**Amendment of the Whole
In committee. 11/12/03**

FILE NO. 031811

RESOLUTION NO.

1 [Urging Port of San Francisco not to Extend Exclusive Right to Negotiate Agreement with
2 Mills Corporation and to Re-Issue Request for Proposals.]

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4 **Resolution Urging the Port Commission not to Extend the Exclusive Right to Negotiate**
5 **Agreement with The Mills Corporation and to Re-Issue the Request for Proposals for**
6 **the Development and Lease of Piers 27-31 as a Mixed-Use Recreation Project.**

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8 WHEREAS, On June 24, 1997 the San Francisco Port Commission adopted the San
9 Francisco Waterfront Land Use Plan and the findings of a Program Environmental Impact
10 Report (EIR) for the Plan; and

11 WHEREAS, The Waterfront Land Use Plan identifies Piers 27-31 for “a unique and
12 inviting waterfront mixed-use recreation project, integrating a varied mix of maritime and
13 commercial uses and open space, including the Northeast Wharf Plaza, oriented around
14 active recreational pursuits”; and,

15 WHEREAS, The San Francisco Bay Conservation and Development Commission
16 Strategic Area Plan identifies the Northeastern Waterfront as a focal point for recreational
17 activities; and,

18 WHEREAS, In May 1999 the San Francisco Port Commission directed Port staff to
19 form the Northeast Waterfront Advisory Group to provide input and guidance on the
20 development of a recreation-oriented project at Piers 27-31; and,

21 WHEREAS, The Northeast Waterfront Advisory Group, restating the Waterfront Land
22 Use Plan, submitted a Mission Statement to the San Francisco Port Commission that called
23 for “a unique and inviting waterfront mixed-use recreation project, integrating a varied mix of
24 maritime and commercial uses and open space, including the Northeast Wharf Plaza,
25 oriented around active recreational pursuits”; and,

**SUPERVISOR PESKIN
BOARD OF SUPERVISORS**

1 WHEREAS, On September 21, 1999 the San Francisco Port Commission approved
2 the Mission Statement and development concept recommended by the Northeast Waterfront
3 Advisory Group for the Piers 27-31 Mixed Use Recreation Development Project (“Recreation
4 Project”); and,

5 WHEREAS, On November 12, 1999 the San Francisco Port Commission issued a
6 request for proposals (RFP) for the Piers 27-31 Recreation Project that restated the
7 aforementioned Mission Statement; and,

8 WHEREAS, On August 31, 2000 the San Francisco Port Commission issued an
9 amended request for proposals for the Piers 27-31 Recreation Project that restated the
10 aforementioned Mission Statement; and,

11 WHEREAS, The amended request for proposals for Piers 27-31 further stated that
12 “the Recreation Project is to be designed to support the recreational pursuits of the residents
13 of the City and the Bay Area, thereby attracting more people to the Waterfront to use and
14 enjoy the Bay in furtherance of the public trust”; and,

15 WHEREAS, On December 5, 2000 The Mills Corporation submitted a proposal to the
16 San Francisco Port Commission for the development of Piers 27-31; and,

17 WHEREAS, The development proposal included 272,000 square feet of office space,
18 110,000 square feet of retail space, and 34,000 square feet of restaurant space but only
19 229,000 square feet of recreation space, consisting of the YMCA, Sports Valley, and other
20 indoor and outdoor active recreation space; and,

21 WHEREAS, On March 14, 2001 the Northeast Waterfront Advisory Group voted 7-0
22 with 3 abstentions against the Mills development proposal; and,

23 WHEREAS, On April 3, 2001 the Fisherman’s Wharf Advisory Committee voted 12-0
24 with 1 abstention against the Mills development proposal; and,

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1 WHEREAS, On April 13, 2001 Bay Area Economics, an independent consulting firm
2 hired by the San Francisco Port Commission, issued an analysis of developer proposals for
3 Piers 27-31 which scored The Mills Corporation proposal lower than its competition in all
4 Selected Criteria categories; and,

5 WHEREAS, On April 18, 2001 the San Francisco Port Commission by a vote of 3-2
6 selected The Mills Corporation as the company with exclusive negotiation rights for the
7 development of Piers 27-31; and,

8 WHEREAS, On April 25, 2001 ten members of the Northeast Waterfront Advisory
9 Group submitted a letter of formal protest to the San Francisco Port Commission based “on
10 the Commission’s disregard of the actual Selection Criteria specified in the RFP”; and,

11 WHEREAS, The Northeast Waterfront Advisory Group members further stated “this
12 callous action has resulted in a squandering of public funds and efforts over the past years”;
13 and,

14 WHEREAS, On May 18, 2001 the Board of Supervisors unanimously passed
15 resolution number 010786 “expressing the Board of Supervisors grave concern regarding the
16 process in which the proposals were evaluated and selected by the San Francisco Port
17 Commission”; and,

18 WHEREAS, On June 13, 2001 the Port of San Francisco entered into an Exclusive
19 Right to Negotiate agreement with The Mills Corporation for Piers 27-31; and,

20 WHEREAS, The Exclusive Right to Negotiate agreement required The Mills
21 Corporation to “significantly reduce the amount of office, retail, and eating and drinking
22 space” in the proposed project; and,

23 WHEREAS, The Waterfront Land Use Plan EIR allowed for a maximum of 53,000
24 square feet of office space in the entire Northeast Waterfront, including Piers 27-31; and,
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1 WHEREAS, On September 23, 2003, The Mills Corporation submitted a revised plan
2 to the San Francisco Port Commission that retains 200,000 square feet of general, non-
3 maritime office space and 6,000 square feet of maritime office space; and,

4 WHEREAS, There are currently over 20% vacancy factor of office space in the
5 Northeast Waterfront; and,

6 WHEREAS, The Waterfront Land Use Plan EIR allowed for a maximum of 60,000
7 square feet of retail space in the entire Northeast Waterfront, including Piers 27-31; and,

8 WHEREAS, The September 23, 2003 revised plan increases retail space to 145,000
9 square feet; and,

10 WHEREAS, The Mills Corporation, under the its March 29, 2002 Development
11 Memorandum with the Port of San Francisco, may substitute 20,000 square feet of office
12 space with additional retail space; and,

13 WHEREAS, The March 29, 2002 Development Memorandum between The Mills
14 Corporation and the Port of San Francisco required restaurants, cafés, and food service not
15 to exceed 34,000 square feet; and,

16 WHEREAS, The September 23, 2003 revised plan increases restaurant, café, and
17 food service space to 63,000 square feet; and,

18 WHEREAS, Bay Area Economics termed The Mills Corporation proposal a High
19 Financial Risk and a High Operating Risk; and,

20 WHEREAS, Bay Area Economics declared “the significant amount of retail in the
21 proposed project could have a competitive effect on existing and pipeline retail projects,
22 including those on Port property such as Pier 39, Ferry Building, and the Cruise Ship
23 Terminal” and “competition with these projects could directly affect the Port’s revenue flows”;
24 and,

1 WHEREAS, The Port of San Francisco currently receives 20% of its \$52,000,000
2 annual revenue from percentage rents; and,

3 WHEREAS, Bay Area Economics stated “the Port anticipates receiving significant
4 participation in the office rent increases for the development of Pier 1, Piers 1^{1/2}-3-5 and the
5 Ferry Building, which could be negatively impacted by the addition of Piers 27-31 office
6 supply”; and,

7 WHEREAS, Bay Area Economics stated “to be successful, the restaurants will need to
8 ‘cannibalize’ customers away from Fisherman’s Wharf and other locations on the Waterfront”;
9 and,

10 WHEREAS, Based on revenues from current tenants of Piers 27-31, the Port of San
11 Francisco is projected to lose \$5.25 million in revenues over the next 11 years through its
12 proposed financial agreement with The Mills Corporation; and,

13 WHEREAS, The Port of San Francisco is projecting an increase of 300% in cruise ship
14 business over the next five years; and,

15 WHEREAS, The new Cruise Terminal at Piers 30-32 is not going to be online for six to
16 eight years; and,

17 WHEREAS, Pier 27 is the only pier that can easily accommodate a third Cruise Ship
18 berthing while Piers 30-32 is being developed; and,

19 WHEREAS, Pier 27 would not be available for the true maritime use as a cruise ship
20 terminal under the current proposal; and,

21 WHEREAS, The dramatic changes in the office and retail markets since the
22 development proposal was submitted in 2000 may have changed the sponsor and the Port’s
23 economic assumptions; and,

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1 WHEREAS, Under the Burton Act, lands within the jurisdiction of the Port of San
2 Francisco were transferred from the State of California in 1968 for uses consistent with the
3 Public Trust; and,

4 WHEREAS, The Public Trust reserves these lands for uses that promote navigation,
5 fisheries, water borne commerce, and uses that enhance natural resources or attract people
6 to use and enjoy the Bay; and,

7 WHEREAS, Public Trust determinations for the proposed project will have implications
8 for other areas of the San Francisco waterfront and Public Trust lands throughout the State of
9 California; and,

10 WHEREAS, A significant percentage of the indoor recreation in the proposed project,
11 such as game courts, exercise facilities, and an indoor skate park, has little or no relationship
12 with the water; and,

13 WHEREAS, Despite the project sponsor’s superficial programmatic and name
14 changes to such non-maritime activities as the climbing center, teen center, and “high
15 adventure” climbing wall, these activities remain neither water-oriented nor water-enhanced;
16 and,

17 WHEREAS, The proposed project contains over 200,000 square feet of general, non-
18 maritime office space or 80% of the total uses in Pier 31, with less than 3% of the uses
19 devoted to maritime; and,

20 WHEREAS, The proposed project lacks the necessary proportion of Public Trust uses
21 within Pier 31 to meet the standards for restoration projects within historic buildings on Public
22 Trust lands; and,

23 WHEREAS, The 30,000 square feet of destination retail space proposed at Pier 29 is
24 neither water-enhanced nor enhanced by its proximity to the waterfront; and,
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1 WHEREAS, The inclusion of a significant amount of general office space, general
2 retail, and indoor recreational activities without a connection to the waterfront raise very
3 serious concerns regarding this project’s compliance with the Public Trust; and,

4 WHEREAS, The Waterfront Land Use Plan and the Port of San Francisco request for
5 proposals for Piers 27-31 state that development should “arrange and design vehicle access
6 to the Site so that it does not generate significant new traffic congestion on The Embarcadero
7 or queuing along The Embarcadero”; and,

8 WHEREAS, On September 14, 2003 Korve Engineering issued its Revised Draft
9 Transportation Study of the proposed project as part of the City of San Francisco’s
10 environmental review process; and,

11 WHEREAS, Korve Engineering has identified two vehicle intersections, First
12 Street/Market Street and Lombard/Battery Street/The Embarcadero, in the study area that
13 currently operate during weekend midday peak hours and weekday PM peak hours,
14 respectively, at a Level of Service of D, defined as a long traffic delay; and,

15 WHEREAS, Korve Engineering has identified one vehicle intersection in the study
16 area, First Street/Harrison Street, that currently operates during weekday PM hours at a Level
17 of Service of F, defined as an extreme traffic delay; and,

18 WHEREAS, Korve Engineering calculated that the proposed project would generate
19 785 vehicle trips to and from the project site in the weekday PM peak hour; and,

20 WHEREAS, Korve Engineering calculated that the proposed project would generate
21 832 vehicle trips to and from the project site in the weekend midday peak hour; and,

22 WHEREAS, Korve Engineering calculated that the proposed project restaurant, retail
23 and office land uses would generate approximately 242 daily truck trips on an average
24 weekday; and,

1 WHEREAS, Korve Engineering calculated that the proposed project would result in a
2 traffic Level of Service classification of D, long traffic delay during the weekend midday peak
3 hour for the Bay Street/Columbus Street (36 seconds of delay experienced per vehicle) and
4 during the weekday PM peak hour for the Chestnut Street/The Embarcadero (44 seconds of
5 delay experienced per vehicle) intersections; and,

6 WHEREAS, Korve Engineering calculated that the proposed project would result in a
7 traffic Level of Service classification of E, very long traffic delay, during the weekend midday
8 peak hour for the Broadway Street/The Embarcadero (60 seconds of delay experienced per
9 vehicle) and First Street/Market Street intersections (62 seconds of delay experienced per
10 vehicle); and,

11 WHEREAS, Korve Engineering calculated that the proposed project would result in a
12 traffic Level of Service classification of F, extreme traffic delay, during the weekday PM peak
13 hour for the First Street/Harrison Street intersections (124 seconds of delay experienced per
14 vehicle); and,

15 WHEREAS, Korve Engineering calculated that the proposed project would generate
16 3,382 pedestrian trips to and from the project site in the weekday PM peak hour; and,

17 WHEREAS, Korve Engineering calculated that the proposed project would generate
18 3,738 pedestrian trips to and from the project site in the weekend midday peak hour; and,

19 WHEREAS, The City and County of San Francisco defines pedestrian Level of Service
20 ratings of E or F as unsatisfactory pedestrian conditions, a significant impact with
21 considerable restrictions on movement and speed; and,

22 WHEREAS, Korve Engineering calculated that the proposed project would result in a
23 pedestrian Level of Service of E or F during the weekday PM peak hour for all 8 of the
24 crosswalks analyzed: two crosswalks at Bay Street/The Embarcadero, three crosswalks at
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1 Sansome Street/Chestnut Street/The Embarcadero, and three crosswalks at Lombard
2 Street/Battery Street/The Embarcadero; and,

3 WHEREAS, Korve Engineering calculated that the proposed project would result in a
4 pedestrian Level of Service of E or F during the weekend midday peak hour for 7 of the 8
5 crosswalks analyzed: two crosswalks at Bay Street/The Embarcadero, three crosswalks at
6 Sansome Street/Chestnut Street/The Embarcadero, and two crosswalks at Lombard
7 Street/Battery Street/The Embarcadero; and,

8 WHEREAS, The Embarcadero is designated as part of the Bay, Ridge and Coast Trail,
9 a recreational pedestrian/bicycle path connecting several Bay Area cities; and,

10 WHEREAS, There is a dedicated bicycle lane along The Embarcadero that runs along
11 the area directly adjacent to the project site; and,

12 WHEREAS, The proposed project would reduce sidewalk widths by 8 feet along 450
13 feet of The Embarcadero to accommodate a valet parking operation, the loading and
14 unloading of passengers and possibly small boats and kayaks, and freight and service
15 deliveries during non-peak hour; and,

16 WHEREAS, Korve Engineering calculated the number of passenger vehicles expected
17 to use the drop-off area at 110 per hour; and,

18 WHEREAS, Korve Engineering reported that the YMCA expects to have between
19 seven and ten buses in the curbside drop-off area in the evenings; and,

20 WHEREAS, The sidewalk reduction proposed by the project would narrow sidewalk
21 widths in some sections of The Embarcadero from between 25 to 27 feet to as narrow as 17
22 feet; and,

23 WHEREAS, The narrowing of sidewalk widths along The Embarcadero may interfere
24 with the recreational needs of walkers, skaters, joggers, wheelchair bound persons, and
25 bicyclists seeking to enjoy the waterfront; and,

1 WHEREAS, The F-line streetcar is the only public transit service adjacent to the
2 proposed project site; and,

3 WHEREAS, Korve Engineering calculated that the proposed project would generate
4 1,170 transit trips to and from the project site in the weekday PM peak hour; and,

5 WHEREAS, Korve Engineering calculated that the proposed project would generate
6 1,210 transit trips to and from the project site in the weekend midday peak hour; and,

7 WHEREAS, Korve Engineering reported that the proposed project would result in the
8 F-line streetcar operating above capacity during weekday PM peak hours; and,

9 WHEREAS, Korve Engineering calculated that MUNI would need to add 6.1 additional
10 F-line streetcars to meet the increased weekday PM peak hour demand resulting from the
11 proposed project; and,

12 WHEREAS, The proposed project seeks to introduce residents, including youth and
13 children, to water activities in the San Francisco Bay; and,

14 WHEREAS, The Northpoint Water Pollution Control Plant, which processes up to 150
15 million gallons per day in wet weather, discharges between Piers 31 & 33, directly north of
16 project site; and,

17 WHEREAS, Storm flows that exceed the capacity of both Northpoint and Bayview
18 sewage treatment plants and the storage & transport structures are discharged after partial
19 treatment through one of the 29 combined sewer overflow structures along the waterfront,
20 including at Sansome and Embarcadero, directly adjacent to the project site; and,

21 WHEREAS, On May 16, 2003 the San Francisco Public Health Department expressed
22 health and safety concerns regarding the project proposal due to potential bacterial
23 contamination and turbidity of the water; and,

24 WHEREAS, On September 17, 2003 Coast and Harbor Engineering reported that the
25 proposed “wake attenuation structures at the site are likely to have only a minor effect on

1 circulation during stronger currents and a negligible effect on water quality at the Piers 27/29-
2 31 basin”; and,

3 WHEREAS, The Mills Corporation Exclusive Right to Negotiate with the San Francisco
4 Port Commission is scheduled to expire on January 13, 2004; therefore, be it

5 RESOLVED, That the Board of Supervisors of the City and County of San Francisco
6 urges the San Francisco Port Commission not to extend the Exclusive Right to Negotiate with
7 Mills Corporation; and, be it

8 FURTHER RESOLVED, That the Board of Supervisors urges the Port Commission to
9 Re-Issue the Request for Proposals for the Development and Lease of Piers 27-31 as a
10 Mixed-Use Recreation Project.

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