

FILE NO. 031434

RESOLUTION NO. 676-03

1 [Approval of Public Trust Exchange]
 2

3 **Resolution approving an Exchange Agreement with the State Lands Commission that**
 4 **would remove the public trust and Burton Act trust from approximately 22,600 square**
 5 **feet of unimproved real property located on Seawall Lot 330 at the corner of Bryant and**
 6 **Beale Streets, and would place the public trust and Burton Act trust on an**
 7 **approximately 10.348.77 acre site located between Maryland Street, Cesar Chavez**
 8 **Street, and 24th Street, on the eastern portion of the Western Pacific parcel.**
 9 **parcel; and adopting findings that the approved actions are consistent with the City's**
 10 **General Plan and eight Priority Policies of City Planning Code Section 101.1.**

11 WHEREAS, On March 25, 2003, by Resolution No. 03-28, the San Francisco Port
 12 Commission approved a Lease Disposition and Development Agreement and Lease with San
 13 Francisco Cruise Terminal, LLC ("SFCT") relating to the development of a mixed-use Cruise
 14 Terminal project at Pier 30-32 ("Cruise Terminal Mixed Use Project") and development of the
 15 Brannan Street Wharf, and approved a Purchase and Sale Agreement (the "Sale Agreement")
 16 relating to the sale to SFCT of an approximately 22,600 square foot parcel located at Seawall
 17 Lot 330 (the "Condo Site") as shown on Exhibit A to the Memorandum to Port Commissioners,
 18 dated June 18, 2003 (the "Port Memo"), a copy of which is on file with the Clerk of the Board
 19 of Supervisors in File No. 031434 which is hereby declared to be a part of this resolution as if
 20 set forth fully herein, for development of a condominium project; and

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

24 WHEREAS, Under the terms of the approved Sale Agreement, the City would sell the
 25 Condo Site to SFCT for its appraised fair market value for construction of a condominium

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1 tower, and the Port would participate in sales proceeds from individual condominium units, all
2 of which funds would contribute towards SFCT's construction of the Brannan Street Wharf
3 and development of the Cruise Terminal Mixed Use Project on Piers 30-32; and

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

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

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

22 WHEREAS, The Port has identified a piece of real property held by it that is not
23 currently subject to the Trust, which would serve as the receiving parcel for the Trust, which
24 parcel (the "Receiving Parcel") consists of an approximately 10.348.77 acre portion of the
25 property commonly referred to as the Western Pacific Parcel, ~~shown on Exhibit B to the Port~~

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1 Memo; as described and shown on Exhibits A and B to the Memo to Board of Supervisors,
2 dated September 22, 2003, a copy of which is on file with the Clerk of the Board of
3 Supervisors in File No. 031434; and

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

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

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

1 waterfront, has been found to be economically infeasible because of the site's distance from
2 the City's financial district or tourist areas such as Fisherman's Wharf, the limited duration of
3 the cruise season, and the economics of hotel development in the City. The most appropriate
4 and economically viable use for the Condo Site is residential use. The development of
5 housing would be the land use most compatible with surrounding uses. Residential
6 condominium development would also maximize the revenue to the Trust necessary to
7 finance the Cruise Terminal Mixed Use Project and Brannan Street Wharf if the Trust were
8 lifted off the site pursuant to the Exchange.

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

1 between the Port and Marine Terminals Corporation, which manages the Pier 80 facility. As a
2 result of this strategic shift, the Port now contracts with 12 different carriers that call at Pier 80.
3 This has resulted in an increased demand and new markets in the surrounding area for
4 maritime and other waterfront-related industrial activities. In view of these changed
5 circumstances, the Receiving Parcel is considered useful and necessary for Trust purposes.
6 Port staff has prepared a report discussing the changing trust needs for the Western Pacific
7 Property entitled "The Pier 80 Terminal Complex: Meeting Cargo Growth Needs at the Pier 80
8 Omni Terminal and former Western Pacific Site." A copy of that report is attached as Exhibit
9 C to the Port Memo, and additional materials updating that report are on file with the Clerk of
10 the Board of Supervisors in File No. 031434 which materials are hereby declared to be a part
11 of this Resolution as if set forth fully herein.

12 4. The Condo Site and the Receiving Parcel were each appraised at their fair
13 market value by Clifford & Associates in "Appraisal Report – Development site, Seawall
14 Lot 330, Bryant Street/The Embarcadero, San Francisco, CA (February, 2003)" and
15 "Appraisal Report, ~~10.34 Acre~~8.77 Acre portion of Western Pacific Site, San Francisco, CA
16 (~~September~~May 2003)" (collectively, the "Appraisal"). The Appraisal concludes that the
17 Receiving Parcel has a total net present value of ~~\$10,700,000~~,\$9,438,000,~~330,000~~, and that
18 the Condo Parcel has a total net present value of \$9,300,000, for a net surplus of
19 ~~\$1,400,000~~\$138,000~~30,000~~ in increased market value for the Trust. The Board has reviewed
20 and concurs with the conclusions set forth in the Appraisal, copies of which are on file with the
21 Clerk of the Board of Supervisors in File No. 031434 and are hereby declared to be a part
22 of this resolution as if set forth fully herein; and

23 WHEREAS, Charter Section 9.118(c) requires Board of Supervisors approval of sales
24 or other transfers of City-owned real property; and
25

1 WHEREAS, In order to accomplish the proposed Trust exchange, the Board of
2 Supervisors wishes to approve the exchange of the Trust on the material terms set forth in the
3 Port Memo (the "Exchange"), and in substantially the form of the Exchange Agreement which
4 is on file with the Clerk of the Board of Supervisors in File No. 031434 , which is hereby
5 declared to be a part of this resolution as if set forth fully herein; and

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

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

16 WHEREAS, the proposed Exchange is not a land use approval for development at the
17 Receiving Parcel, no development at the Receiving Parcel is currently proposed, and any
18 future development at the Receiving Parcel would require future approval by the Port
19 Commission, and the Board of Supervisors to the extent required under the City's laws and
20 regulations, after completion and consideration of any environmental review required by
21 CEQA; and

22 WHEREAS, The Director of Planning, by letter dated May 7, 2003 found that the sale
23 of the Condo Parcel (which requires the actions contemplated by the Exchange Agreement
24 approved hereunder) is in conformity with the City's General Plan and with the Eight Priority
25 Policies of City Planning Code Section 101.1, which letter is on file with the Clerk of the Board

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1 of Supervisors under File No. 031434, and which letter is incorporated herein by this
2 reference; and

3 WHEREAS, The Director of Planning, by letter dated _____ September 24, 2003
4 found that the actions undertaken pursuant to the Exchange Agreement that will impose the
5 public trust on the Receiving Parcel is in conformity with the City's General Plan and with the
6 Eight Priority Policies of City Planning Code Section 101.1, which letter is on file with the Clerk
7 of the Board of Supervisors under File No. 031434, and which letter is incorporated
8 herein by this reference; now, therefore, be it

9 RESOLVED, That for purposes of compliance with the California Environmental Quality
10 Act ("CEQA"), approval of the matters and actions approved by this Resolution are within the
11 scope of Alternative 5, the Reduced Building Height Alternative (the "Preferred Alternative")
12 examined in the Revised FSEIR for which the Board of Supervisors by Resolution No. 461-03
13 has adopted findings as required by CEQA, including a Mitigation Monitoring and Reporting
14 Program, which findings are on file with the Clerk of the Board of Supervisors under File No.
15 030379 and which findings are incorporated herein by this reference; and be it

16 FURTHER RESOLVED, That based on the foregoing, the Board of Supervisors
17 hereby finds that: (1) the Exchange is within the scope of the Preferred Alternative and does
18 not raise any important new issues about the significant effects on the environment not
19 previously considered in the Revised FSEIR and the Waterfront Plan Final EIR; (2) no
20 changes are proposed or have occurred in the Preferred Alternative that would require major
21 revisions to the Revised FSEIR and the Waterfront Plan Final EIR due to the involvement of
22 significant new environmental effects or a substantial increase in the severity of previously
23 identified significant effects; (3) no substantial changes have occurred with respect to the
24 circumstances under which the Preferred Alternative is being undertaken that would require
25 major revisions to the Revised FSEIR and the Waterfront Plan Final EIR due to the

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1 involvement of significant new environmental effects or a substantial increase in the severity
2 of previously identified significant effects; and (4) no new information of substantial
3 importance has become available since the Revised FSEIR was certified indicating that: (a)
4 the Preferred Alternative will have one or more significant effects not discussed in the Revised
5 FSEIR and the Waterfront Plan Final EIR; (b) significant effects examined in the Revised
6 FSEIR and the Waterfront Plan Final EIR would be substantially more severe; (c) mitigation
7 measures or alternatives previously found not to be feasible would in fact be feasible and
8 would substantially reduce one or more significant effects of the Preferred Alternative; or (d)
9 mitigation measures or alternatives which are considerably different from those analyzed in
10 the Revised FSEIR and the Waterfront Plan Final EIR would substantially reduce one or more
11 significant effects on the environmental; and be it

12 FURTHER RESOLVED, For the reasons set forth herein, this Board finds that (1) the
13 Exchange will maximize the overall benefits to the Trust and will not interfere with Trust uses
14 or purposes; (2) the Condo Site has been filled and reclaimed, is cut off from access to the
15 waters of San Francisco Bay, constitutes a relatively small portion (approximately 0.06%) of
16 the tide and submerged lands granted to the City, and is no longer needed or required for the
17 promotion of the Trust; (3) removing the Trust from the Condo Site will not result in substantial
18 interference with Trust uses and purposes, and would promote Trust purposes by generating
19 sufficient funds to allow the development of the Cruise Terminal Mixed Use Project, including
20 the Brannan Street Wharf, augment a resident population situated to take full advantage of
21 the public amenities located along the Port, and better ensure the success of Port projects on
22 the northern waterfront; and (4) the Receiving Parcel has greater value than the Condo Site,
23 both in terms of fair market value and usefulness to the Trust; and be it

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

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1 FURTHER RESOLVED, That the Board of Supervisors hereby finds that the Exchange
2 Agreement is consistent with the General Plan, and with the eight Priority Policies of Planning
3 Code Section 101.1 for the same reasons as set forth in the letters of the Director of Planning,
4 dated May 7, 2003, and _____ September 24-, 2003, which letters and findings
5 are on file with the Clerk of the Board of Supervisors under File No. 031434 and which
6 letters and findings are incorporated by reference as though fully set forth in this resolution;
7 and be it

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

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

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

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

****San Francisco Port Commission**
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City and County of San Francisco

City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

Tails Resolution

File Number: 031434

Date Passed:

Resolution approving an Exchange Agreement with the State Lands Commission that would remove the public trust and Burton Act trust from approximately 22,600 square feet of unimproved real property located on Seawall Lot 330 at the corner of Bryant and Beale Streets, and would place the public trust and Burton Act trust on an approximately 8.77 acre site located between Maryland Street, Cesar Chavez Street, and 24th Street, on the eastern portion of the Western Pacific parcel; and adopting findings that the approved actions are consistent with the City's General Plan and eight Priority Policies of City Planning Code Section 101.1.

October 7, 2003 Board of Supervisors — ADOPTED

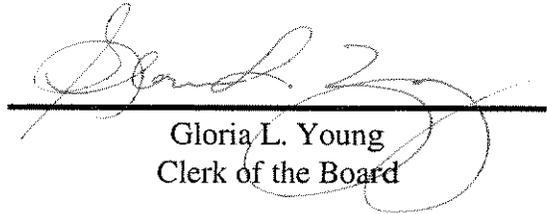
Ayes: 11 - Ammiano, Daly, Dufty, Gonzalez, Hall, Ma, Maxwell, McGoldrick,
Newsom, Peskin, Sandoval

File No. 031434

I hereby certify that the foregoing Resolution was ADOPTED on October 7, 2003 by the Board of Supervisors of the City and County of San Francisco.

OCT 17 2003

Date Approved



Gloria L. Young
Clerk of the Board



Mayor Willie L. Brown Jr.