

File No. 131193

Committee Item No. 1

Board Item No. \_\_\_\_\_

## COMMITTEE/BOARD OF SUPERVISORS

### AGENDA PACKET CONTENTS LIST

Committee: Budget & Finance Committee

Date January 15, 2014

Board of Supervisors Meeting

Date \_\_\_\_\_

#### Cmte Board

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| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Budget and Legislative Analyst Report        |
| <input type="checkbox"/>            | <input type="checkbox"/> | Youth Commission Report                      |
| <input type="checkbox"/>            | <input type="checkbox"/> | Introduction Form                            |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Department/Agency Cover Letter and/or Report |
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| <input type="checkbox"/>            | <input type="checkbox"/> | Grant Information Form                       |
| <input type="checkbox"/>            | <input type="checkbox"/> | Grant Budget                                 |
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| <input type="checkbox"/>            | <input type="checkbox"/> | Contract/Agreement                           |
| <input type="checkbox"/>            | <input type="checkbox"/> | Form 126 – Ethics Commission                 |
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Completed by: Linda Wong Date January 10, 2014

Completed by: \_\_\_\_\_ Date \_\_\_\_\_

1 [Sale of Transferable Development Rights - War Memorial Complex - 301 and 401 Van Ness  
2 Avenue]

3 **Resolution authorizing the Director of Property to sell up to 1,100,000 gross square feet**  
4 **of transferable development rights (TDR) from the War Memorial Complex, 301 and 401**  
5 **Van Ness Avenue, San Francisco, at fair market value, and to execute and record**  
6 **Certificates of Transfer and to take such additional actions as may be necessary to**  
7 **effectuate one or more TDR transfers in accordance with Planning Code, Section 128.**

8  
9 WHEREAS, On April 27, 2003, the Board of Supervisors approved Ordinance No. 77-  
10 04 which, among other things, amended San Francisco Planning Code Section 128 to provide  
11 that a lot zoned P (public) may be a Transfer Lot for purposes of conveying Transferable  
12 Development Rights ("TDR"), provided that certain criteria outlined in Section 128(a)(4) are  
13 satisfied, and as further amended in Ordinance No. 87-07, approved by the Board of  
14 Supervisors on April 27, 2007; and

15 WHEREAS, On May 10, 2007, the War Memorial Board of Trustees adopted  
16 Resolution No. 07-26, authorizing the City's Director of Property to negotiate and enter into  
17 contracts for the sale of TDR from the War Memorial Complex, with the net proceeds from any  
18 such sales deposited to a segregated, interest bearing account established by the City's  
19 Controller as a trust asset specifically for the War Memorial Complex; and

20 WHEREAS, The Director of Property proposes to transfer up to 1,100,000 gross  
21 square feet of TDR from the War Memorial Complex (Assessor's Block 0786A, Lot 001) at  
22 301 and 401 Van Ness Avenue (the "Property") to finance the rehabilitation and restoration of  
23 the Property in accordance with the Secretary of the Interior Standards; and

24 WHEREAS, Under the terms of Planning Code Section 128, the transfer of TDR from  
25 the Property to an eligible transferee or an eligible Development Lot requires certain

1 administrative actions by Director of Property, including, but not limited to, the recording of a  
2 Certificate of Transfer against the Property that states the amount of TDR available for  
3 transfer, and that the transfer of TDR permanently reduces the development potential of the  
4 Property by the amount of TDR transferred; and

5 WHEREAS, The proposed TDR transfer would involve soliciting interested buyers,  
6 negotiating applicable TDR Transfer Agreements (the "Agreements"), and establishing a  
7 market value transfer price of the TDR; and

8 WHEREAS, It is in the interest of the City to sell TDR from the Property to effectuate  
9 rehabilitation and restoration of the War Memorial Complex; now, therefore, be it

10 RESOLVED, That, provided that the criteria and requirements of Planning Code  
11 Section 128 with respect to transfer of TDR are met, the Board of Supervisors authorizes the  
12 Director of Property to execute and record the Certificate of Transfer and to negotiate and  
13 execute Agreements and to take such other actions as reasonably required under Planning  
14 Code Section 128 to effectuate the transfer of up to 1,100,000 gross square feet of TDR from  
15 the Property to buyers on a rolling basis, upon satisfaction of the following conditions: (i) buyer  
16 has executed an Agreement (or Agreements), in form acceptable to the Director of Property  
17 and City Attorney, acquiring TDR at no less than \$25 per square foot; and (ii) the Agreements  
18 are acceptable to the Managing Director of the War Memorial; and, be it

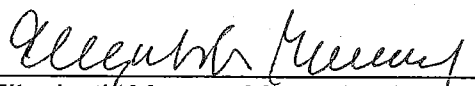
19 FURTHER RESOLVED, All funds from the sale of TDRs from the Property shall be  
20 placed into the segregated account established by the Controller as a trust asset to be used  
21 solely for the rehabilitation and restoration of the War Memorial Complex, (which may include  
22 payment of debt service in furtherance of said rehabilitation and restoration of the War  
23 Memorial Complex) in accordance with the Secretary of the Interior Standards; and, be it

1           FURTHER RESOLVED, That the Director of Property is hereby authorized and urged,  
2 in the name and of behalf of the City and County, to execute and deliver the title to TDR to the  
3 buyer upon the closing of escrow in accordance with the terms and conditions of the  
4 applicable Agreement(s) as negotiated, and to take any all steps (including, but not limited to,  
5 the execution and delivery of any and all certificates, agreements, notices, consents, escrow  
6 instructions, closing documents and other instruments or documents) as the Director of  
7 Property deems necessary or appropriate, in consultation with the City Attorney, to  
8 consummate the sale of the TDR, or to otherwise effectuate the purpose and intent of this  
9 Resolution, such determination to be conclusively evidenced by the execution and delivery by  
10 the Director of Property of any such documents; and, be it

11           FURTHER RESOLVED, That the Director of Property will report to the Capital Planning  
12 Committee and the Board of Supervisors' Budget & Finance Committee at the end of each  
13 quarter to report and update the results of sales of City owned TDR, and, should no sales take  
14 place in the previous quarter, this reporting requirement will hereby be waived.

15  
16 RECOMMENDED:

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19 \_\_\_\_\_  
John Updike  
Director of Property

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22 \_\_\_\_\_  
Elizabeth Murray, Managing Director  
23 War Memorial

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25  
Mayor Lee, Supervisor Chiu  
BOARD OF SUPERVISORS

<p><b>Item 1</b>  <b>File 13-1193</b>  <i>(Continued from January 8, 2014)</i></p>	<p><b>Departments:</b>                  Real Estate                  War Memorial</p>
<p><b>EXECUTIVE SUMMARY</b></p>	
<p style="text-align: center;"><b>Legislative Objectives</b></p>	
<ul style="list-style-type: none"> <li>The proposed resolution authorizes the sale of up to 1,100,000 gross square feet of Transferable Development Rights (TDR) from the War Memorial Complex at no less than \$25 per square foot, in accordance with City Planning Code 128.</li> </ul>	
<p style="text-align: center;"><b>Key Points</b></p>	
<ul style="list-style-type: none"> <li>Under Planning Code Section 128, owners of historic buildings located in C-3 Zoning Districts may ask the Planning Department to certify their unused potential, known as transferable development rights (TDR). Once certified, the TDR units may then be transferred via a sale to another property in any other C-3 District. Each TDR is equal to one square foot of floor area.</li> <li>The revenue generated from the TDR sale must be used to rehabilitate the historic building according to the U.S. Secretary of the Interior’s Standards for Treatment of Historic Properties.</li> <li>On July 1, 2013, the City began renovation of the War Memorial Veterans Building, including seismic upgrades, accessibility, life safety and building code improvements, and replacement or improvements to building systems, at a current projected budget of \$154.3 million.</li> </ul>	
<p style="text-align: center;"><b>Fiscal Impacts</b></p>	
<ul style="list-style-type: none"> <li>A March 2013 appraisal by Carneghi-Blum &amp; Partners, Inc. of TDRs at the War Memorial Veterans Building determined a market value of \$24 per square foot. The proposed resolution authorizes the Real Estate Division to sell TDRs for not less than \$25 per square foot, or \$1 more than the recent appraisal based on more recent market activity.</li> <li>Assuming sale of all 1,100,000 at \$25 per square foot results in total revenues of \$27,500,000.</li> <li>Staff administrative costs of \$10,000 and \$25,000 per transaction, and title company fees of \$3,000 per transaction, are estimated based on number of transactions and level of complexity.</li> <li>Net proceeds from the sale of up to 1,100,000 TDRs would be used for the War Memorial renovation project, which is currently projected to have a \$14.5 million funding shortfall.</li> </ul>	
<p style="text-align: center;"><b>Policy Considerations</b></p>	
<ul style="list-style-type: none"> <li>Given that this would be only the second offering of public TDRs, amend the proposed resolution for the Director of Property to submit a future resolution to the Board of Supervisors reauthorizing such TDR sales upon reaching sales of 550,000 gross square feet of TDRs.</li> </ul>	
<p style="text-align: center;"><b>Recommendations</b></p>	
<ul style="list-style-type: none"> <li>Amend the proposed resolution on page 2, line 20 to add (iii) the Director of Property shall submit enabling legislation to the Board of Supervisors to reauthorize such TDR sales immediately upon reaching sales of 550,000 gross square feet (such legislation to adjust the minimum sales price of TDRs as necessary).</li> <li>Approve the proposed resolution as amended.</li> </ul>	

## MANDATE STATEMENT AND BACKGROUND

### Mandate Statement

According to Charter Section 9.118(c), the sale or other transfer of real property owned by the City and County of San Francisco shall first be approved by resolution of the Board of Supervisors. In addition, Planning Code Section 128 specifies the definitions, requirements and procedures for determining and cancelling Transfer of Development Rights (TDR) as well as the preservation, rehabilitation and maintenance requirements.

### Background

In the mid-1980s, the City established the Transfer of Development Rights program to allow the sale of unused development potential from preservation properties to development properties. The goal was to generate income for the maintenance and preservation of historic buildings, while allowing new developments to build higher. Under Planning Code Section 128, owners of historic buildings located in C-3 Zoning Districts<sup>1</sup> may ask the Planning Department to certify their unused potential, known as transferable development rights (TDR).

Once certified, the TDR units may then be transferred via a sale to another property in any other C-3 District. As of 2007, TDRs may also be transferred from any lot zoned P (public), provided that the other conditions for transfer outlined in Section 128(a)(4) are met. The revenue generated from the TDR sale must be used to rehabilitate the historic building according to the U.S. Secretary of the Interior's Standards for Treatment of Historic Properties.

Each TDR unit is equal to one square foot of gross floor area. To calculate the TDR available from a preservation property, the difference between the building's existing floor area ratio (FAR) and that allowed under zoning limits is determined. Attachment I to this report, provided by Mr. John Updike, Director of Real Estate, graphically depicts how the unused development rights from a landmarked building would be transferred for use by another development parcel. Development properties may obtain TDR to build beyond what is allowed under FAR limits and up to zoned height limits. They may not, however, use TDR to exceed or disregard height, bulk, and setback limits, sunlight access requirements, or other restrictions.

Based on a recent study<sup>2</sup>, the City has certified approximately 5.3 million square feet of TDR originating from 112 buildings downtown. Of the total certified TDRs, approximately 2.8 million square feet has been used for 34 projects, leaving a remaining balance of approximately 2.5

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<sup>1</sup> C-3 Zoning Districts are defined as downtown commercial districts and include Support (S), General (G), Office (O) or Retail (R) uses. In accordance with Section 128 of the Planning Code, any C-3 District parcel may be the recipient parcels for a TDR transaction.

<sup>2</sup> San Francisco's Transfer of Development Rights Program report dated June, 2013, completed by the Seifel Consulting Inc. and C.H. Elliott & Associates for the San Francisco Planning Department.

million square feet. The average amount of TDR used on each receiving site is 84,000 square feet, with half of the parcels requiring less than 40,000 square feet.

Average annual demand for TDR since the program's inception in 1985 has been approximately 100,000 square feet. However, the demand for TDRs generally varies with market conditions and the development cycle, such that when development is active, TDRs tend to be in greatest demand. An estimated total of 1.3 million TDR square feet is needed for projects that are currently in the development pipeline. Mr. Updike also notes that the market conditions are very favorable now given the current real estate market.

## DETAILS OF PROPOSED LEGISLATION

The proposed resolution would authorize the Director of Real Estate to:

- (1) sell up to 1,100,000 gross square feet of Transferable Development Rights (TDR) from the War Memorial Complex, at no less than \$25 per square foot,
- (2) execute and record the Certificates of Transfer and negotiate and execute the related agreements as necessary,
- (3) make sure the agreements are acceptable to the Managing Director of the War Memorial,
- (4) place funds from the sale of the TDRs into an account solely for the rehabilitation and restoration of the War Memorial Complex in accordance with the Secretary of the Interior's Standards,
- (5) take such additional actions as may be necessary to effectuate one or more TDR transfers in accordance with Planning Code Section 128, and
- (6) report to the Capital Planning Committee and the Board of Supervisors' Budget and Finance Committee at the end of each quarter on the results of the sales of City-owned TDRs.

### War Memorial Complex

The San Francisco War Memorial complex includes two buildings, the War Memorial Opera House and the War Memorial Veterans Building at 301 and 401 Van Ness Avenue respectively, and the adjoining outdoor Memorial Court, all of which were completed in 1932. The complex is designated as both a City Landmark and State Landmark.

The War Memorial is a charitable trust department, in which the Board of Trustees has exclusive charge over its assets. In 2007, the Board of Trustees approved a resolution, authorizing the Director of Real Estate to obtain City Zoning Administrator approval for the transferable development rights of the War Memorial complex.

According to the Board of Trustees resolution, the Director of Real Estate, with approval from the Managing Director of the War Memorial, could negotiate and award agreements for the sale of TDR for the War Memorial complex. Proceeds from the sale, net of transaction costs, are to be deposited into a segregated, interest-bearing account solely for use by the War Memorial, subject to appropriation approval by the Board of Supervisors.

**War Memorial Veterans Building Project**

The City has begun renovation of the War Memorial Veterans Building, including seismic upgrades, accessibility, life safety and building code improvements, and replacement or improvements to building systems. The construction of the Veterans Building improvements began on July 1, 2013 and is scheduled to be completed by July 2015.

Total construction costs are currently estimated at approximately \$104 million. The total War Memorial Seismic Upgrade and Improvement Project current projected budget is \$154.3 million, which includes project management, designs and permits; construction costs; hazardous material abatement; relocation costs for existing tenants; and interest and debt service reserves. The funding sources for the War Memorial Seismic Upgrade and Improvement Project include: (a) \$132,455,590 from Certificates of Participation proceeds<sup>3</sup>; (b) \$6,300,000 of War Memorial Department capital funds; and (c) \$1,000,000 of Arts Commission capital funds, as summarized in Attachment II to this report.

**FISCAL IMPACTS****Amount of TDRs Available**

To determine the available TDRs, the difference between the building's existing floor area ratio and the amount of square footage allowed under zoning limits is calculated. Mr. Updike advises that the TDR available at the War Memorial is estimated to be 1,222,280 square feet. However, Mr. Updike notes that the Planning Department has just begun the formal certification of the total TDR available at the War Memorial, which is anticipated to be completed by February 1, 2014. Mr. Updike advises that the proposed resolution would sell up to 1,100,000 square feet of TDR, or 122,280 square feet less than the current estimated total available, in order to leave some margin for error and allow the War Memorial some modest expansion potential for future improvements.

**Fair Market Value for TDR**

The Real Estate Division authorized an appraisal, which was conducted in March 2013 by Carneghi-Blum & Partners, Inc., a private real estate appraisal firm, of the market value price per square foot of the TDRs at the War Memorial Veterans Building. Mr. Updike advises that this appraisal was commissioned for a specific request to transfer 151,545 square feet of TDR from the War Memorial for use by the Transbay Tower. Mr. Updike notes that this transfer of TDR from the War Memorial did not occur because the Transbay Tower selected two private sector sellers who could complete their TDR transactions more quickly than the City.

According to this March 2013 appraisal, between 2000 and 2012, the market value of TDRs generally fluctuated between \$18 and \$38 per square foot, with such pricing reflecting both the available supply and demand to purchase TDRs, which generally reflect real estate and economic development demands. This appraisal found that the March 15, 2013 market value<sup>4</sup>

<sup>3</sup> As approved by the Board of Supervisors on July 26, 2011 (Ordinance 149-11).

<sup>4</sup> Market value is defined as the most probable price which the property should bring in a competitive and open sale.



of the 151,454 square feet of TDR at the War Memorial Veterans Building was \$24 per square foot or a total value of approximately \$3,640,000.

### **Sale of TDRs**

Although the March 2013 market value appraisal was for \$24 per square foot, the proposed resolution authorizes the Real Estate Division to sell up to 1,100,000 square feet of TDRs for not less than \$25 per square foot, or \$1 more than the recent appraisal. Mr. Updike advises that the proposed minimum of \$25 per square foot is based on more recent discussions with real estate brokers and is reflective of recent market activity. Assuming sale of all 1,100,000 square feet at \$25 per square foot would result in total revenues of \$27,500,000.

However, Mr. Updike advises that the proposed sale of the War Memorial TDRs would likely be conducted on a rolling basis, of first come-first served, such that there are likely to be various purchasers of the 1,100,000 TDRs over a period of several years. According to Mr. Updike, due to the nature of the market, a party offering to sell TDRs must wait for prospective developers to approach the City with a desire to purchase these TDRs. Mr. Updike notes that he has had inquiries regarding the proposed TDRs, but cannot comment on the specifics at this time.

Mr. Updike notes that the Real Estate Division will monitor the TDR market and at appropriate times over the next several years, will secure additional appraisals of the TDR market to ensure that the City is securing a fair market price for any remaining balance of TDR square footage. Mr. Updike estimates that occasional appraisals over the next two to three years will cost approximately \$15,000.

### **Administrative Costs of TDRs**

The City's administrative costs to execute and complete the TDR sales transactions would be deducted from the gross revenues received. Mr. Updike anticipates City staff costs to negotiate each TDR transaction of between \$10,000 and \$25,000, depending on how many transactions are required to exhaust the 1,100,000 square feet of TDRs at the War Memorial, and the level of complexity of each transaction. In addition, Mr. Updike estimates that the title company costs will be approximately \$3,000 per transaction. Mr. Updike advises that the Real Estate Division anticipates using a boilerplate sales agreement to limit the legal transaction costs to execute and record the TDR certificates of transfer and negotiate and execute the related agreements.

Given that the number of transactions cannot be specified at this time, the total administrative costs to sell all 1,100,000 TDRs cannot be estimated. In addition, the timing for sale of all 1,100,000 cannot be determined. Therefore, the timing for the receipt of all of the TDR sale proceeds and the total net proceeds to be realized by the War Memorial cannot be calculated at this time.

### Use of TDR Revenues

Under the proposed resolution, the net proceeds from the sale of up to 1,100,000 TDR by the War Memorial would be used solely for the rehabilitation and restoration of the War Memorial Complex, which may include payment of debt service, in accordance with the Secretary of the Interior Standards. According to Ms. Beth Murray, the Managing Director of the War Memorial and Performing Arts Center, and as summarized in the War Memorial Budget Status Report included as Attachment II to this report, the current projected costs for the War Memorial renovation project of approximately \$154.3 million is approximately \$14.5 million greater than the current budgeted funding sources totaling \$139.8 million. Ms. Murray advises that the projected \$14.5 million deficit is primarily due to higher construction bids than anticipated and the potential need for a higher 18% contingency due to the complexity of the seismic upgrades and historic restoration. Ms. Murray advises that the net revenues received from the proposed TDR sales would be used to address the shortfall in the War Memorial capital improvement project. Appropriation of all revenues received from the sale of such TDRs would be subject to appropriation approval by the Board of Supervisors.

### POLICY CONSIDERATION

The proposed resolution would authorize the Director of the Real Estate Division to negotiate, execute and record the necessary documents for the sale of up to 1,100,000 square feet of TDR from the War Memorial Complex over several years, at a sales price of at least \$25 per square feet, without subsequent Board of Supervisors approval. All revenues from the sales, less the administrative and transaction costs, would be placed in a separate account to be used to fund the shortfall to rehabilitate and restore the War Memorial Complex, subject to Board of Supervisors appropriation approval. However, the actual price of each TDR sale is not currently known, the specified developers and/or parcels for the sale to be transferred have not been identified and the total value of the sale and the related administrative costs are not currently known such that the net value of the transactions cannot be estimated at this time.

Under the proposed resolution, the Director of the Real Estate Division would be required to report to the Capital Planning Committee (CPC) and the Board of Supervisors' Budget and Finance Committee at the end of each quarter on the results of the sales of City-owned TDRs. In accordance with the proposed resolution, if no TDR sales occurred in the previous quarter, then this quarterly reporting requirement would be waived.

In addition to the proposed sale of up to 1,100,000 square feet of TDR from the War Memorial Complex, Mr. Updike advises that the Real Estate Division has identified approximately 2,500,000 square feet of TDRs that may potentially be available, or a total of approximately 3,600,000 square feet of TDRs. Such additional TDRs are potentially available from City Hall, Asian Art Museum, Bill Graham Auditorium and 101 Grove Street (Public Health Building).

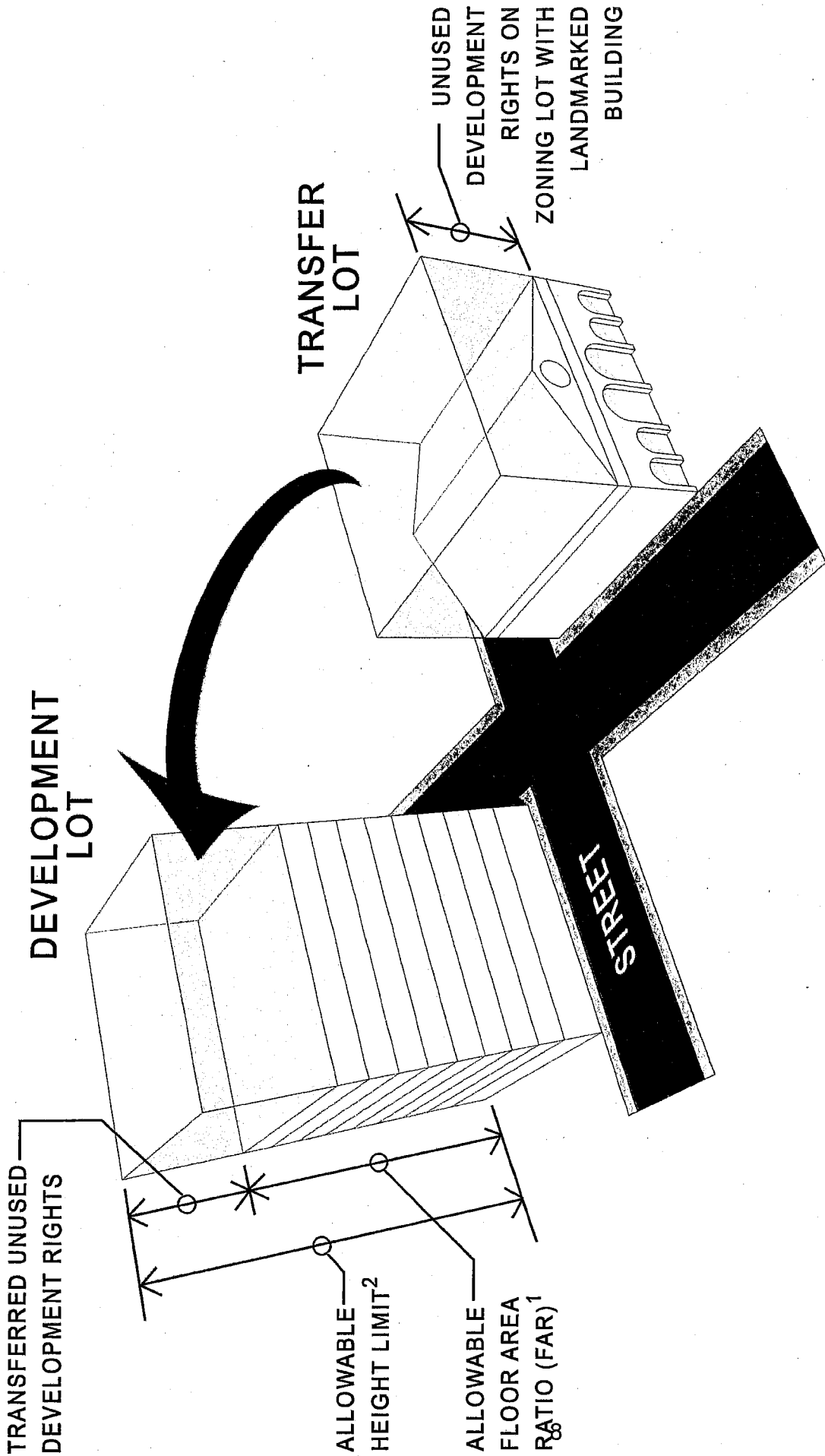
Given that this would be the second<sup>5</sup> offering of such public TDRs, the Budget and Legislative Analyst recommends that the proposed resolution be amended to require the Director of Property to submit a future resolution to the Board of Supervisors reauthorizing such TDR sales immediately upon reaching projected sales of 550,000 gross square feet of TDRs. This amendment would enable the Board of Supervisors to review and analyze the history of the TDR sales and potentially adjust the minimum sales price of TDRs once the City has experience in initially selling 550,000 square feet, or approximately one-half of the available TDRs from the War Memorial. At the same time, the proposed amendment would enable the full certification of the requested up to 1,100,000 TDRs and provide sufficient capacity of 550,000 square feet of TDRs to be sold at a minimum of \$25 per square foot to provide immediate revenues for the War Memorial Complex capital improvement project. Mr. Updike concurs with the proposed recommendation.

## RECOMMENDATIONS

1. Amend the proposed resolution on page 2, line 20 to add (iii) the Director of Property shall submit enabling legislation to the Board of Supervisors to reauthorize such TDR sales immediately upon reaching sales of 550,000 gross square feet (such legislation to adjust the minimum sales price of TDRs as necessary).
2. Approve the proposed resolution as amended.

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<sup>5</sup> The first City offering of TDRs occurred in the early 2000s when Continental Development Corporation San Francisco LLC (CDC) approached the City about purchasing TDRs from the Old Mint property for development of the InterContinental San Francisco Hotel. This offering resulted in the modification of the City's Planning Code to make Public (P) zoned lots eligible to transfer TDRs. In 2003, the City certified 267,728 TDRs from the Old Mint and in 2005 CDC bought 253,195 TDRs at \$5.51 per TDR, for \$1,395,000. This \$5.51 per TDR sales price from the Old Mint is the lowest known sales price for TDRs. The remaining 14,533 TDRs were sold for \$18 per TDR or \$261,954. The TDR sale proceeds totaling \$1.7 million are a revenue source to rehabilitate and restore the Old Mint.



**TRANSFER OF UNUSED DEVELOPMENT POTENTIAL  
SAN FRANCISCO TRANSFER OF DEVELOPMENT RIGHTS (TDR) PROGRAM**

1: FLOOR AREA RATIO (FAR) IS THE RATIO OF A BUILDING'S MAXIMUM AREA POTENTIAL TO THE SIZE OF THE SITE IT IS BUILT ON. FOR EXAMPLE, AN FAR OF 5 ON A 10,000 SF SITE LIMITS DEVELOPMENT TO A 50,000 SF BUILDING ON THIS SITE.

2: HEIGHT, BULK, SETBACK, SUNLIGHT ACCESS, SEPARATION BETWEEN TOWERS, OR ANY OTHER RULES OR LIMITATIONS APPLICABLE TO THE DEVELOPMENT LOT REMAIN UNCHANGED.

**WAR MEMORIAL VETERANS BUILDING SEISMIC UPGRADE & IMPROVEMENTS**

Budget Status Report - November 14, 2013

Description	CCSF-COPS	War Memorial	SF Arts Commission	TOTAL BUDGET	Current Projection	Variance
Construction	\$ 91,018,571					
Hazardous Materials Abatement	1,650,000					
Construction Total	\$ 92,668,571	\$ 4,666,447	\$ 892,240	\$ 98,227,258	\$ 103,984,866	\$ (5,757,608)
Construction Contingency	9,422,229	466,643	90,000	9,978,872	18,717,276	(8,738,404)
CM/GC Contingency	1,820,371	93,329	17,760	1,931,460	1,931,460	-
Soft Costs (A/E, Design, Project Management)	25,663,829	603,581	-	26,267,410	26,267,410	-
Post-Construction Site Work	500,000	-	-	500,000	500,000	-
Relocation	1,225,000	-	-	1,225,000	1,225,000	-
Fixtures/Furnishings & Equipment	-	470,000	-	470,000	470,000	-
Finance Costs	1,155,590	-	-	1,155,590	1,155,590	-
<b>TOTAL PROJECT BUDGET</b>	<b>\$ 132,455,590</b>	<b>\$ 6,300,000</b>	<b>\$ 1,000,000</b>	<b>\$ 139,755,590</b>	<b>\$ 154,251,602</b>	<b>\$ (14,496,012)</b>

OFFICE OF THE MAYOR  
SAN FRANCISCO



EDWIN M. LEE  
MAYOR

TO: Angela Calvillo, Clerk of the Board of Supervisors  
FROM: *per* Mayor Edwin M. Lee *EL*  
RE: War Memorial Complex – 301 and 401 Van Ness – Sale of Transferable  
Development Rights  
DATE: December 10, 2013

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Attached for introduction to the Board of Supervisors is the resolution authorizing the Director of Property to sell up to 1,100,000 gross square feet of transferable development rights ("TDR") from the War Memorial Complex, 301 and 401 Van Ness Avenue, San Francisco, at fair market value, and to execute and record Certificates of Transfer and to take such additional actions as may be necessary to effectuate one or more TDR transfers in accordance with Planning Code Section 128.

Please note this item is cosponsored by Supervisors Chiu and Wiener

I request that this item be calendared in Budget and Finance Committee.

Should you have any questions, please contact Jason Elliott (415) 554-5105.

cc. Supervisor David Chiu  
Supervisor Scott Wiener

RECEIVED  
BOARD OF SUPERVISORS  
SAN FRANCISCO  
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*EL*

131193

<p><b>Item 3</b> <b>File 13-1193</b></p>	<p><b>Departments:</b> Real Estate War Memorial</p>
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**EXECUTIVE SUMMARY**

**Legislative Objectives**

- The proposed resolution authorizes the sale of up to 1,100,000 gross square feet of Transferable Development Rights (TDR) from the War Memorial Complex at no less than \$25 per square foot, in accordance with City Planning Code 128.

**Key Points**

- Under Planning Code Section 128, owners of historic buildings located in C-3 Zoning Districts may ask the Planning Department to certify their unused potential, known as transferable development rights (TDR). Once certified, the TDR units may then be transferred via a sale to another property in any other C-3 District. Each TDR is equal to one square foot of floor area.
- The revenue generated from the TDR sale must be used to rehabilitate the historic building according to the U.S. Secretary of the Interior’s Standards for Treatment of Historic Properties.
- On July 1, 2013, the City began renovation of the War Memorial Veterans Building, including seismic upgrades, accessibility, life safety and building code improvements, and replacement or improvements to building systems, at a current projected budget of \$154.3 million.

**Fiscal Impacts**

- A March 2013 appraisal by Carneghi-Blum & Partners, Inc. of TDRs at the War Memorial Veterans Building determined a market value of \$24 per square foot. The proposed resolution authorizes the Real Estate Division to sell TDRs for not less than \$25 per square foot, or \$1 more than the recent appraisal based on more recent market activity.
- Assuming sale of all 1,100,000 at \$25 per square foot results in total revenues of \$27,500,000.
- Staff administrative costs of \$10,000 and \$25,000 per transaction, and title company fees of \$3,000 per transaction, are estimated based on number of transactions and level of complexity.
- Net proceeds from the sale of up to 1,100,000 TDRs would be used for the War Memorial renovation project, which is currently projected to have a \$14.5 million funding shortfall.

**Policy Considerations**

- Given that this would be the first offering of such public TDRs, amend the proposed resolution for the Director of Property to submit a future resolution to the Board of Supervisors reauthorizing such TDR sales upon reaching sales of 550,000 gross square feet of TDRs.

**Recommendations**

- Amend the proposed resolution on page 2, line 20 to add (iii) the Director of Property shall submit enabling legislation to the Board of Supervisors to reauthorize such TDR sales immediately upon reaching sales of 550,000 gross square feet (such legislation to adjust the minimum sales price of TDRs as necessary).
- Approve the proposed resolution as amended.

## MANDATE STATEMENT AND BACKGROUND

### Mandate Statement

According to Charter Section 9.118(c), the sale or other transfer of real property owned by the City and County of San Francisco shall first be approved by resolution of the Board of Supervisors. In addition, Planning Code Section 128 specifies the definitions, requirements and procedures for determining and cancelling Transfer of Development Rights (TDR) as well as the preservation, rehabilitation and maintenance requirements.

### Background

In the mid-1980s, the City established the Transfer of Development Rights program to allow the sale of unused development potential from preservation properties to development properties. The goal was to generate income for the maintenance and preservation of historic buildings, while allowing new developments to build higher. Under Planning Code Section 128, owners of historic buildings located in C-3 Zoning Districts<sup>1</sup> may ask the Planning Department to certify their unused potential, known as transferable development rights (TDR).

Once certified, the TDR units may then be transferred via a sale to another property in any other C-3 District. As of 2007, TDRs may also be transferred from any lot zoned P (public), provided that the other conditions for transfer outlined in Section 128(a)(4) are met. The revenue generated from the TDR sale must be used to rehabilitate the historic building according to the U.S. Secretary of the Interior's Standards for Treatment of Historic Properties.

Each TDR unit is equal to one square foot of gross floor area. To calculate the TDR available from a preservation property, the difference between the building's existing floor area ratio (FAR) and that allowed under zoning limits is determined. Attachment I to this report, provided by Mr. John Updike, Director of Real Estate, graphically depicts how the unused development rights from a landmarked building would be transferred for use by another development parcel. Development properties may obtain TDR to build beyond what is allowed under FAR limits and up to zoned height limits. They may not, however, use TDR to exceed or disregard height, bulk, and setback limits, sunlight access requirements, or other restrictions.

Based on a recent study<sup>2</sup>, the City has certified approximately 5.4 million square feet of TDR originating from 112 buildings downtown. Of the total certified TDRs, approximately 2.9 million square feet has been used for 34 projects, leaving a remaining balance of approximately 2.5

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<sup>1</sup> C-3 Zoning Districts are defined as downtown commercial districts and include Support (S), General (G), Office (O) or Retail (R) uses. In accordance with Section 128 of the Planning Code, any C-3 District parcel may be the recipient parcels for a TDR transaction.

<sup>2</sup> San Francisco's Transfer of Development Rights Program report dated June, 2013, completed by the Seifel Consulting Inc. and C.H. Elliott & Associates for the San Francisco Planning Department.



million square feet. The average amount of TDR used on each receiving site is 84,000 square feet, with half of the parcels requiring less than 40,000 square feet.

Average annual demand for TDR since the program's inception has been approximately 100,000 square feet. However, the demand for TDRs generally varies with market conditions and the development cycle, such that when development is active, TDRs tend to be in greatest demand. An estimated total of 1.3 million TDR square feet is needed for projects that are currently in the development pipeline. Mr. Updike also notes that the market conditions are very favorable now given the current real estate market.

## DETAILS OF PROPOSED LEGISLATION

The proposed resolution would authorize the Director of Real Estate to:

- (1) sell up to 1,100,000 gross square feet of Transferable Development Rights (TDR) from the War Memorial Complex, at no less than \$25 per square foot,
- (2) execute and record the Certificates of Transfer and negotiate and execute the related agreements as necessary,
- (3) make sure the agreements are acceptable to the Managing Director of the War Memorial,
- (4) place funds from the sale of the TDRs into an account solely for the rehabilitation and restoration of the War Memorial Complex in accordance with the Secretary of the Interior's Standards,
- (5) take such additional actions as may be necessary to effectuate one or more TDR transfers in accordance with Planning Code Section 128, and
- (6) report to the Capital Planning Committee and the Board of Supervisors' Budget and Finance Committee at the end of each quarter on the results of the sales of City-owned TDRs.

### War Memorial Complex

The San Francisco War Memorial complex includes two buildings, the War Memorial Opera House and the War Memorial Veterans Building at 301 and 401 Van Ness Avenue respectively, and the adjoining outdoor Memorial Court, all of which were completed in 1932. The complex is designated as both a City Landmark and State Landmark.

The War Memorial is a charitable trust department, in which the Board of Trustees has exclusive charge over its assets. In 2007, the Board of Trustees approved a resolution, authorizing the Director of Real Estate to obtain City Zoning Administrator approval for the transferable development rights of the War Memorial complex.

According to the Board of Trustees resolution, the Director of Real Estate, with approval from the Managing Director of the War Memorial, could negotiate and award agreements for the sale of TDR for the War Memorial complex. Proceeds from the sale, net of transaction costs, are to be deposited into a segregated, interest-bearing account solely for use by the War Memorial, subject to appropriation approval by the Board of Supervisors.

### **War Memorial Veterans Building Project**

The City has begun renovation of the War Memorial Veterans Building, including seismic upgrades, accessibility, life safety and building code improvements, and replacement or improvements to building systems. The construction of the Veterans Building improvements began on July 1, 2013 and is scheduled to be completed by July 2015.

Total construction costs are currently estimated at approximately \$104 million. The total War Memorial Seismic Upgrade and Improvement Project current projected budget is \$154.3 million, which includes project management, designs and permits; construction costs; hazardous material abatement; relocation costs for existing tenants; and interest and debt service reserves. The funding sources for the War Memorial Seismic Upgrade and Improvement Project include: (a) \$132,455,590 from Certificates of Participation proceeds<sup>3</sup>; (b) \$6,300,000 of War Memorial Department capital funds; and (c) \$1,000,000 of Arts Commission capital funds, as summarized in Attachment II to this report.

## **FISCAL IMPACTS**

### **Amount of TDRs Available**

To determine the available TDRs, the difference between the building's existing floor area ratio and the amount of square footage allowed under zoning limits is calculated. Mr. Updike advises that the TDR available at the War Memorial is estimated to be 1,222,280 square feet. However, Mr. Updike notes that the Planning Department has just begun the formal certification of the total TDR available at the War Memorial, which is anticipated to be completed by February 1, 2014. Mr. Updike advises that the proposed resolution would sell up to 1,100,000 square feet of TDR, or 122,280 square feet less than the current estimated total available, in order to leave some margin for error and allow the War Memorial some modest expansion potential for future improvements.

### **Fair Market Value for TDR**

The Real Estate Division authorized an appraisal, which was conducted in March 2013 by Carneghi-Blum & Partners, Inc., a private real estate appraisal firm, of the market value price per square foot of the TDRs at the War Memorial Veterans Building. Mr. Updike advises that this appraisal was commissioned for a specific request to transfer 151,545 square feet of TDR from the War Memorial for use by the Transbay Tower. Mr. Updike notes that this transfer of TDR from the War Memorial did not occur because the Transbay Tower selected two private sector sellers who could complete their TDR transactions more quickly than the City.

According to this March 2013 appraisal, between 2000 and 2012, the market value of TDRs fluctuated between \$18 and \$38 per square foot, with such pricing reflecting both the available supply and demand to purchase TDRs, which generally reflect real estate and economic development demands. This appraisal found that the March 15, 2013 market value<sup>4</sup> of the

<sup>3</sup> As approved by the Board of Supervisors on July 26, 2011 (Ordinance 149-11).

<sup>4</sup> Market value is defined as the most probable price which the property should bring in a competitive and open sale.

151,454 square feet of TDR at the War Memorial Veterans Building was \$24 per square foot or a total value of approximately \$3,640,000.

#### **Sale of TDRs**

Although the March 2013 market value appraisal was for \$24 per square foot, the proposed resolution authorizes the Real Estate Division to sell up to 1,100,000 square feet of TDRs for not less than \$25 per square foot, or \$1 more than the recent appraisal. Mr. Updike advises that the proposed minimum of \$25 per square foot is based on more recent discussions with real estate brokers and is reflective of recent market activity. Assuming sale of all 1,100,000 square feet at \$25 per square foot would result in total revenues of \$27,500,000.

However, Mr. Updike advises that the proposed sale of the War Memorial TDRs would likely be conducted on a rolling basis, of first come-first served, such that there is likely to be various purchasers of the 1,100,000 TDRs over a period of several years. According to Mr. Updike, due to the nature of the market, a party offering to sell TDRs must wait for prospective developers to approach the City with a desire to purchase these TDRs. Mr. Updike notes that he has had inquiries regarding the proposed TDRs, but cannot comment on the specifics at this time.

Mr. Updike notes that the Real Estate Division will monitor the TDR market and at appropriate times over the next several years, will secure additional appraisals of the TDR market to ensure that the City is securing a fair market price for any remaining balance of TDR square footage. Mr. Updike estimates that occasional appraisals over the next two to three years will cost approximately \$15,000.

#### **Administrative Costs of TDRs**

The City's administrative costs to execute and complete the TDR sales transactions would be deducted from the gross revenues received. Mr. Updike anticipates City staff costs to negotiate each TDR transaction of between \$10,000 and \$25,000, depending on how many transactions are required to exhaust the 1,100,000 square feet of TDRs at the War Memorial, and the level of complexity of each transaction. In addition, Mr. Updike estimates that the title company costs will be approximately \$3,000 per transaction. Mr. Updike advises that the Real Estate Division anticipates using a boilerplate sales agreement to limit the legal transaction costs to execute and record the TDR certificates of transfer and negotiate and execute the related agreements.

Given that the number of transactions cannot be specified at this time, the total administrative costs to sell all 1,100,000 TDRs cannot be estimated. In addition, the timing for sale of all 1,100,000 cannot be determined. Therefore, the timing for the receipt of all of the TDR sale proceeds and the total net proceeds to be realized by the War Memorial cannot be calculated at this time.

### Use of TDR Revenues

Under the proposed resolution, the net proceeds from the sale of up to 1,100,000 TDR by the War Memorial would be used solely for the rehabilitation and restoration of the War Memorial Complex, which may include payment of debt service, in accordance with the Secretary of the Interior Standards. According to Ms. Beth Murray, the Managing Director of the War Memorial and Performing Arts Center, and as summarized in the War Memorial Budget Status Report included as Attachment II to this report, the current projected costs for the War Memorial renovation project of approximately \$154.3 million is approximately \$14.5 million greater than the current budgeted funding sources totaling \$139.8 million. Ms. Murray advises that the projected \$14.5 million deficit is primarily due to higher construction bids than anticipated and the potential need for a higher 18% contingency due to the complexity of the seismic upgrades and historic restoration. Ms. Murray advises that the net revenues received from the proposed TDR sales would be used to address the shortfall in the War Memorial capital improvement project. Appropriation of all revenues received from the sale of such TDRs would be subject to appropriation approval by the Board of Supervisors.

### POLICY CONSIDERATION

The proposed resolution would authorize the Director of the Real Estate Division to negotiate, execute and record the necessary documents for the sale of up to 1,100,000 square feet of TDR from the War Memorial Complex over several years, at a sales price of at least \$25 per square feet, without subsequent Board of Supervisors approval. All revenues from the sales, less the administrative and transaction costs, would be placed in a separate account to be used to fund the shortfall to rehabilitate and restore the War Memorial Complex, subject to Board of Supervisors appropriation approval. However, the actual price of each TDR sale is not currently known, the specified developers and/or parcels for the sale to be transferred have not been identified and the total value of the sale and the related administrative costs are not currently known such that the net value of the transactions cannot be estimated at this time.

Under the proposed resolution, the Director of the Real Estate Division would be required to report to the Capital Planning Committee (CPC) and the Board of Supervisors' Budget and Finance Committee at the end of each quarter on the results of the sales of City-owned TDRs. In accordance with the proposed resolution, if no TDR sales occurred in the previous quarter, then this quarterly reporting requirement would be waived.

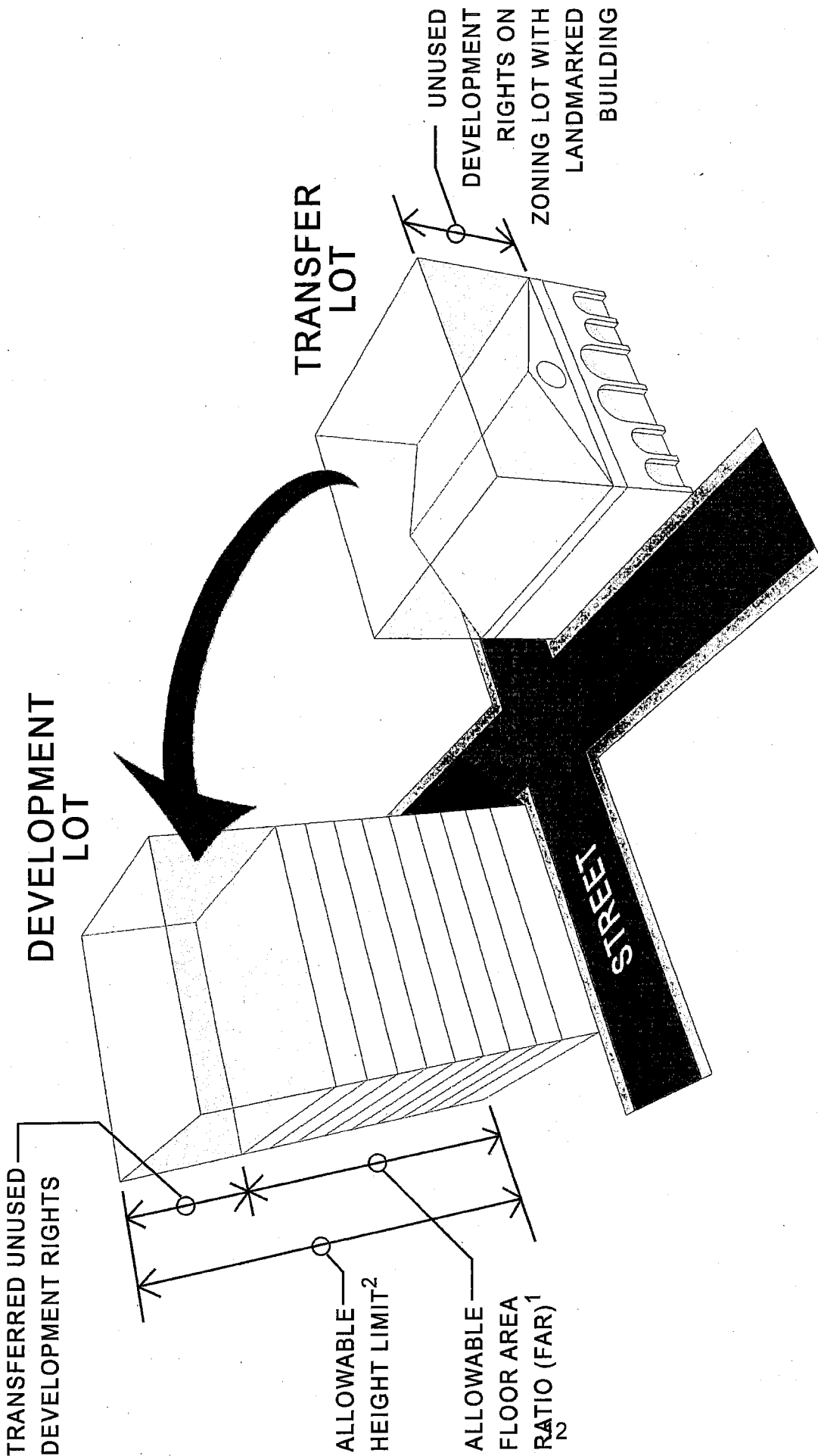
In addition to the proposed sale of up to 1,100,000 square feet of TDR from the War Memorial Complex, Mr. Updike advises that the Real Estate Division has identified approximately 2,500,000 square feet of TDRs that may potentially be available, or a total of approximately 3,600,000 square feet of TDRs. Such additional TRRs are potentially available from City Hall, Asian Art Museum, Bill Graham Auditorium and 101 Grove Street (Public Health Building).

Given that this would be the first offering of such public TDRs, the Budget and Legislative Analyst recommends that the proposed resolution be amended to require the Director of Property to submit a future resolution to the Board of Supervisors reauthorizing such TDR sales immediately upon reaching projected sales of 550,000 gross square feet of TDRs. This

amendment would enable the Board of Supervisors to review and analyze the history of the TDR sales and potentially adjust the minimum sales price of TDRs once the City has experience in initially selling 550,000 square feet, or approximately one-half of the available TDRs from the War Memorial. At the same time, the proposed amendment would enable the full certification of the requested up to 1,100,000 TDRs and provide sufficient capacity of 550,000 square feet of TDRs to be sold at a minimum of \$25 per square foot to provide immediate revenues for the War Memorial Complex capital improvement project. Mr. Updike concurs with the proposed recommendation.

## RECOMMENDATIONS

1. Amend the proposed resolution on page 2, line 20 to add (iii) the Director of Property shall submit enabling legislation to the Board of Supervisors to reauthorize such TDR sales immediately upon reaching sales of 550,000 gross square feet (such legislation to adjust the minimum sales price of TDRs as necessary).
2. Approve the proposed resolution as amended.



**TRANSFER OF UNUSED DEVELOPMENT POTENTIAL  
SAN FRANCISCO TRANSFER OF DEVELOPMENT RIGHTS (TDR) PROGRAM**

- 1: FLOOR AREA RATIO (FAR) IS THE RATIO OF A BUILDING'S MAXIMUM AREA POTENTIAL TO THE SIZE OF THE SITE IT IS BUILT ON. FOR EXAMPLE, AN FAR OF 5 ON A 10,000 SF SITE LIMITS DEVELOPMENT TO A 50,000 SF BUILDING ON THIS SITE.
- 2: HEIGHT, BULK, SETBACK, SUNLIGHT ACCESS, SEPARATION BETWEEN TOWERS, OR ANY OTHER RULES OR LIMITATIONS APPLICABLE TO THE DEVELOPMENT LOT REMAIN UNCHANGED.

**WAR MEMORIAL VETERANS BUILDING SEISMIC UPGRADE & IMPROVEMENTS**

Budget Status Report - November 14, 2013

Description	CCSF-COPs	War Memorial	SF Arts Commission	TOTAL BUDGET	Current Projection	Variance
Construction	\$ 91,018,571					
Hazardous Materials Abatement	1,650,000					
Construction Total	\$ 92,668,571	\$ 4,666,447	\$ 892,240	\$ 98,227,258	\$ 103,984,866	\$ (5,757,608)
Construction Contingency	9,422,229	466,643	90,000	9,978,872	18,717,276	(8,738,404)
CM/GC Contingency	1,820,371	93,329	17,760	1,931,460	1,931,460	-
Soft Costs (A/E, Design, Project Management)	25,663,829	603,581	-	26,267,410	26,267,410	-
Post-Construction Site Work	500,000	-	-	500,000	500,000	-
Relocation	1,225,000	-	-	1,225,000	1,225,000	-
Fixtures/Furnishings & Equipment	-	470,000	-	470,000	470,000	-
Finance Costs	1,155,590	-	-	1,155,590	1,155,590	-
<b>TOTAL PROJECT BUDGET</b>	<b>\$ 132,455,590</b>	<b>\$ 6,300,000</b>	<b>\$ 1,000,000</b>	<b>\$ 139,755,590</b>	<b>\$ 154,251,602</b>	<b>\$ (14,496,012)</b>

**WAR MEMORIAL BOARD OF TRUSTEES**  
San Francisco War Memorial and Performing Arts Center

Resolution authorizing the Director of Property of the City and County of San Francisco to sell Transferable Development Rights ("TDR") from the War Memorial Complex.

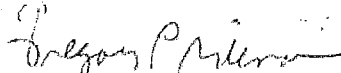
**RESOLUTION NO. 07-26**

RESOLVED, By the Board of Trustees of the War Memorial of San Francisco, a charitable trust department under Article V of the San Francisco Charter with exclusive charge over its assets, that it hereby authorizes the Director of Property of the City and County of San Francisco to apply on behalf of the War Memorial to the City Zoning Administrator for a Statement of Eligibility in accordance with the procedure described in Section 128 of the Planning Code, and to negotiate and enter into contracts for the sale of Transferable Development Rights ("TDR") from the War Memorial Complex, located at 301 and 401 Van Ness Avenue and identified as Block 0786A, Lot 1, which contains two buildings known as the War Memorial Opera House and the War Memorial Veterans Building, in order to expedite the receipt of funds for the City's restoration and rehabilitation of the War Memorial Complex.

The Director of Property shall execute this authority in accordance with the following procedures:

- 1) The Director of Property shall notify the Managing Director of the War Memorial of any offers to purchase or other inquires regarding TDR from the War Memorial Complex.
- 2) The Director of Property shall negotiate contracts for the sale of TDR from the War Memorial Complex in accordance with procedures approved by ordinance of the San Francisco Board of Supervisors.
- 3) The Director of Property shall obtain approval from the Managing Director of the War Memorial before awarding contracts for the sale of TDR from the War Memorial Complex.
- 4) The Director of Property shall deduct from the gross proceeds received from the sale of TDR from the War Memorial Complex (a) administrative costs incurred by the Department of Real Estate and the Planning Department in connection with their determination of the fair market value of the TDR, (b) fees and costs in connection with the Statement of Eligibility, and (c) the costs and expenses of the Department of Real Estate, the Planning Department, and the City Attorney's Office in connection with the sale of TDR from the War Memorial Complex.
- 5) Net proceeds from the sale of TDR from the War Memorial Complex shall be deposited in a segregated, interest bearing account established by the City's Controller's Office specifically for the War Memorial Complex. Such account shall be designated as a special fund category eight, in accordance with Section 10.100-1 of the San Francisco Administrative Code, except that all accrued interest shall be credited to the account regardless of the fund balance, and none of the net sales proceeds shall be transferred to the City's General Fund. Net sales proceeds from the sale of TDR from the War Memorial Complex shall remain a trust asset of the charitable trust department, the War Memorial and Performing Arts Center.

Adopted by the War Memorial Board of Trustees on May 10, 2007.

  
Gregory P. Ridenour  
Executive Secretary