

1 [Rescission of Final Environmental Impact Report Certification - 8 Washington Street/Seawall  
2 Lot No. 351 Project]

3 **Motion rescinding the certification of the Final Environmental Impact Report for the 8**  
4 **Washington Street/Seawall Lot No. 351 Project to comply with orders of the San**  
5 **Francisco Superior Court in Ferry Building Investors, LLC, et al. v. San Francisco Port**  
6 **Commission, et al., Case No. CPF-12-512355, and Neighbors to Preserve the**  
7 **Waterfront, et al. v. City and County of San Francisco et al., Case No. CPF-12-512356.**

8  
9 WHEREAS, The Board of Supervisors (i) through Motion No. M12-061 affirmed the  
10 Planning Commission's certification of the Final Environmental Impact Report ("FEIR") for the  
11 8 Washington Street/Seawall Lot 351 Project ("Project"); (ii) through Motion No. M12-062  
12 approved the Planning Commission's conditional use authorization for the Project; (iii) through  
13 Resolution No. 226-12 approved (a) a Purchase and Sale Agreement between the San  
14 Francisco Port Commission ("Port") and San Francisco Waterfront Partners II, LLC (the  
15 "Project Sponsor") to sell a portion of Seawall Lot 351 in exchange for a portion of Block No.  
16 168, Lot No. 58, Block No. 171, Lot No. 69, and Block No. 201, Lot No. 12; (b) a Trust  
17 Exchange Agreement with the California State Lands Commission that would remove the  
18 public trust from such portion of Seawall Lot No. 351 and impressing the public trust on such  
19 portion of real property located on Block No. 168, Lot No. 58, Block No. 171, Lot No. 69, and  
20 Block No. 201, Lot No. 12; (c) a Lease for a term of 66 years between the Port and Project  
21 Sponsor; and (d) a Maintenance Agreement between the Port and Project Sponsor; (iv)  
22 through Ordinance No. 104-12 approved a zoning map amendment, which was later rejected  
23 by voter referendum in Proposition C at the November 2012 general municipal election; and  
24 (v) through Ordinance No. 105-12 approved a General Plan amendment; and  
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1           WHEREAS, Prior to the actions by the Board of Supervisors, the Planning Commission  
2 by Motion No. 18560 certified the FEIR and by Motions No. 18561 through No. 18567 took  
3 various approval actions related to the Project; and

4           WHEREAS, The Recreation and Park Commission by Resolutions No. 1203-14 and  
5 1203-15, and the Port Commission by Resolutions No. 12-46 and 12-47 took various  
6 additional approval actions related to the Project; and

7           WHEREAS, Following approval of the Project by the City, two parties filed lawsuits  
8 against the City in *Ferry Building Investors, LLC, et al. v. San Francisco Port Commission, et*  
9 *al.* (CPF-12-512355), and *Neighbors to Preserve the Waterfront, et al. v. City and County of*  
10 *San Francisco, et al.* (CPF-12-512356), seeking writs of mandamus overturning the FEIR  
11 under the California Environmental Quality Act (“CEQA”); and

12           WHEREAS, The San Francisco Superior Court (“Court”) consolidated the cases for  
13 hearing, and following hearing in December 2014, entered judgment in *Ferry Building*  
14 *Investors, LLC, et al. v. San Francisco Port Commission, et al.* (CPF-12-512355) on February  
15 11, 2015, and in *Neighbors to Preserve the Waterfront, et al. v. City and County of San*  
16 *Francisco, et al.* (CPF-12-512356) on February 25, 2015, ordering that the petitions for writ of  
17 mandamus be granted in part, finding that because it was more than two years old, the traffic  
18 data relied on in the FEIR did not provide the public, City decision-makers, and the Court with  
19 accurate information about the Project’s traffic-related impacts; and ordering that the petitions  
20 for writ of mandamus be denied on all other grounds; and

21           WHEREAS, The Court’s peremptory writs of mandamus order the City to set aside the  
22 certification of the FEIR and its approvals of the Project and restrain the City from considering  
23 Project approvals pending revision of the traffic-related analysis based on currently-existing  
24 conditions and the certification of an environmental impact report (“EIR”) that complies with  
25 the requirements of CEQA; and

1           WHEREAS, The judgments order the City to file a return upon taking final action to  
2 comply with the peremptory writ, on or before August 1, 2015, or such other date as may be  
3 agreed upon by the parties and/or approved by the Court; and

4           WHEREAS, The Planning Department will prepare a revised EIR for the Project in  
5 compliance with the Court's order once it receives a revised Project application from the  
6 Project Sponsor that complies with the height limit imposed by the Proposition C referendum  
7 approved by the voters in November 2012, which disapproved the height increase approved  
8 by the Board by Ordinance No. 104-12; and

9           WHEREAS, Administrative Code, Section 31.16(b)(10) provides that if the Board of  
10 Supervisors reverses the Planning Commission's certification of an EIR all actions approving  
11 the project in reliance on the EIR are deemed void; now, therefore, be it

12           MOVED, That in compliance with the peremptory writs of mandamus issued by the San  
13 Francisco Superior Court in Cases No. CPF-12-512355 and CPF-12-512356, this Board of  
14 Supervisors rescinds the certification of the FEIR by the Planning Commission; and, be it

15           FURTHER MOVED, That the Board hereby advises that as provided in Administrative  
16 Code, Section 31.16(b)(10) the Board's rescission of the certification of the FEIR voids the  
17 City's approvals of the Project listed in this Motion.