

File No. 150693

Committee Item No. 2  
Board Item No. 58

## COMMITTEE/BOARD OF SUPERVISORS

### AGENDA PACKET CONTENTS LIST

Committee: Land Use & Transportation

Date July 13, 2015

Board of Supervisors Meeting

Date July 21, 2015

#### Cmte Board

<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Motion
<input type="checkbox"/>	<input type="checkbox"/>	Resolution
<input type="checkbox"/>	<input type="checkbox"/>	Ordinance
<input type="checkbox"/>	<input type="checkbox"/>	Legislative Digest
<input 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 checked="" type="checkbox"/>	Department/Agency Cover Letter and/or Report
<input type="checkbox"/>	<input type="checkbox"/>	MOU
<input type="checkbox"/>	<input type="checkbox"/>	Grant Information Form
<input type="checkbox"/>	<input type="checkbox"/>	Grant Budget
<input type="checkbox"/>	<input type="checkbox"/>	Subcontract Budget
<input type="checkbox"/>	<input type="checkbox"/>	Contract/Agreement
<input type="checkbox"/>	<input type="checkbox"/>	Form 126 – Ethics Commission
<input type="checkbox"/>	<input type="checkbox"/>	Award Letter
<input type="checkbox"/>	<input type="checkbox"/>	Application
<input type="checkbox"/>	<input type="checkbox"/>	Public Correspondence

OTHER (Use back side if additional space is needed)

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Completed by: Andrea Ausberry Date July 10, 2015

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

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  
25

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.  
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**SAN FRANCISCO RECREATION & PARK COMMISSION**

**RESOLUTION NO. 1203-015**

**RESOLUTION RECOMMENDING THAT THE PLANNING COMMISSION FIND THAT THE NET NEW SHADOW CAST ON SUE BIERMAN PARK BY THE PROPOSED PROJECT AT 8 WASHINGTON STREET WILL NOT BE ADVERSE.**

**WHEREAS**, The Recreation and Park Commission has jurisdiction over real property at Assessor's Block 0202/Lots 6, 15, 18, and 20, and Assessor's Block 0203/Lot 014 in San Francisco that is commonly referred to as "Sue Bierman Park"; and

**WHEREAS**, San Francisco Waterfront Partners II, LLC proposes to demolish the existing Golden Gateway Swim and Tennis Club and the existing surface parking lot, and construct a new health club, residential buildings ranging from four to twelve stories in height containing 145 dwelling units, ground-floor retail uses totaling approximately 20,000 square feet, and 400 off-street parking spaces, located at 8 Washington Street, Lot 058 within Assessor's Block 0168, Lot 69 within Assessor's Block 0171, Lot 012 of Assessor's Block 0201, and Seawall Lot 351, which includes Lot 013 of Assessor's Block 0201 within the RC-4 (Residential-Commercial, High Density) District and the 84-E Height and Bulk District (the "Project"); and

**WHEREAS**, On March 22, 2012, the Recreation and Park Commission and the Planning Commission held a duly advertised joint public hearing at which the Recreation and Park Commission adopted Resolution No. 1203-014 establishing an absolute cumulative shadow limit equal to 0.00067% of the theoretically available annual sunlight ("TAAS") for Sue Bierman Park; and



**WHEREAS**, By Resolution No. 1203-014 the Recreation and Park Commission also adopted findings pursuant to CEQA, which findings are incorporated by this reference as if fully set forth in this Resolution; and

**WHEREAS**, Under Planning Code Section 295, a building permit application for a project exceeding a height of 40 feet cannot be approved if there is any shadow impact on a property under the jurisdiction of the Recreation and Park Department, unless the Planning Commission, upon recommendation from the General Manager of the Recreation and Park Department, in consultation with the Recreation and Park Commission, makes a determination that the shadow impact will not be significant or adverse; and

**WHEREAS**, The Commission finds that the additional shadow cast by the Project, while numerically significant is not expected to interfere with the use of Sue Bierman Park, for the following reasons: (1) the new shadow would be cast on small areas at the northwest and northeast portions of the Park, with a maximum area of 670 square feet shadowed at a single time (6:47AM on June 21); (2) the areas to be shaded consists primarily of lawn situated at the outer fringes of the Park, immediately adjacent to the Washington Street sidewalk; 3) larger expanses of grassy seating areas, and pedestrian pathways situated toward the interior of the Park would not be affected ; (4) all net new shadows would be cast for a short duration (approximately 15 minutes) during the early-morning and late-evening hours, from early June through mid-July, and thus the Project would not cast shadows during mid-day hours when usage of the Park is generally higher; now therefore, be it

**RESOLVED**, The Commission finds that the additional shadow cast by the Project would not be adverse for the reasons set forth in this Resolution; and be it

**FURTHER RESOLVED,** The Commission recommends that the Planning Commission find that the net new shadow cast by the Project on Sue Bierman Park will not be adverse.


Adopted by the following vote:

Ayes 5

Noes 0

Absent 2

I hereby certify that the foregoing resolution was adopted at the Special Joint Meeting of the Recreation and Park Commission and City Planning Commission held on March 22, 2012.

  
Margaret A. McArthur, Commission Liaison



**SAN FRANCISCO RECREATION & PARK COMMISSION**

**RESOLUTION NO. 1203-014**

**RESOLUTION ADOPTING FINDINGS UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT, INCLUDING A STATEMENT OF OVERRIDING CONSIDERATIONS AND A MITIGATION MONITORING AND REPORTING PROGRAM, AND ESTABLISHING AN ABSOLUTE CUMULATIVE SHADOW LIMIT FOR SUE BIERMAN PARK.**

**WHEREAS**, The Recreation and Park Commission has jurisdiction over real property at Assessor's Block 0202/Lots 6, 15, 18, and 20, and Assessor's Block 0203/Lot 014 in San Francisco that is commonly referred to as "Sue Bierman Park"; and

**WHEREAS**, San Francisco Waterfront Partners II, LLC proposes to demolish the existing Golden Gateway Swim and Tennis Club and the existing surface parking lot, and construct a new health club, residential buildings ranging from four to twelve stories in height containing 145 dwelling units, ground-floor retail uses totaling approximately 20,000 square feet, and 400 off-street parking spaces, located at 8 Washington Street, Lot 058 within Assessor's Block 0168, Lot 69 within Assessor's Block 0171, Lot 012 of Assessor's Block 0201, and Seawall Lot 351, which includes Lot 013 of Assessor's Block 0201 within the RC-4 (Residential-Commercial, High Density) District and the 84-E Height and Bulk District (the "Project"); and

**WHEREAS**, On March 22, 2012, the Planning Commission held a public hearing and, by Motion No. 18560 certified the Final Environmental Impact Report ("Final EIR") as completed in compliance with the California Environmental Quality Act ("CEQA"), the CEQA Guidelines and Chapter 31 of the San Francisco Administrative Code, reflecting the independent judgment and analysis of the City, as accurate, adequate, and

objective and that the Comments and Responses document of the Final EIR contained no significant revisions to the Draft Environmental Impact Report for the Project; and

**WHEREAS**, The Final EIR files available from the Planning Department have been made available to the Commission and the public and this Commission has reviewed and considered the information in the Final EIR; and

**WHEREAS**, On March 22, 2012, the Planning Commission, by its Motion No. 18561 adopted findings under CEQA (the "CEQA Findings") for approving the Project, including the actions listed in Attachment A to the Planning Commission Motion, which included findings rejecting alternatives as infeasible, adopting a Statement of Overriding Considerations and adopting a Mitigation Monitoring and Reporting Program (the "MMRP"); and

**WHEREAS**, The Planning Commission Motion No. 18561 including the CEQA Findings and the MMRP, are incorporated herein by reference as though fully set forth; and the Commission has reviewed and considered the information in the CEQA Findings, including the Statement of Overriding Considerations and the proposed MMRP; and

**WHEREAS**, Planning Code Section 295 provides for the Planning Commission and the Recreation and Park Commission after a joint meeting to adopt criteria for the implementation of an initiative ordinance, commonly known as Proposition K, which is designed to protect property under the jurisdiction of the Recreation and Park Department from shadow that would adversely impact such property; and

**WHEREAS**, Pursuant to Planning Code Section 295, the Planning Commission and the Recreation and Park Commission, on February 7, 1989, adopted standards for allowing additional shadows on the greater downtown parks (Resolution No. 11595); and

**WHEREAS**, Sue Bierman Park did not exist in its current form, size, and configuration when the absolute cumulative limits were adopted in 1989, and thus no formal standards have ever been adopted establishing an absolute cumulative shadow limit for the Park in its present configuration; and

**WHEREAS**, On an annual basis, the Theoretically Available Annual Sunlight ("TAAS") on Sue Bierman Park (with no adjacent structures present) is approximately 659,443,349 square-foot-hours of sunlight and existing structures in the area cast shadows on the Park that total approximately 265,992,877 square-foot hours, or approximately 40.3% of the TAAS; and

**WHEREAS**, A technical memorandum, prepared by Turnstone Consulting and submitted on December 13, 2011, concluded that the Project would cast approximately 4,425 square-foot-hours of new shadow on Sue Bierman Park, equal to approximately 0.00067% of the TAAS on Sue Bierman Park; and

**WHEREAS**, The Recreation and Park Commission and the Planning Commission held a duly advertized joint public hearing on March 22, 2012 to consider whether to establish an absolute cumulative shadow limit equal to 0.00067% of the TAAS for Sue Bierman Park; and

**WHEREAS**, The staff of both the Planning Department and the Recreation and Park Department have recommended establishing a cumulative shadow limit for Sue Bierman Park of 0.00067% of the TAAS, equal to approximately 4,425 square-foot-hours of net new shadow; now therefore, be it

**RESOLVED**, The Commission adopts the CEQA Findings, including the Statement of Overriding Considerations and MMRP which are incorporated into this Resolution by reference and adopts the mitigation measures set forth in the MMRP; and  
be it

**FURTHER RESOLVED,** The Commission finds that the Project as proposed will not require important revisions to the Final EIR due changes in the project, changes with respect to the circumstances under which the Project is to be undertaken or no new information of substantial importance to the Project that indicate (a) the Project will have significant effects not discussed in the FEIR; (b) significant environmental effects will be substantially more severe; (c) mitigation measures or alternatives found not feasible, which would reduce one or more significant effects, have become feasible; or (d) mitigation measures or alternatives, which are considerably different from those in the FEIR, would substantially reduce one or more significant effects on the environment; and be it

**FURTHER RESOLVED,** The Commission establishes an absolute cumulative shadow limit for Sue Bierman Park equal to 0.00067 percent of the Theoretically Available Annual Sunlight ("TAAS").

Adopted by the following vote:

Ayes	5
Noes	0
Absent	2

I hereby certify that the foregoing resolution was adopted at the Special Joint Meeting of the Recreation and Park Commission and City Planning Commission held on March 22, 2012.

  
Margaret A. McArthur, Commission Liaison

## Ausberry, Andrea

---

**From:** McArthur, Margaret (REC)  
**Sent:** Thursday, July 09, 2015 2:56 PM  
**To:** Ausberry, Andrea  
**Subject:** RE: Missing Resolutions - 1203-14 and 1203-15  
**Attachments:** 20150709150043519.pdf; 20150709150037740.pdf

Andrea

Here you go.

Best  
Margaret

Margaret A. McArthur  
Commission Liaison  
San Francisco Recreation and Park Commission  
501 Stanyan Street  
San Francisco, CA 94117  
phone: 415-831-2750  
email: [margaret.mcarthur@sfgov.org](mailto:margaret.mcarthur@sfgov.org)

---

**From:** Ausberry, Andrea  
**Sent:** Thursday, July 09, 2015 12:38 PM  
**To:** McArthur, Margaret (REC)  
**Subject:** Missing Resolutions - 1203-14 and 1203-15  
**Importance:** High

Hi Margaret,


Two resolutions are mentioned in the attached Motion to be heard in Land Use on July 13<sup>th</sup>:

Page 2, Lines 4 and 5

Please forward both Resolutions by close of business, July 9<sup>th</sup>.

Thank you,

*Andrea S. Ausberry*  
Assistant Clerk  
Land Use and Transportation Committee  
San Francisco Board of Supervisors  
Office 415.554.4442  
Website | <http://www.sfbos.org/>  
Follow Us! | [Twitter](#)

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## SAN FRANCISCO PLANNING DEPARTMENT

### Planning Commission Motion No. 18560

HEARING DATE: March 22, 2012

Date: March 22, 2012  
Case No.: 2007.0030E  
Project Address: 8 Washington Street/Seawall Lot 351  
Zoning: RC-4 (Residential/Commercial Combined: High Density)  
84-E Height and Bulk District  
Block/Lot: Assessor's Block 168/Lot 58, Block 171/69, Block 201/Lot 12 and Seawall  
Lot 351, which includes Lot 13.  
Staff Contact: Paul Maltzer – (415) 575-9038  
paul.maltzer@sfgov.org

1650 Mission St.  
Suite 400  
San Francisco,  
CA 94103-2479

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415.558.6378

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415.558.6409

Planning  
Information:  
415.558.6377

#### ADOPTING FINDINGS RELATED TO THE CERTIFICATION OF A FINAL ENVIRONMENTAL IMPACT REPORT FOR A PROPOSED MIXED-USE, RESIDENTIAL, COMMERCIAL, FITNESS CENTER AND PUBLIC OPEN SPACE PROJECT AT 8 WASHINGTON STREET/SEAWALL LOT 351.

MOVED, that the San Francisco Planning Commission (hereinafter "Commission") hereby CERTIFIES the Final Environmental Impact Report identified as Case No. 2007.0030E, 8 Washington Street/Seawall Lot 351 (hereinafter "Project"), based upon the following findings:

1. The City and County of San Francisco, acting through the Planning Department (hereinafter "Department") fulfilled all procedural requirements of the California Environmental Quality Act (Cal. Pub. Res. Code Section 21000 *et seq.*, hereinafter "CEQA"), the State CEQA Guidelines (Cal. Admin. Code Title 14, Section 15000 *et seq.*, hereinafter "CEQA Guidelines") and Chapter 31 of the San Francisco Administrative Code (hereinafter "Chapter 31").
  - A. The Department determined that an Environmental Impact Report (hereinafter "EIR") was required and provided public notice of that determination by publication in a newspaper of general circulation on December 8, 2007.
  - B. On June 15, 2011, the Department published the Draft Environmental Impact Report (hereinafter "DEIR") and provided public notice in a newspaper of general circulation of the availability of the DEIR for public review and comment and of the date and time of the Planning Commission public hearing on the DEIR; this notice was mailed to the Department's list of persons requesting such notice.
  - C. Notices of availability of the DEIR and of the date and time of the public hearing were posted near the project site by Department staff on June 15, 2011.
  - D. On June 15, 2011, copies of the DEIR were mailed or otherwise delivered to a list of persons requesting it, to those noted on the distribution list in the DEIR, to adjacent property owners, and to government agencies, the latter both directly and through the State Clearinghouse.

- E. Notice of Completion was filed with the State Secretary of Resources via the State Clearinghouse on June 15, 2011.
2. The Commission held a duly advertised public hearing on said DEIR on July 21, 2011, at which opportunity for public comment was given, and public comment was received on the DEIR. The period for acceptance of written comments ended on August 15, 2011.
  3. The Department prepared responses to comments on environmental issues received at the public hearing and in writing during the 61-day public review period for the DEIR, prepared revisions to the text of the DEIR in response to comments received or based on additional information that became available during the public review period, and corrected errors in the DEIR. This material was presented in a Draft Comments and Responses document, published on December 22, 2011, distributed to the Commission and all parties who commented on the DEIR, and made available to others upon request at the Department.
  4. A Final Environmental Impact Report (hereinafter "FEIR") has been prepared by the Department, consisting of the DEIR, any consultations and comments received during the review process, any additional information that became available, and the Comments and Responses document all as required by law.
  5. Project EIR files have been made available for review by the Commission and the public. These files are available for public review at the Department at 1650 Mission Street, Suite 400, and are part of the record before the Commission.
  6. On March 22, 2012, the Commission reviewed and considered the FEIR and hereby does find that the contents of said report and the procedures through which the FEIR was prepared, publicized, and reviewed comply with the provisions of CEQA, the CEQA Guidelines, and Chapter 31 of the San Francisco Administrative Code.
  7. The project sponsor has indicated that the presently preferred project is the Project Variant, described in the FEIR, with the additional modification that the presently preferred project would contain 145 residential units, 15 residential units less than the Project Variant, and the presently preferred project would contain 400 parking spaces, 20 parking spaces less than the Project Variant.
  8. The Planning Commission hereby does find that the FEIR concerning File No. 2007.0030E, 8 Washington Street/Seawall Lot 351 Project, reflects the independent judgment and analysis of the City and County of San Francisco, is adequate, accurate and objective, and that the Comments and Responses document contains no significant revisions to the DEIR. The Planning Commission further finds that Final EIR does not add significant new information to the Draft EIR that would require recirculation of the EIR under CEQA because the Final EIR contains no information revealing (1) any new significant environmental impact that would result from the Project or from a new mitigation measure proposed to be implemented, (2) any substantial increase in the severity of a previously identified environmental impact, (3) any feasible project alternative or mitigation measure considerably different from others previously analyzed that would clearly lessen the environmental impacts of the Project, but that was rejected by the Project's proponents, or (4) that the Draft EIR was



so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded, and hereby does CERTIFY THE COMPLETION of said FEIR in compliance with CEQA and the CEQA Guidelines.

9. The Commission, in certifying the completion of said FEIR, hereby does find that the Project Variant described in the EIR and the project preferred by the project sponsor:
- A. Will have a significant project-specific effect on the environment in that:
    - B. It could expose people or structures to increased risk of flooding due to climate-induced sea level rise;
    - C. Construction of the proposed project would expose sensitive receptors to substantial levels of PM<sub>2.5</sub> and other TACs, including DPM; and
    - D. The proposed project would expose new (on-site) sensitive receptors to significant levels of PM<sub>2.5</sub> and other TACs from a single source.
  - E. Will have a significant cumulative effect on the environment in that:
    - F. The proposed project would expose new (on-site) sensitive receptors to cumulatively considerable levels of PM<sub>2.5</sub> and other TACs from off-site and on-site sources;
    - G. Project construction activities would result in a considerable contribution to cumulatively significant levels of PM<sub>2.5</sub> and other TACs on off-site receptors; and
    - H. The proposed project would contribute to cumulative traffic impacts at study intersections.

I hereby certify that the foregoing Motion was ADOPTED by the Planning Commission at its regular meeting of March 22, 2012.

Linda Avery

Commission Secretary

AYES: Antonini, Borden, Fong, Miguel

NOES: Sugaya, Wu

ABSENT: Moore

ADOPTED: March 22, 2012





# SAN FRANCISCO PLANNING DEPARTMENT

1650 Mission St.  
Suite 400  
San Francisco,  
CA 94103-2479

*Subject to: (Select only if applicable)*

- |   |   |
|---|---|
| <input checked="" type="checkbox"/> Affordable Housing (Sec. 415) | <input checked="" type="checkbox"/> First Source Hiring (Admin. Code) |
| <input type="checkbox"/> Jobs Housing Linkage Program (Sec. 413)  | <input type="checkbox"/> Child Care Requirement (Sec. 414)            |
| <input type="checkbox"/> Downtown Park Fee (Sec. 412)             | <input checked="" type="checkbox"/> Other                             |

Reception:  
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**415.558.6409**

Planning  
Information:  
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## Planning Commission Motion 18561 HEARING DATE: MARCH 22, 2012

*Date:* January 5, 2012  
*Case No.:* 2007.0030ECKMRZ  
*Project Address:* 8 Washington Street  
*Zoning:* RC-4 (Residential-Commercial, High Density) District  
84-E Height and Bulk District  
*Block/Lot:* 0168/058; 0171/069; 0201/012-013 (including Seawall Lot 351)  
*Project Sponsor:* Simon Snellgrove  
San Francisco Waterfront Partners II, LLC  
Pier 3, The Embarcadero  
San Francisco, CA 94111  
*Staff Contact:* Kevin Guy – (415) 558-6163  
kevin.guy@sfgov.org

ADOPTING FINDINGS UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT, INCLUDING FINDINGS REJECTING ALTERNATIVES AS INFEASIBLE, ADOPTING A STATEMENT OF OVERRIDING CONSIDERATIONS, AND ADOPTING A MITIGATION, MONITORING, AND REPORTING PROGRAM, RELATING TO A PROPOSAL TO DEMOLISH AN EXISTING SURFACE PARKING LOT AND HEALTH CLUB, AND TO CONSTRUCT A NEW HEALTH CLUB, RESIDENTIAL BUILDINGS RANGING FROM FOUR TO TWELVE STORIES IN HEIGHT CONTAINING 134 DWELLING UNITS, GROUND-FLOOR RETAIL USES TOTALING APPROXIMATELY 20,000 SQUARE FEET, AND 382 OFF-STREET PARKING SPACES, WITHIN THE RC-4 (RESIDENTIAL-COMMERCIAL, HIGH DENSITY) DISTRICT AND THE 84-E HEIGHT AND BULK DISTRICT

### PREAMBLE

On April 25, 2011, Neil Sekhri, acting on behalf of San Francisco Waterfront Partners II, LLC ("Project Sponsor") filed an application with the Planning Department ("Department") for Conditional Use Authorization to allow development exceeding 50 feet in height within an RC District, to allow an accessory off-street parking garage, to allow commercial uses above the ground floor, and to allow non-residential uses exceeding 6,000 square feet, and to approved a Planned Unit Development, pursuant to Planning Code Sections ("Sections") 209.7(d), 209.8(c), 209.8(f), 253, 303, and 304, to allow a project that would demolish an existing surface parking lot and health club and construct a new health club,

residential buildings ranging from four to twelve stories in height containing 145 dwelling units, ground-floor retail uses totaling approximately 20,000 square feet, and 400 off-street parking spaces, located at 8 Washington Street, Lot 058 within Assessor's Block 0168, Lot 069 within Assessor's Block 0171, Lot 012 of Assessor's Block 0201, and Seawall Lot 351, which includes Lot 013 of Assessor's Block 0201 ("Project Site), within the RC-4 (Residential-Commercial, High Density) District and the 84-E Height and Bulk District. The project requests specific modifications of Planning Code requirements regarding bulk limitations, rear yard, off-street loading, and off-street parking quantities through the Planned Unit Development process specified in Section 304 (collectively, "Project"). On February 17, 2012, the Project Sponsor amended the Project application to reduce the number of dwelling units from 145 to 134, and to reduce the number of residential parking spaces from 145 to 134.

On January 3, 2007, the Project Sponsor submitted an Environmental Evaluation Application with the Department, Case No. 2007.0030E. The Department issued a Notice of Preparation of Environmental Review on December 8, 2007, to owners of properties within 300 feet, adjacent tenants, and other potentially interested parties.

On June 15, 2011, the Department published a draft Environmental Impact Report (EIR) for public review. The draft EIR was available for public comment until August 15, 2011. On July 21, 2011, the Planning Commission ("Commission") conducted a duly noticed public hearing at a regularly scheduled meeting to solicit comments regarding the draft EIR. On December 22, 2011, the Department published a Comments and Responses document, responding to comments made regarding the draft EIR prepared for the Project.

On March 22, 2012, the Commission reviewed and considered the Final EIR and found that the contents of said report and the procedures through which the Final EIR was prepared, publicized, and reviewed complied with the California Environmental Quality Act (California Public Resources Code Sections 21000 et seq.) ("CEQA"), 14 California Code of Regulations Sections 15000 et seq. ("the CEQA Guidelines"), and Chapter 31 of the San Francisco Administrative Code ("Chapter 31").

The Commission found the Final EIR was adequate, accurate and objective, reflected the independent analysis and judgment of the Department and the Commission, and that the summary of comments and responses contained no significant revisions to the draft EIR, and approved the Final EIR for the Project in compliance with CEQA, the CEQA Guidelines and Chapter 31.

The Planning Department, Linda Avery, is the custodian of records, located in the File for Case No. 2007.0030E, at 1650 Mission Street, Fourth Floor, San Francisco, California.

Department staff prepared a Mitigation Monitoring and Reporting program ("MMRP"), which material was made available to the public and this Commission for this Commission's review, consideration and action.

On March 13, 2007, the Project Sponsor submitted a request for review of a development exceeding 40 feet in height, pursuant to Section 295, analyzing the potential shadow impacts of the Project to properties under the jurisdiction of the Recreation and Parks Department (Case No. 2007.0030K).

Department staff prepared a shadow fan depicting the potential shadow cast by the development and concluded that the Project could have a potential impact to properties subject to Section 295. A technical memorandum, prepared by Turnstone Consulting, dated December 13, 2011, concluded that the Project would cast approximately 4,425 square-foot-hours of new shadow on Sue Bierman Park, equal to approximately 0.00067% of the theoretically available annual sunlight ("TAAS") on Sue Bierman Park.

Pursuant to Section 295, the Planning Commission and the Recreation and Park Commission, on February 7, 1989, adopted standards for allowing additional shadows on the greater downtown parks (Resolution No. 11595). At the time the standards were adopted, Sue Bierman Park did not exist in its present form and configuration. Therefore, no standards have been adopted establishing an absolute cumulative limit for Sue Bierman Park, in its present configuration. The Planning Commission and the Recreation and Park Commission held a duly advertised joint public hearing on March 22, 2012 and adopted Resolution No. 185623 establishing an absolute cumulative shadow limit equal to 0.00067 percent of the TAAS for Sue Bierman Park.

On March 22, 2012, the Recreation and Park Commission conducted a duly noticed public hearing at a regularly scheduled meeting and recommended that the Planning Commission find that the shadows cast by the Project on Sue Bierman Park will not be adverse. On March 22, 2012, the Planning Commission conducted a duly noticed public hearing at a regularly scheduled meeting and adopted Motion No. 18563 determining that the shadows cast by the Project on Sue Bierman Park will not be adverse, and allocating the absolute cumulative shadow limit of 0.00067 percent to the Project.

On August 9, 2011, the Project Sponsor submitted a request to amend Height Map HT01 of the Zoning Maps of the San Francisco Planning Code to reclassify two portions of the southwestern area of the development site from the 84-E Height and Bulk District to the 92-E Height and Bulk District in one portion, and the 136-E Height and Bulk District in another portion (Case No. 2007.0030Z). On March 22, 2012, the Planning Commission conducted a duly noticed public hearing at a regularly scheduled meeting and adopted Resolution No. 18566, recommending that the Board of Supervisors approve the requested Height Reclassification.

On August 9, 2011, the Project Sponsor submitted a request to amend "Map 2 - Height and Bulk Plan" within the Northeastern Waterfront Area Plan of the General Plan, to reclassify two portions of the southwestern portion of the development site from the existing 84-foot height limit to a height of 92 feet in one portion, and 136 feet in another portion. On December 8, 2011, the Commission conducted a duly noticed public hearing at a regularly scheduled meeting and adopted Resolution No. 18501, initiating the requested General Plan Amendment. On March 22, 2012, the Planning Commission conducted a duly noticed public hearing at a regularly scheduled meeting and adopted Resolution No. 18564, recommending that the Board of Supervisors approve the requested General Plan Amendment.

On December 1, 2011, the Project Sponsor submitted a request for a General Plan Referral, Case No. 2007.0030R, regarding the exchange of Public Trust Land, changes in use of various portions of the property (including the publicly-owned Seawall Lot 351), and subdivision associated with the Project. On March 22, 2012, the Planning Commission conducted a duly noticed public hearing at a regularly scheduled meeting and adopted Motion No. 18565 determining that these actions are consistent with the objectives and policies of the General Plan and the Priority Policies of Section 101.1.

On March 22, 2012, the Commission conducted a duly noticed public hearing at a regularly scheduled meeting on Conditional Use Application No. 2007.0030E.

The Commission has heard and considered the testimony presented to it at the public hearing and has further considered written materials and oral testimony presented on behalf of the applicant, Department staff, and other interested parties.

The Commission has heard and considered the testimony presented to it at the public hearing and has further considered written materials and oral testimony presented on behalf of the applicant, Department staff, and other interested parties.

**MOVED**, that the Commission hereby adopts findings under the California Environmental Quality Act, including rejecting alternatives as infeasible, adopting a Statement of Overriding Considerations, and the adopting Mitigation, Monitoring, and Reporting Program attached as Exhibits A, based on the following findings:

## **FINDINGS**

Having reviewed the materials identified in the preamble above, and having heard all testimony and arguments, this Commission finds, concludes, and determines as follows:

In determining to approve the 8 Washington Street project described in Section I below (referred to herein as the "Project"), the San Francisco Planning Commission ("Agency" or "Planning Commission") makes and adopts the following findings of fact and decisions regarding mitigation measures and alternatives, and adopts the statement of overriding considerations, based on substantial evidence in the whole record of this proceeding and under the California Environmental Quality Act ("CEQA"), California Public Resources Code Sections 21000 et seq., particularly Sections 21081 and 21081.5, the Guidelines for Implementation of CEQA ("CEQA Guidelines"), 14 California Code of Regulations Sections 15000 et seq., particularly Sections 15091 through 15093, and Chapter 31 of the San Francisco Administrative Code.

This document is organized as follows:

Section I provides a description of the Project proposed for adoption, the environmental review process for the Project, the approval actions to be taken and the location of records;

Section II identifies the impacts found not to be significant that do not require mitigation;

Sections III identifies potentially significant impacts that can be avoided or reduced to less-than-significant levels through mitigation and describe the disposition of the mitigation measures;

Sections IV identifies significant impacts that cannot be avoided or reduced to less-than-significant levels and describe any applicable mitigation measures as well as the disposition of the mitigation measures;

Section V identifies improvement measures that would further reduce impacts identified as less than significant and describes the disposition of the improvement measures;

Section VI discusses mitigation measures and project modifications proposed by commenters and, for mitigation measures or project modifications proposed by commenters that are not being adopted, describes the reasoning why the Agency is rejecting these mitigation measures and project modifications;

Section VII evaluates the different Project alternatives and the economic, legal, social, technological, and other considerations that support approval of the Project and the rejection of the alternatives, or elements thereof, analyzed; and

Section VIII presents a statement of overriding considerations setting forth specific reasons in support of the Agency's actions and its rejection of the alternatives not incorporated into the Project.

The Mitigation Monitoring and Reporting Program ("MMRP") for the mitigation measures that have been proposed for adoption is attached with these findings as Exhibit A. The MMRP is required by CEQA Section 21081.6 and CEQA Guidelines Section 15091. Exhibit A provides a table setting forth each mitigation measure listed in the Final Environmental Impact Report for the Project ("Final EIR" or "FEIR") that is required to reduce or avoid a significant adverse impact. Exhibit A also specifies the agency responsible for implementation of each measure and establishes monitoring actions and a monitoring schedule. The full text of the mitigation measures is set forth in Exhibit A.

These findings are based upon substantial evidence in the entire record before the Agency. The references set forth in these findings to certain pages or sections of the Draft Environmental Impact Report ("Draft EIR" or "DEIR") or the Comments and Responses document ("C&R") in the Final EIR are for ease of reference and are not intended to provide an exhaustive list of the evidence relied upon for these findings.

#### **I. APPROVAL OF THE PROJECT**

The Project is the same as the Large Fitness Center Project Variant ("Project Variant") that was analyzed in the Final EIR, Chapter VII, C&R IV.37-44, except that the Project Variant would provide 160 residential units whereas the Project would provide 134 residential units, 26 fewer units than under the Project Variant. Furthermore, the Project Variant would provide 420 parking spaces (160 residential and 260 public parking spaces), whereas the Project would provide 382 parking spaces (127 residential and 255 public parking spaces), 38 parking spaces fewer than under the Project Variant. Under the Project

Variant, the café to be constructed at the corner of The Embarcadero and Jackson Street would be approximately 1,915 square feet, whereas it would be approximately 1,800 square feet under the Project. A more detailed summary of the Project Variant and its environmental analysis is contained in Sections I.C and I.D.

#### A. Project Description

The Project involves the development of two mixed-use buildings containing 134 residential units, ground floor restaurants and retail of about 20,000 gross square feet, a new indoor and outdoor health club and aquatics facility, new public parks and open space and an underground parking garage. The proposed buildings would be built to Leadership in Energy and Environmental Design (LEED) Gold standards. One of the two residential buildings would be built along The Embarcadero (four to six stories, 48-70 feet tall) and the other would be built along Drumm Street (7-12 stories, 81-136 feet tall). The residential buildings would be connected at the ground floor by a one-story central space along Washington Street, marking the main residential entrance to the buildings. A private central courtyard, accessible to residents and visible to the public, would be located in the ground-floor area between the two buildings. Setbacks would be incorporated into the building along The Embarcadero at the fifth and sixth levels, and into the building along Drumm Street at the eighth, ninth, and twelfth levels. The residential buildings would use a base isolation structural system for the building foundation.

The ground floor of the proposed residential buildings would contain a lobby and common areas, private residential amenities, retail spaces, and restaurants. The retail spaces would range in size from approximately 835 gross square feet to approximately 6,670 gross square feet. A proposed restaurant would occupy the southern portion of the east building at the ground floor and would front on The Embarcadero and Washington Street. The entrance to the restaurant would be at the chamfered southeast corner of the ground floor. Outdoor seating areas would be provided within covered patios along The Embarcadero and Washington Street. A small café/retail space is proposed for the southwest corner of the site, at Drumm Street and Washington Street.

A new public open space totaling approximately 10,450 square feet would be developed to the north of the residential buildings along the Jackson Street alignment ("Jackson Commons"). Jackson Commons would provide pedestrian views and access to the waterfront and would connect Jackson Street to The Embarcadero. Landscape and a meandering pedestrian path would lead to a more hardscaped area with



public seating at The Embarcadero. In addition, the current Drumm Street Garden Walk would be widened and improved to create a better pedestrian experience and connection to the waterfront.

The approximately 16,350 square foot new indoor fitness and health club would be located in a new one and two story building north of Jackson Street along The Embarcadero. The building form would be defined by a sloping green roof that is predominantly 17 feet in height at the southern end of the health club, and rise to a peak of 35 feet at the northern end to conceal an elevator shaft. This elevator would provide access to the second floor of the health club and to approximately 4,000 square feet of outdoor terrace space located on the roof of the new restaurant building to the north. Approximately 21,500 square feet of outdoor recreation space including at least one large lap and recreation pool would be constructed. The swimming pools would be constructed at ground level, and no tennis courts would be constructed on the site. The balance of the outdoor space would be programmed with ample lounging area, a Jacuzzi, a barbeque area and bocce ball court. An approximately 1,800 square foot café at The Embarcadero and Jackson Street would also be within the health club building and would be open to the public with outdoor seating within the Jackson Commons.

An approximately 4,000 square foot, one-story, 18-foot-tall restaurant building would be constructed immediately to the north of the proposed health club building and swim deck area. The restaurant building would front on a new, approximately 11,255 square foot, publicly accessible open space ("Pacific Park") at the northern end of the project site, which would contain an approximately 4,500 square foot children's interpretive sculptural garden. The restaurant would include an approximately 4,000 square rooftop deck, as noted above with public access via an elevator. The building would be a semi-transparent pavilion with an enclosable outdoor patio that is designed for year round use to activate the proposed publicly accessible open space.

Parking for residents and the public would be provided on three levels below the proposed residential buildings. The proposed parking would include up to 382 spaces, including 127 spaces for residents and 255 public spaces to serve the Ferry Building and Waterfront area businesses, onsite retail, restaurant, and health club uses. Pedestrian access to the public parking garage would be through an elevator entrance along Washington Street entered to the east of the residential lobby and an elevator entrance along Jackson Commons. Elevators would connect the private residential underground parking to the ground and upper floors of the proposed buildings. Vehicle access to the parking garage would be through a two-way ramp directly off of Washington Street west of the lobby entrance.

#### **B. Project Objectives**

San Francisco Waterfront Partners II, LLC (the "Project Applicant") seeks to achieve the following objectives by undertaking the Project:

- To develop a high-quality, sustainable, and economically feasible high-density, primarily residential, project within the existing density designation for the site, in order to help meet projected City housing needs and satisfy the City's inclusionary affordable housing requirements.
- To create new pedestrian, public access and circulation improvements and street-level retail and/or restaurant uses that will reconnect the City with the waterfront and enhance and beautify the Ferry Building waterfront area and the Golden Gateway area.
- To develop a project that achieves high-quality urban design and LEED Gold or equivalent sustainability standards and that enhances the existing urban design character of the area.
- To increase the supply of public underground parking to support the continued economic viability of the Ferry Building Farmer's Market and the retail and restaurant uses at the Ferry Building, Pier 1 and Piers 1-1/2 – 5.
- To complete the project on schedule and within budget.
- To construct a high-quality project that includes a sufficient number of residential units to produce a reasonable return on investment for the project sponsor and its investors and is able to attract investment capital and construction financing, while generating sufficient revenue to finance the recreation, parking, and open space amenities proposed as part of the project.
- To develop a project with minimal environmental disruption.
- To construct recreation and open space that serves Golden Gateway residents, San Franciscans, and waterfront visitors alike.

The Port of San Francisco's (the "Port's") objectives for the development of Seawall Lot 351 are as follows:

Design Objectives

- The design of new development should respect the character of the Ferry Building, The Embarcadero Roadway, the mid-Embarcadero open space improvements (Harry Bridges Plaza and Sue Bierman Park), and the Golden Gateway project.

- Construct new development which complements the rich architectural character of the Embarcadero National Register Historic District and is complementary to the architectural features of the pier bulkhead buildings.
  - Reinforce the large scale (grand boulevard) of The Embarcadero by using bold forms, deeply recessed building openings, and strong detailing on building façades facing The Embarcadero.
  - Consider emphasis on the corner of Washington and The Embarcadero in a manner that strengthens or enhances the Mid-Embarcadero open spaces and pedestrian experience.
  - To define the north edge of adjacent open space, new development should acknowledge the massing and street enclosure relationship with the bulkhead buildings across The Embarcadero (e.g., bold forms of similar height, constructed to The Embarcadero edge).
  - Maintain and enhance the view corridors along The Embarcadero and down Washington Street. Recognize the visual connection from the Ferry Building and Pier 1 to Coit Tower in a manner that preserves the iconic vista and acknowledges the landmark status of these sites.
  - Propose a building height and massing that fits within the neighborhood context formed by the William Heath Davis Building of the Golden Gateway Center, the Golden Gateway Commons condominiums and the heights of the historic Pier 1 through Pier 5 bulkhead buildings.
  - Preserve open views and pedestrian access through landscaped improvements or waterfront-serving activity that does not require a permanent structure (e.g., outdoor café, flower market, bike shop) along the sewer easement in the SWL 351 portion of the Jackson Street right-of-way.
  - Proposed design should consider the appearance of all rooftop equipment as seen from the street and the elevation of neighboring buildings and hills. Consider active roofs, with careful placement of elevator towers that provide access to the roof.
  - Primary uses and pedestrian entrances should face The Embarcadero, and incorporate lighting and other amenities to create enlivened street activity.
  - Avoid blank ground floor walls along The Embarcadero and Washington Street by providing views into the ground floor of buildings.
  - Avoid service and parking access from The Embarcadero.
- 
- Design and locate parking facilities to minimize their aesthetic presence and impact on the surrounding area.

- Utilize best efforts to meet or exceed the City's Green Building Standards and best sustainability practices.
- Comply with Regional Water Quality Control Board performance criteria and the Port's Storm Water Management Plan for the reduction of stormwater pollution impacts associated with newly constructed facilities.

#### Development Program Objectives

- Promote public enjoyment of and access to the waterfront by providing a destination that welcomes diverse users, including workers, San Francisco residents, and visitors to the waterfront and the adjacent public open spaces including Sue Bierman Park and Justin Herman Plaza.
- Encourage pedestrian flow from the Ferry Building, Pier 1, and Sue Bierman Park to the site and to the greater waterfront through project design, onsite public open spaces, location of parking, and appropriate uses.
- Activate and revitalize the waterfront edge during the evenings and weekends to complement the weekday office uses in the adjacent downtown buildings.
- Create an enlivened pedestrian experience along The Embarcadero and Washington Street by considering multiple uses and storefronts on the ground floor and well located public open space on the site.
- Reconnect the downtown and landside neighborhoods with the waterfront and make the area inviting to workers and local residents as well as visitors.
- Provide a development program which includes no fewer than 90 parking spaces for visitors to the Ferry Building waterfront area. Operate parking in a manner to optimize utilization and minimize impact on traffic and the neighborhood.
- Realize Port revenue to support the Port's public trust responsibilities, which include maintaining maritime industries, creating public-oriented activities and open space waterfront improvements, preserving historic maritime resources, and maintaining Port facilities.

#### **C. Environmental Review**

The San Francisco Planning Department ("Planning Department"), as lead agency for the Project, initiated environmental review of the Project after the Project Applicant filed an environmental

evaluation ("EE") application on January 3, 2007. In accordance with Sections 15063 and 15082 of the CEQA Guidelines, the Planning Department published a Notice of Preparation of an EIR/Initial Study (the "NOP/Initial Study") for the initial project proposal on December 8, 2007 to focus the scope of the EIR on potentially significant effects of the initial project proposal. Publication of the NOP/Initial Study initiated a 30-day public comment period, and comment letters were submitted to the Planning Department during this period.

On August 15, 2008, the Port issued a Request for Proposals (RFP) for the development of Seawall Lot 351. The RFP was re-issued on November 10, 2008. Two parties submitted timely proposals: San Francisco Waterfront Partners II and a development group led by Dhaval Panchal (which later withdrew its proposal). On February 24, 2009, the Port Commission authorized Port staff to enter into an exclusive negotiating agreement with San Francisco Waterfront Partners II, finding that the proposal submitted by San Francisco Waterfront Partners II meets the requirements of the RFP and meets the Port's objectives for Seawall Lot 351.

In February 2009, Supervisor David Chiu urged the Port of San Francisco to engage the San Francisco Planning Department to lead a planning analysis of the Port's surface parking lots north of Market Street. The Port Commission funded a focused study managed by the Planning Department to foster community consensus on the future of Port Seawall Lot 351 and at other seawall lot properties on the northern waterfront. Public participation and comment was sought in a series of five public workshops. This work began in May 2009 and was completed in May 2010. The Planning Department published the results of its study in June 2010 in a document entitled *Northeast Embarcadero Study: An Urban Design Analysis for the Northeast Embarcadero Area*. On July 8, 2010, the San Francisco Planning Commission adopted a resolution that it "recognizes the design principles and recommendations of the Study" and "urges the Port of San Francisco to consider the recommendations of the Northeast Embarcadero Study when considering proposals for new development in the study area." The Planning Commission resolution did not adopt the Northeast Embarcadero Study as a planning document. The resolution states that the Planning Commission did not commit to approve any project to be considered within the Northeast Embarcadero Study area in the future, and that no such project could be considered until after completion of environmental review under the California Environmental Quality Act (CEQA).

On July 27, 2010, SFWP submitted an EE application for a revised project proposal. The San Francisco Planning Department then prepared the Draft EIR, which describes the proposed project and the environmental setting, identifies potential impacts, presents mitigation measures for impacts found to be significant or potentially significant, and evaluates project alternatives. In assessing construction and operational impacts of the project, the Draft EIR considers the impact of the Pproject and the cumulative impacts associated with the proposed project in combination with other past, present, and future actions

with potential for impacts on the same resources. Each environmental issue presented in the Draft EIR is analyzed with respect to significance criteria that are based on the San Francisco Planning Environmental Review ("ER") guidance regarding the environmental effects to be considered significant. ER guidance is, in turn, based on CEQA Guidelines Appendix G, with some modifications.

The Department published the Draft EIR on June 15, 2011, which was circulated to local and state agencies and to interested organizations and individuals for review and comment for over a 60-day public review period, which ended on August 15, 2011. The San Francisco Planning Commission held a public hearing to solicit testimony on the Draft EIR on July 21, 2011. A court reporter was present at the public hearing, transcribed the oral comments verbatim, and prepared written transcripts. The Planning Department also received written comments on the Draft EIR, which were sent through mail, fax, or email.

The San Francisco Planning Department then prepared the C&R. This document, which provides written response to each comment received on the Draft EIR, was published on December 22, 2011 and included copies of all of the comments received on the Draft EIR and individual responses to those comments. The C&R provided additional, updated information and clarification on issues raised by commenters, as well as Planning Department Draft EIR text changes. The Draft EIR, the C&R and all errata sheets, and all of the supporting information constitute the Final EIR.

The Final EIR includes updates and refinements to the Draft EIR project description, including the Project Variant, which is a design variation that modifies limited features of the proposed project described in the Draft EIR. As discussed in the Final EIR, the Project Variant would be comprised of the same uses as the proposed project described in the Draft EIR. The two residential buildings south of Jackson Commons would be similar to the Draft EIR's proposed project in their lobby, restaurant and retail spaces, and access. However, the Project Variant would have 160 residential units instead of the 165 residential units proposed for the project as described in the DEIR, and the Project Variant may also include a base isolation structural system as part of the foundation for the residential buildings. The proposed parking garage and its entrance on Washington Street would remain the same.

The proposed Jackson Commons would remain in the same location under the Project Variant. The proposed health club building north of Jackson Commons would be larger in size under the Project Variant (16,350 gross square feet as compared to 12,800 gross square feet), but similar in height to the Draft EIR's proposed project. Under the Project Variant, the café located in the health club building would be similar in size (1,915 gross square feet compared to 1,850 gross square feet) as under the Draft EIR's proposed project. Under the Project Variant, the recreational swimming and lap pools would be at ground level, and no tennis courts would be constructed on the project site. In addition to the landscaping proposed for Pacific Park, the Project Variant would include a children's interpretative

sculpture garden with an interactive water feature. The amount of off-street parking would remain 420 off street spaces under the Project Variant, with 160 spaces allocated to the 160 residential units and 260 spaces of public parking. Total restaurant/retail space would be reduced from 29,100 gross square feet to 19,800 gross square feet under the Project Variant as compared to the project described in the DEIR.

The Planning Commission reviewed and considered the Final EIR. In certifying the Final EIR, the Planning Commission determined that the Final EIR does not add significant new information to the Draft EIR that would require recirculation of the EIR under CEQA because the Final EIR contains no information revealing (1) any new significant environmental impact that would result from the Project or from a new mitigation measure proposed to be implemented, (2) any substantial increase in the severity of a previously identified environmental impact, (3) any feasible project alternative or mitigation measure considerably different from others previously analyzed that would clearly lessen the environmental impacts of the Project, but that was rejected by the Project's proponents, or (4) that the Draft EIR was so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded.

#### **D. Environmental Analysis of the Project Variant**

As discussed above, the Final EIR includes a description and analysis of the environmental impacts of the Project Variant, which is incorporated herein by reference. The Final EIR concludes that the impacts and mitigation measures would be substantially the same for the Project Variant as that are for the Draft EIR's proposed project. (C&R IV.38-44). More specifically, the Final EIR concludes that the environmental effects of the Project Variant relating to population and housing, utilities and service systems, public services, geology and soils, hazards and hazardous resources, mineral and energy resources, agricultural and forest resources, land use, aesthetics, historic architectural resources, noise, effects on pedestrian-level winds, sea level rise, hydrology, and biological resources would be substantially the same as those described under the DEIR's proposed project. (C&R IV.38) All mitigation measures described for these topics under the DEIR's proposed project would be applicable for the Project Variant. (C&R IV.38).

The analysis and conclusions presented in the "Tidelands Trust and State Lands Commission" subsection of the Plans and Policies subchapter would be the same for the Project Variant even though the configuration of the public trust exchange would be slightly different than under the Draft EIR's proposed project. (C&R IV.38). While the base isolation structural system of the Project Variant would require excavating foundation for the residential buildings 3 to 5 feet deeper than for the Draft EIR's proposed project, the Project Variant's impacts with respect to archeological resources would remain less than significant with the mitigation measures set forth in Mitigation Measure M-CP-1a: Archaeological Testing, Monitoring and Data Recovery and Reporting, Mitigation Measure M-CP-1b: Interpretation, and Mitigation Measure M-CP-6: Accidental Discovery. (C&R IV.38-39).

Compared to the proposed project, the Project Variant would generate approximately 2 fewer vehicular trips to and from the site during the peak hour, and about 127 fewer daily vehicle trips. This decrease would be considered to be within the daily variation of traffic and would not modify the intersection levels of service results or conclusions presented for the DEIR's proposed project in Section IV.D, Transportation and Circulation. With the base isolation structural system, excavation for foundations

would be slightly deeper, resulting in additional haul truck trips to remove more soil from the project site during construction. The additional 1,100 to 1,230 truck loads (2,200 to 2,460 one-way trips) would not be expected to increase the total number of truck trips per day generated during the excavation phase, but could extend the amount of time needed to complete excavation by an additional two to four weeks. There would be about 100 fewer piles in the foundation; therefore, pile driving would take less time, offsetting the additional time needed for excavation, and reducing the number of truck trips for delivery of construction materials to the project site. The impacts of construction traffic would remain as described for the proposed project in Impact TR-8 and as discussed under subheading "Project Construction/America's Cup Host and Venue Agreement," in C&R Chapter III, Section B, Project Description. Therefore, the analysis, conclusions, and mitigation measures presented in Section IV.D, Transportation and Circulation, would be substantially similar for the Project Variant. (C&R IV.40-41).

With respect to air quality impacts, while there would be an approximately 15 percent increase in the number of truck trips generated during construction for the additional excavation with the Project Variant, no new significant impact would occur. The construction health risk assessment analysis presented for the DEIR's proposed project would not change substantially with the additional construction-related haul truck trips for the Project Variant, because emissions from the haul trucks represent a small fraction of the total on-site diesel particulate emissions during construction. The health risk impacts during construction would be significant and unavoidable, as for the DEIR's proposed project. While the larger fitness center would generate more vehicle trips than the fitness center in the DEIR's proposed project, the increase would be more than offset by a reduction in vehicle trips generated by fewer residential units and less restaurant and retail space. Hence, significant impacts identified for the proposed project would not be reduced to less-than-significant levels with the variant, and conclusions in Section IV.E, Air Quality, remain applicable to the Project Variant. (C&R IV.41).

The Project Variant would not change the features of the DEIR's proposed project that support the Planning Department's determination of consistency with San Francisco's Strategies to Address Greenhouse Gas Emissions. Therefore, the analysis and conclusions presented in Section IV.F, Greenhouse Gases Emissions, for the DEIR's proposed project would be substantially similar for the Project Variant. (C&R IV.42).

The Project Variant would have the substantially the same shadow impacts as the DEIR's Proposed Project, although moving the swimming pools from the roof top of the health club to the ground would result in more shading of the swimming pools. During the spring, summer, and autumn, the ground-level swimming pools associated with the Project Variant would receive about 4 to 6 fewer hours of sunlight each day compared to the rooftop swimming pools associated with the DEIR's proposed project. However, the existing swimming pools are shadowed by existing buildings during the mid- to late afternoon throughout the year. During the winter, the ground-level swimming pools associated with the Project Variant would be similarly shadowed each day compared to DEIR's proposed project. (C&R IV.2, 42).

Although all of the tennis courts that currently exist on the project site would be eliminated under the Project Variant, impacts on recreation would remain less than significant. The recommended supply of tennis courts is 1 court for every 5,000 residents. The current ratio is 1 court for each 3,537 residents (810,000 residents / 215 tennis courts, 168 public and 61 private). With the DEIR's proposed project and its removal of five existing tennis courts at the Golden Gateway Tennis and Swim Club, the ratio would increase to 1 court for every 3,616 residents. With the Project Variant and its four fewer courts than the DEIR's proposed project, the ratio would increase to 1 court for every 3,682 residents. The number of



residents per tennis court would remain lower than the recommended standard of 1 court for every 5,000 residents. The analysis and conclusions presented in Section IV.H, Recreation, would be similar for the Project Variant. (C&R IV.42-44).

As stated above, the Project that is approved by the Planning Commission is the same as the Project Variant, except that the Project Variant would provide 160 residential units whereas the Project would provide 134 residential units, 26 fewer units than under the Project Variant. Furthermore, the Project Variant would provide 420 parking spaces (160 residential and 260 public parking spaces), whereas the Project would provide 382 parking spaces (127 residential and 255 public parking spaces), 38 parking spaces fewer than under the Project Variant. The reduction of 26 residential units, compared to the Project Variant, would result in a corresponding slight reduction in transportation impacts, and would not appreciably change other impact analyses or conclusions in the EIR. The reduction of 38 parking spaces, compared to the Project Variant would not change traffic impacts identified for the Project Variant. The maximum parking demand for the project would be below the 382 parking spaces to be provided on site, and thus would not change the parking impacts analysis and conclusions in the EIR.

#### E. Approval Actions

Local and state agencies will rely on the Final EIR for the approval actions listed below and in doing so will adopt CEQA findings, including a statement of overriding considerations and a mitigation monitoring and reporting program.

##### 1. Planning Commission

- Certification of the Final EIR;
- Recommend approval of a General Plan amendment to allow an increase in height on a portion of the site to 92 feet and to 136 feet and to allow the bulk of the Project;
- Recommend approval of a Zoning Map amendment to allow an increase in height on a portion of the site to 92 feet and to 136 feet and to allow the bulk of the Project;
- Approval of a Planned Unit Development/Conditional Use Permit pursuant to Planning Code Sections 303 (Conditional Use), 304 (PUD), 253 (review of structures over 40 feet in any "R" District), 271(b) (Bulk Limit Exception), 151 and 204.5(c) (off-street parking for residential uses in excess of maximum accessory amounts), 151 (reduction in off-street parking requirements for non-residential uses), 152 (modification of off-street loading requirements), 209.7(d) (provision of a public parking garage for spaces to serve the Ferry Building and Waterfront area), 209.8(c) (commercial use above ground floor for the health club), 209.8(f) (non-residential use exceeding 6,000 gross square feet), 134 (rear yard requirement);
- A determination by the Planning Commission of consistency with the *General Plan* pursuant to Charter Section 4.105 and Administrative Code Section 2A.53;

- Joint adoption by the Planning Commission and the Recreation and Park Commission of a resolution establishing a new absolute cumulative limit for allowable new shadow on Sue Bierman Park to accommodate the new shadow on that park that would result from the Project (no cumulative limit currently exists for Sue Bierman Park); and
- Shadow impact determination by the Planning Commission, after review and comment by the San Francisco Recreation and Park Department and Commission under Section 295 of the Planning Code.

## 2. Recreation and Park Commission

- Joint adoption by the Planning Commission and the Recreation and Park Commission of a resolution establishing a new absolute cumulative limit for allowable new shadow on Sue Bierman Park to accommodate the new shadow on that park that would result from the Project (no cumulative limit currently exists for Sue Bierman Park); and
- Review and comment under Section 295 of the Planning Code.

## 3. Port Commission

- Approval of a purchase and sale agreement to convey a portion of Seawall Lot 351 to the Project Applicant for residential development after implementation of the public trust exchange;
- Approval of a lease disposition and development agreement, ground lease, and related transactional documents governing development and operation of improvements by the Project Applicant on portions of Seawall Lot 351 retained by the Port;
- Approval of a Public Trust Exchange Agreement to effect removal of the public trust use limitations from the portion of Seawall Lot 351 proposed for residential use and imposition of public trust use limitations on the portions of the 8 Washington site proposed for open space and restaurant use; and
- Approvals to form a Mello-Roos Community Facilities District (CFD), maintenance CFD, and Infrastructure Financing District (IFD) to finance construction and maintenance of public facilities serving the site.

## 4. Department of Public Works

- Approval of a Tentative Subdivision Map;
- Approval by the San Francisco Department of Public Works of the proposed removal of street trees and "significant trees"; and

- Approval by the San Francisco Department of Public Works of proposed curb cuts along Drumm and Washington Streets, expanded sidewalks on Washington Street and Drumm Street, and lane reconfiguration on Washington Street to remove the landscaped median.

**5. Board of Supervisors**

- Approval of a General Plan amendment to allow an increase in height on a portion of the site to 92 feet and to 136 feet and to allow the bulk of the Project;
- Approval of a Zoning Map amendment to allow an increase in height on a portion of the site to 92 feet and to 136 feet and to allow the bulk of the Project;
- Approval of a purchase and sale agreement to convey a portion of Seawall Lot 351 to the Project Applicant for residential development after implementation of the public trust exchange;
- Approval of a ground lease governing development and operation of improvements by the Project Applicant on certain portions of Seawall Lot 351 retained by the Port;
- Approval of a Public Trust Exchange Agreement to effect removal of the public trust use limitations from the portion of Seawall Lot 351 proposed for residential use and imposition of public trust use limitations on the portions of the 8 Washington site proposed for open space and restaurant use; and
- Approvals to form a Mello-Roos Community Facilities District (CFD), maintenance CFD, and Infrastructure Financing District (IFD) to finance construction and maintenance of public facilities serving the site.

**6. State Lands Commission**

- Approval of a Public Trust Exchange Agreement to effect removal of the public trust use limitations from the portion of Seawall Lot 351 proposed for residential use and imposition of public trust use limitations on the portions of the 8 Washington site proposed for open space and restaurant use.

**7. San Francisco Public Utilities Commission / Port**

- Approval from the SFPUC for discharging into the combined sewer system as a result of dewatering the site.
- Approval of a Stormwater Control Plan by the Port in compliance with San Francisco Stormwater Design Guidelines.

**8. San Francisco Department of Health**

- Approval of a site mitigation plan by the San Francisco Department of Health under San Francisco's Maher Ordinance (Article 22A of the San Francisco Health Code); and
- Approval of a dust control plan by the San Francisco Department of Health under Article 22B of the San Francisco Health Code.

#### **E. Contents and Location of Record**

The record upon which all findings and determinations related to the Project are based includes the following:

- The Notice of Preparation/Initial Study and all other public notices relating to the Project.
- The Final EIR and all documents referenced in or relied upon by the EIR. (The references in these findings to the EIR or FEIR include both the Draft EIR and the C&R documents.)
- All information including written evidence and testimony provided by City staff to the Planning Commission relating to the EIR, the Project, and the alternatives set forth in the EIR.
- All information provided by the public, including the proceedings of the public hearings on the adequacy of the Draft EIR and the transcripts of the July 21, 2011 public hearing and written correspondence received by Planning Department staff during the public comment period of the Draft EIR, and the public meeting on March 22, 2012, at which the Planning Commission certified completion of the Final EIR.
- All other documents comprising the record pursuant to Public Resources Code Section 21167.6(e).

The Agency has relied on all of the documents listed above in reaching its decision on the Project.

The public hearing transcript, a copy of all letters regarding the Draft EIR received during the public review period, the administrative record, and background documentation for the Final EIR, as well as additional materials concerning approval of the Project and adoption of these findings are contained in Planning Commission files, located at 1650 Mission Street, Suite 400, San Francisco, CA 94103. Linda Avery, Planning Commission Secretary, is the custodian of records for the Planning Commission. All files have been available to the Agency and the public for review in considering these findings and whether to approve the Project.

#### **F. Requirement for Findings of Fact**

CEQA requires public agencies to consider the potential effects of their discretionary activities on the environment and, when feasible, to adopt and implement mitigation measures that avoid or substantially lessen the effects of those activities on the environment. Specifically, Public Resources Code section 21002 provides that "public agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen the significant environmental effects of such projects[.]" The same statute states that the procedures required by CEQA "are intended to assist public agencies in systematically identifying both the significant effects of proposed projects and the feasible alternatives or feasible mitigation measures which will avoid or substantially lessen such significant effects." Section 21002 goes on to state that "in the event [that] specific economic, social, or other conditions make infeasible such project alternatives or such mitigation measures, individual projects may be approved in spite of one or more significant effects thereof."

The mandate and principles announced in Public Resources Code Section 21002 are implemented, in part, through the requirement that agencies must adopt findings before approving projects for which EIRs are required. (See Pub. Resources Code, § 21081, subd. (a); CEQA Guidelines, § 15091, subd. (a).) For each significant environmental effect identified in an EIR for a proposed project, the approving agency must issue a written finding reaching one or more of three permissible conclusions. The three possible findings are:

- (1) Changes or alterations have been required in, or incorporated into, the project which mitigate or avoid the significant effects on the environment.
- (2) Those changes or alterations are within the responsibility and jurisdiction of another public agency and have been, or can and should be, adopted by that other agency.
- (3) Specific economic, legal, social, technological, other considerations, including considerations for the provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or alternatives identified in the environmental impact report.

(Public Resources Code Section 21081, subd (a); see also CEQA Guidelines Section 15091, subd. (a).)

Public Resources Code section 21061.1 defines "feasible" to mean "capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social and technological factors." CEQA Guidelines section 15364 adds another factor: "legal" considerations. (See also *Citizens of Goleta Valley v. Board of Supervisors (Goleta II)* (1990) 52 Cal.3d 553, 565.)

The concept of "feasibility" also encompasses the question of whether a particular alternative or mitigation measure promotes the underlying goals and objectives of a project. (*City of Del Mar v. City of*

*San Diego* (1982) 133 Cal.App.3d 410, 417 (*City of Del Mar*).) "[F]easibility' under CEQA encompasses 'desirability' to the extent that desirability is based on a reasonable balancing of the relevant economic, environmental, social, and technological factors." (*Ibid.*; see also *Sequoiah Hills Homeowners Assn. v. City of Oakland* (1993) 23 Cal.App.4th 704, 715 (*Sequoiah Hills*); see also *California Native Plant Society v. City of Santa Cruz* (2009) 177 Cal.App.4th 957, 1001 [after weighing "'economic, environmental, social, and technological factors' ... 'an agency may conclude that a mitigation measure or alternative is impracticable or undesirable from a policy standpoint and reject it as infeasible on that ground'"].)

With respect to a project for which significant impacts are not avoided or substantially lessened, a public agency, after adopting proper findings, may nevertheless approve the project if the agency first adopts a statement of overriding considerations setting forth the specific reasons why the agency found that the project's "benefits" rendered "acceptable" its "unavoidable adverse environmental effects." (CEQA Guidelines, §§ 15093, 15043, subd. (b); see also Pub. Resources Code, § 21081, subd. (b).) The California Supreme Court has stated, "[t]he wisdom of approving . . . any development project, a delicate task which requires a balancing of interests, is necessarily left to the sound discretion of the local officials and their constituents who are responsible for such decisions. The law as we interpret and apply it simply requires that those decisions be informed, and therefore balanced." (*Goleta II*, *supra*, 52 Cal.3d at p. 576.)

Because the EIR identified significant effects that may occur as a result of the project, and in accordance with the provisions of the Guidelines presented above, Agency hereby adopts these findings as part of the approval of the Project. These findings reflect the independent judgment of the Agency and constitute its best efforts to set forth the evidentiary and policy bases for its decision to approve the Project in a manner consistent with the requirements of CEQA. These findings, in other words, are not merely informational, but rather constitute a binding set of obligations that come into effect with the Agency's approval of the Project.

#### **G. Findings About Significant Environmental Impacts and Mitigation Measures**

The following Sections II, III and IV set forth the Agency's findings about the Final EIR's determinations regarding significant environmental impacts and the mitigation measures proposed to address them. These findings provide the written analysis and conclusions of the Agency regarding the environmental impacts of the Project and the mitigation measures included as part of the Final EIR and adopted by the Agency as part of the Project. To avoid duplication and redundancy, and because the Agency agrees with, and hereby adopts, the conclusions in the Final EIR, these findings will not repeat the analysis and conclusions in the Final EIR, but instead incorporate them by reference in these findings and rely upon them as substantial evidence supporting these findings.

In making these findings, the Agency has considered the opinions of staff and experts, other agencies and members of the public. The Agency finds that the determination of significance thresholds is a judgment decision within the discretion of the City and County of San Francisco; the significance thresholds used in the Final EIR are supported by substantial evidence in the record, including the expert opinion of the Final EIR preparers and City staff; and the significance thresholds used in the Final EIR provide reasonable and appropriate means of assessing the significance of the adverse environmental effects of the Project.

These findings do not attempt to describe the full analysis of each environmental impact contained in the Final EIR. Instead, a full explanation of these environmental findings and conclusions can be found in the Final EIR and these findings hereby incorporate by reference the discussion and analysis in the Final EIR supporting the Final EIR's determination regarding the Project's impacts and mitigation measures designed to address those impacts. In making these findings, the Agency ratifies, adopts and incorporates in these findings the determinations and conclusions of the Final EIR relating to environmental impacts and mitigation measures, except to the extent any such determinations and conclusions are specifically and expressly modified by these findings.

The Agency adopts and incorporates the mitigation measures set forth in the Final EIR and the attached MMRP as described below to substantially lessen or avoid the potentially significant and significant impacts of the Project. In adopting these mitigation measures, the Agency intends to adopt each of the mitigation measures proposed in the Final EIR for the Project unless otherwise identified as infeasible or outside of the jurisdiction of the Agency. The Agency recognizes that some of these mitigation measures may be partially or wholly within the jurisdiction of other agencies, including but not limited to the San Francisco Municipal Transportation Agency ("SFMTA"), the Department of Building Inspection ("DBI"), the Department of Public Works ("DPW"), and the Department of Public Health ("DPH"). The Agency finds that the following mitigation measures are partially or wholly within the jurisdiction of these other agencies, that these agencies can implement the following mitigation measures, and the Agency urges these agencies to implement the following mitigation measures:

MITIGATION MEASURE	AGENCY
Mitigation Measure M-CP-1a (Archeological Testing, Monitoring and Data Recovery and Reporting)	California State Native American Heritage Commission
Mitigation Measure M-TR-9 (Travel Demand Management)	SFMTA
Mitigation Measure Noise-1 (Construction Noise)	DPW
Mitigation Measure Noise-2 (Title 24 Compliance)	DBI

Mitigation Measure AQ-7 (Building Design and Ventilation Requirements)	DBI
Mitigation Measure M-SLR-3 (Emergency Plan)	DBI
Mitigation Measure M-BI-4 (Conformity with the Planning Department's Standards for Bird Safe Buildings)	DBI
Mitigation Measure Hazards-1 (Flammable Vapors During Construction)	DBI
Mitigation Measure Hazards-2 (Vapor Intrusion During Operation)	DBI / DPH

In order implement the mitigation measures set forth in the Final EIR and the attached MMRP, the Agency is adopting all of the mitigation measures as conditions of approval of the Project. With respect to the mitigation measures that are partially or wholly under the jurisdiction of other agencies, the Agency finds that such mitigation measures fall within the normal permitting and enforcement authority of those agencies and, therefore, it is reasonable to conclude that those agencies will assist in the implementation and enforcement of the mitigation measures.

In the event a mitigation measure recommended in the Final EIR has inadvertently been omitted in these findings or the MMRP, such mitigation measure is hereby adopted and incorporated in the findings below by reference. In addition, in the event the language describing a mitigation measure set forth in these findings or the MMRP fails to accurately reflect the mitigation measures in the Final EIR due to a clerical error, the language of the policies and implementation measures as set forth in the Final EIR shall control. The impact numbers and mitigation measure numbers used in these findings reflect the impact and mitigation measure numbers used in the Final EIR.

In Sections II, III and IV below, the same findings are made for a category of environmental impacts and mitigation measures. Rather than repeat the identical finding, the initial finding obviates the need for such repetition because in no instance is the Agency rejecting the conclusions of the FEIR or the mitigation measures recommended in the FEIR for the Project.

## **II. IMPACTS FOUND TO BE LESS THAN SIGNIFICANT AND THUS REQUIRING NO MITIGATION**

Under CEQA, no mitigation measures are required for impacts that are less than significant. (Pub. Resources Code, Section 21002; CEQA Guidelines, Section 15126.4, subd. (a)(3), 15091.) Based on substantial evidence in the whole record of this proceeding, the Agency finds that implementation of the Project will not result in any significant impacts in the following areas and that these impact areas, therefore, do not require mitigation:

### **A. Land Use**

- **Impact LU-1**, The proposed project would not physically divide an established community. (DEIR IV.A.8-9)



- **Impact LU-2**, The proposed project would not have a substantial adverse impact on the existing character of the vicinity. (DEIR IV.A.9-11) (C&R IV.20)
- **Impact LU-3**, The proposed project would not result in a significant cumulative impact related to Land Use. (DEIR IV.A.11)

**B. Aesthetics**

- **Impact AE-1**, The proposed project would not substantially affect scenic vistas and scenic resources visible from publicly accessible areas in the project vicinity. (DEIR IV.B.16-18) (C&R IV.21-22)
- **Impact AE-2**, The proposed project would not cause a substantial adverse change in the existing visual character of the project site and its surroundings. (DEIR IV.B.18-21) (C&R IV.21)
- **Impact AE-3**, The proposed project would not result in a significant cumulative impact related to Aesthetics. (DEIR IV.B.22)

**D. Transportation**

- **Impact TR-1**, The proposed project would not result in significant transportation impacts in the proposed project vicinity due to vehicle traffic. (DEIR IV.D.22-23)
- **Impact TR-2**, The proposed project would not result in significant impacts to transit systems in the proposed project vicinity. (DEIR IV.D.23-24)
- **Impact TR-3**, The proposed project would not result in significant impacts to pedestrians in the proposed project vicinity. (DEIR IV.D.24-26)
- **Impact TR-4**, The proposed project would not result in significant transportation impacts to bicycles in the proposed project vicinity. (DEIR IV.D.26-27)
- **Impact TR-5**, The proposed project would not result in a significant impact related to an increase in the number of vehicles parking in the project vicinity. (DEIR IV.D.28-29) (C&R IV.24-25)
- **Impact TR-6**, The proposed project would not result in a significant unmet need for loading spaces. (DEIR IV.D.29-30)
- **Impact TR-7**, The proposed project would not impair emergency vehicle access near the project site. (DEIR IV.D.30)
- **Impact TR-8**, Construction of the proposed project would not cause a significant increase in traffic near the project site. (DEIR IV.D.30-32) (C&R IV.25)

- **Impact TR-10**, The proposed project would not make a considerable contribution to a significant cumulative impact on transit systems in the proposed project vicinity. (DEIR IV.D.35-37)

**E. Air Quality**

- **Impact AQ-1**, Construction of the proposed project would not violate an air quality standard or contribute to an existing or projected air quality violation, either individually or cumulatively. (DEIR IV.E.17-18) (C&R IV.25)
- **Impact AQ-2**, The proposed project would not result in significant impacts related to fugitive dust resulting from project construction activities. (DEIR IV.E.18-20)
- **Impact AQ-4**, Operation of the proposed project would not violate an air quality standard or make a cumulatively considerable contribution to an existing or projected air quality violation. (DEIR IV.E.24-25)
- **Impact AQ-5**, The proposed project would not result in substantial levels of CO and would not make a cumulatively considerable contribution to existing levels of CO. (DEIR IV.E.25-26)
- **Impact AQ-11**, The proposed project would not conflict with or obstruct implementation of the 2010 Clean Air Plan. (DEIR IV.E.36-37)

**F. Greenhouse Gases**

- **Impact GHG-1**, The proposed project would generate greenhouse gas emissions, but not in levels that would result in a significant impact on the environment or conflict with any policy, plan, or regulation adopted for the purpose of reducing greenhouse gas emissions. (DEIR IV.F.15-16)

**G. Shadow**

- **Impact SH-1**, The proposed project would not adversely affect the use of any park or open space under the jurisdiction of the Recreation and Park Commission. (DEIR IV.G.33-34)
- **Impact SH-2**, The proposed project would not create new shadow in a manner that substantially affects outdoor recreation facilities or other public areas. (DEIR IV.G.34-45) (C&R IV.27-29)
- **Impact SH-3**, The proposed project would not result in a significant cumulative impact related to Shadow. (DEIR IV.G.45)

**H. Recreation**

- **Impact RE-1**, The construction of recreational facilities as part of the proposed project would not result in adverse physical effects on the environment. (DEIR IV.H.9-10) (C&R IV.32-33, 57)
- **Impact RE-2**, The proposed project would not increase the use of existing neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facilities would occur or be accelerated, or create a need for new or physically altered park or recreational facilities beyond those included as part of the proposed project. (DEIR IV.H.10-12) (C&R IV.33, 57)
- **Impact RE-3**, The proposed project would not have a significant adverse effect on recreational opportunities. (DEIR IV.H.12-15) (C&R IV.34-35)
- **Impact RE-4**, The proposed project would not result in a significant cumulative impact related to Recreation. (DEIR IV.H.15)

**I. Sea Level Rise**

- **Impact SLR-1**, The proposed project would not expose people or structures to a significant risk of loss, injury, or death involving flooding, including flooding as a result of the failure of a levee or dam. (DEIR IV.I.13-14)
- **Impact SLR-2**, The proposed project would not expose people or structures to a significant risk of inundation by seiche, tsunami, or mudflow. (DEIR IV.I.14)
- **Impact SLR-4**, The proposed project would not result in a significant cumulative impact related to Sea Level Rise. (DEIR IV.I.16)

**J. Biological Resources**

- **Impact BI-1**, The project would not have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special-status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service. (DEIR IV.J.7)
- **Impact BI-3**, The proposed project would not conflict with local policies or ordinances protecting biological resources. (DEIR IV.J.9-10) (C&R IV.36)
- **Impact BI-5**, The proposed project would not result in substantial adverse cumulative effects related to Biological Resources. (DEIR IV.J.11-12)

**K. Other Impacts Found Less Than Significant in the Initial Study and Not Requiring Mitigation**

The following potential individual and cumulative environmental effects of the initial project proposal were determined to be less than significant in the NOP/Initial Study. Although the NOP/Initial Study

was prepared for the initial project proposal, the Agency finds that the conclusions of NOP/Initial Study continue to be applicable to the Project with respect to each of the topics that are determined are be less than significant. The Project would occupy the same site as the initial project proposal and, like the initial project proposal, would call for disturbance of the entire project site. The Project would include a substantially similar mix and quantity of uses as the initial project proposal but would include fewer residential units (134 residential units compared to 170 under the initial project proposal). (DEIR Intro.3-4). Based on substantial evidence in the whole record of this proceeding, the Agency finds that implementation of the Project will not result in any significant impacts in the following areas and that these impact areas, therefore, do not require mitigation:

- **Land Use** (all topics, but discussed in the EIR for information purposes) (Initial Study 42-44)
- **Aesthetics** (light and glare) (Initial Study 45)
- **Population and Housing** (all topics) (Initial Study 47-50)
- **Cultural and Paleontological Resources** (historical architectural resources, unique paleontological or geologic resources) (Initial Study 50-51)
- **Transportation and Circulation** (air traffic patterns, emergency access) (Initial Study 52-53)
- **Noise** (Initial Study 53-57)
- **Air Quality** (odors) (Initial Study 58-63)
- **Wind** (NOP/Initial Study 63-64)
- **Utilities and Service Systems** (all topics) (Initial Study 69-73)
- **Public Services** (all topics) (Initial Study 73);
- **Biological Resources** (Initial Study 77-80)
- **Geology and Soils** (all topics) (Initial Study 80-86);
- **Hydrology and Water Quality** (all topics) (Initial Study 87-95);
- **Hazards/Hazardous Materials** (all topics except for release of hazardous materials discussed in Section III below) (Initial Study 95-108);
- **Minerals/Energy Resources** (all topics) (Initial Study 108-111); and
- **Agricultural Resources** (all topics) (Initial Study 112).

The NOP/Initial Study was prepared for the initial project proposal, the conclusions of also identified certain environmental effects that would be reduced to less than significant through recommended mitigation measures included in the NOP/Initial Study. Those environmental effects and mitigation measures are discussed in Section III.

**L. Growth Inducing Impacts**

The Project would intensify the use and density of the project site, providing new residential and expanded employment opportunities. The NOP/Initial Study (Appendix A to the Draft EIR, pp. 47-50) estimated that the population increase on the project site would be about 388 new persons (assuming 170 residential units constructed), and concluded that this would not be a substantial increase in population in the context of the projected population increase Citywide. The NOP/Initial Study also estimated that the proposed project could add approximately 70 employees to the City's economy, generating a demand for about 28 new dwelling units in San Francisco. These increases would not be substantial in the context of employment in the City as a whole. The Project is a mixed-use, residential infill project within a densely developed residential area at the edge of the downtown. The area is already served by municipal infrastructure and public services that have sufficient capacity to accommodate the project. The Project would not require or involve the expansion of infrastructure capacity that could accommodate additional growth. It would not stimulate new housing demand in the surrounding area that would not have existed without the project. For these reasons, the Project would not result in a significant growth-inducing impact. (DEIR V.1)

**III. FINDINGS OF SIGNIFICANT OR POTENTIALLY SIGNIFICANT IMPACTS THAT CAN BE AVOIDED OR REDUCED TO A LESS-THAN-SIGNIFICANT LEVEL**

CEQA requires agencies to adopt mitigation measures that would avoid or substantially lessen a project's identified significant impacts or potential significant impacts if such measures are feasible (unless mitigation to such levels is achieved through adoption of a project alternative). The findings in this Section III and in Section IV concern mitigation measures set forth in the Final EIR. These findings discuss mitigation measures as proposed in the Final EIR and as recommended for adoption by the Agency. The full explanation of the potentially significant environmental impacts is set forth in Section IV of the Draft EIR, the Notice of Preparation/Initial Study attached as Appendix A to the Draft EIR, and in some cases is further explained in the C&R. In many cases, mitigation measures will be implemented by the Project Applicant. In these cases, implementation of mitigation measures by the Project Applicant or other developer or facility operator have been or will, in future agreements, be made conditions of Project approval. In the case of other mitigation measures, an agency of the City will have responsibility for implementation of mitigation measures.

The mitigation measures proposed for adoption in Sections III and IV are the same as the mitigation measures identified in the Final EIR. The full text of all of the mitigation measures as proposed for adoption is contained in Exhibit A, the Mitigation Monitoring and Reporting Program. As explained

previously, Exhibit A contains the Mitigation Monitoring and Reporting Program required by CEQA Section 21081.6 and CEQA Guidelines Section 15091. It provides a table setting forth each mitigation measure listed in the FEIR that is required to reduce or avoid a significant adverse impact. Exhibit A also specifies the entity responsible for implementation of each measure, and establishes monitoring actions and a monitoring schedule.

Based on the analysis contained in the Final EIR and the standards of significance, the Agency finds that that implementation of the proposed mitigation measures discussed in this Section will reduce each of the potentially significant impacts described below to a less-than-significant level.

**A. Archeological Resources**

- **Impact CP-1: Project construction activities could disturb the remains of the scuttled ship *Bethel* (and possibly other scuttled Gold Rush era ships).** (DEIR IV.C.15) Disturbance or removal of the scuttled ship *Bethel* could materially impair the physical characteristics of the resource that convey its association with 19th century trade, waterfront development during the Gold Rush, and the notorious waterfront speculator Frederick Lawson. It could also impair the ability of the resource to embody, and yield important information about, distinctive characteristics of 19th century ship design and construction. These effects would be considered a substantial adverse change in the significance of an historical resource and would therefore be a potentially significant impact under CEQA.

**M-CP-1a: Archaeological Testing, Monitoring and Data Recovery and Reporting.** M-CP-1a requires a qualified archaeological consultant selected from the pool of qualified archaeological consultants maintained by the Planning Department to prepare, submit for the ERO's approval, and implement a plan for archeological testing. In addition, the qualified archeological consultant will undertake construction monitoring and/or a data recovery program if required. The qualified archeological consultant's work will be conducted in accordance with the M-CP-1a mitigation measure and the standards and requirements set forth in the *Archaeological Research Design/Treatment Plan for the 8 Washington Street Project*, January 2003; and *Addendum Archaeological Research Design and Treatment Plan for the 8 Washington Street Project*, February 2011, thereby ensuring the significance of CRHR-eligible archaeological resources would be preserved and/or realized in place. (DEIR IV.C.15)

**M-CP-1b: Interpretation.** M-CP-1b requires a qualified archaeological consultant having expertise in California urban historical and marine archaeology to develop and implement a feasible, resource-specific program for post-recovery interpretation of resources and artifacts encountered within the Project site. The particular program for interpretation of artifacts that

are encountered within the Project site will depend upon the results of the data recovery program. All plans and recommendations for interpretation must be approved by the ERO. Implementation of M-CP-1a and M-CP-1b would reduce Impact CP-1 to a less than significant level. (DEIR IV.C.15-20)

- **Impact CP-2: Project construction activities would have the potential to disturb the remains of wharf structures.** (DEIR IV.C.20) Construction activities within or near the current alignments of Jackson and Pacific Streets may disturb remains of the Jackson and Pacific wharves. Removal or damage of these features could impair the physical characteristics of the resource that convey their association with the Gold Rush and would impair the potential of these features to yield important historic information. These effects would be considered a substantial adverse change in the significance of an historical resource and would therefore be a potentially significant impact under CEQA. With implementation of Mitigation Measures M-CP-1a and M-CP-1b, the Project would not cause a substantial adverse change to the significance of this archaeological resource type, if present within the Project site. (DEIR IV.C.20)

**M-CP-1a: Archaeological Testing, Monitoring and Data Recovery and Reporting.** (Discussed above under Impact CP-1) (DEIR IV.C.15-19)

**M-CP-1b: Interpretation.** (Discussed above under Impact CP-1) (DEIR IV.C.19-20)

- **Impact CP-3: Project construction activities would have the potential to disturb the remains of wharf-side discards.** (DEIR IV.C.20) Construction activities within or near the current alignments of Jackson and Pacific Streets may disturb remains of Gold Rush era wharf-side discards along the Jackson and Pacific wharves. If still present, these features may be considered significant under CRHR Criterion 4 (Information Potential). This effect would be considered a substantial adverse change in the significance of an archaeological resource and would therefore be a potentially significant impact under CEQA. With implementation of Mitigation Measures M-CP-1a and M-CP-1b, the Project would not cause a substantial adverse change to the significance of this archaeological resource type, if present within the Project site. (DEIR IV.C.21)

**M-CP-1a: Archaeological Testing, Monitoring and Data Recovery and Reporting.** (Discussed above under Impact CP-1) (DEIR IV.C.15-19)

**M-CP-1b: Interpretation.** (Discussed above under Impact CP-1) (DEIR IV.C.19-20)

- **Impact CP-4: Project construction activities would disturb the remains of the Old Seawall.** (DEIR IV.C.21) Construction activities within or near Seawall Lot 351 would require complete removal of an approximately 440-foot-long segment of the Old Seawall running through the Project site. The Old Seawall is significant under Criterion 1 (Events), and may also be considered potentially significant under Criterion 4 (Information Potential) if its actual construction deviates from the BSHC's detailed specifications. If the actual construction of the segment of seawall underlying Seawall 351 deviates from the detailed BSHC's specifications, removal of this segment would materially impair the ability of this segment to yield information about the actual construction of the Old Seawall that is not available in the historic record. This effect would be considered a substantial adverse change in the significance of an historical resource and would therefore be a potentially significant impact under CEQA. With implementation of Mitigation Measures M-CP-1a and M-CP-1b, the Project would not cause a substantial adverse change to the significance of this archaeological resource type, if present within the Project site. (DEIR IV.C.21)

**M-CP-1a: *Archaeological Testing, Monitoring and Data Recovery and Reporting.*** (Discussed above under Impact CP-1) (DEIR IV.C.15-19)

**M-CP-1b: *Interpretation.*** (Discussed above under Impact CP-1) (DEIR IV.C.19-20)

- **Impact CP-5: Project construction activities would have the potential to disturb the remains of 19th century commercial and residential deposits.** (DEIR IV.C.21-22) Construction activities may disturb and remove artifacts associated with the Chinese laundry, saloons, and boarding houses that are known to have existed on the Project site. If still present, these features may be considered significant under CRHR Criterion 4 (Information Potential). Disturbance of these features would materially impair the potential of these features to yield historic information about the Chinese population in San Francisco, the lives of sailors and waterfront workers, and waterfront businesses and activities. This effect would be considered a substantial adverse change in the significance of an historical resource and would therefore be a potentially significant impact under CEQA. With implementation of Mitigation Measures M-CP-1a and M-CP-1b, the Project would not cause a substantial adverse change to the significance of this archaeological resource type, if present within the Project site.

**M-CP-1a: *Archaeological Testing, Monitoring and Data Recovery and Reporting.*** (Discussed above under Impact CP-1) (DEIR IV.C.15-19)

**M-CP-1b: *Interpretation.*** (Discussed above under Impact CP-1) (DEIR IV.C.19-20)



- **Impact CP-6: Project construction activities would have the potential to disturb unknown remains.** (DEIR IV.C.22) Construction activities may disturb unknown remains within the Project site area. Disturbance or removal of unknown remains could materially impair the physical characteristics of the unknown resource, which would be considered a substantial adverse change in the significance of an historical resource and would therefore be a potentially significant impact under CEQA.

M-CP-6 requires that the Project Applicant to distribute the Planning Department's archaeological resource "ALERT" sheet to inform all field and construction personnel of the potential presence of archaeological resources within the Project site and the procedures in the event such resources are encountered during construction activities. This measure calls for immediate suspension of soils disturbing activity in the vicinity of the discovery and notification of the ERO in the event that indications of archeological resources are discovered during soil disturbing activities. The ERO may require that an archeological consultant be retained to evaluate the resource and make recommendations and to prepare and submit a Final Archeological Resources Report for the ERO's approval. The ERO may require specific additional measures to be implemented by the Project Applicant. Implementation of Mitigation Measure M-CP-6 would ensure that the significance of archeological resources, if present within the Project site, would be preserved in the event such resources are accidentally encountered during demolition and groundwork activities. (DEIR IV.C.23-24) (C&R IV.56)

- **Impact CP-7: Project construction activities would have the potential to contribute to cumulative impacts related to Archaeological Resources.** (DEIR IV.C.24) When considered with past, present, and foreseeable future development projects along and near the San Francisco waterfront, the disturbance of archaeological resources within the project site could contribute to a cumulative loss in the of ability of the San Francisco's waterfront to convey its association with historic events and persons, to embody distinctive characteristics of design and construction, and to yield significant historic and scientific information about development of the early San Francisco waterfront, maritime history, and underrepresented populations in the historical record. With implementation of Mitigation Measures M-CP-1a and M-CP-1b, the Project would not cause a substantial adverse change to the significance of this archaeological resource type, if present within the Project site. (DEIR IV.C.24)

**M-CP-1a: Archaeological Testing, Monitoring and Data Recovery and Reporting.** (Discussed above under Impact CP-1) (DEIR IV.C.15-19)

**M-CP-1b: Interpretation.** (Discussed above under Impact CP-1) (DEIR IV.C.19-20)

**B. Air Quality**

- **Impact AQ-6: Operation of the proposed project would expose sensitive receptors to substantial levels of PM2.5 and other TACs.** If the Project's emergency generator operates for more than 35 hours per year or the project sponsor installs a generator that does not meet an emissions standard equivalent to a Tier 2 engine equipped with a Level 3 verified diesel emission control device, emissions from project operations could result in potentially significant health risk impacts to nearby sensitive receptors. (DEIR IV.E.26-28)

M-AQ-6 requires that the Project's emergency generator meet the emissions standards equivalent to a Tier 2 engine equipped with a Level 3 verified emissions control device and be tested no more than 35 hours per year, and requires the Project Applicant to maintain and make available to the ERO upon request records of annual fuel use and operating hours. With implementation of M-AQ-6 the Project's mobile and stationary source emissions would have a less than significant health risk impact to nearby sensitive receptors. (DEIR IV.E.28-29)

- **Impact AQ-9: Project operations would result in considerable contribution to already cumulatively significant levels of PM2.5 and other TACs on off-site sensitive receptors.** (DEIR IV.E.35-36) Where potential health risks exceed the cumulative thresholds regardless of the risk contribution of a proposed project, the BAAQMD considers projects that result in an increase in health risks above the project-level thresholds to also result in a considerable contribution to cumulative health risk impacts. The Project's vehicle emissions and stationary source emissions could contribute additional health risks that exceed BAAQMD's project-level thresholds of significance. Through implementation of M-AQ-6 and the project's trip reduction measures, the combined sum of the project's stationary source and mobile source health risk emissions would be mitigated to below the project level thresholds, therefore the Project's contribution to cumulative health risk impacts would be less than cumulatively considerable.

M-AQ-6 (Discussed above under **Impact AQ-6**) (DEIR IV.E.28-29)

**C. Biological Resources**

- **Impact BI-2: The project would remove migratory bird habitat and impede the use of nesting (nursery) sites.** (DEIR IV.J.7-8) The trees on the Project site could provide nesting habitat for resident urban-adapted and migratory songbirds. During construction, the existing on-site trees and shrubbery would be removed. Vegetation removal during the

breeding season (approximately March through August) could remove trees that support active nests. As a result, there would be a short-term loss of nesting habitat.

M-BI-2 requires that vegetation removal activities for the proposed project be conducted during the non-breeding season (i.e., September through February) to avoid impact to nesting birds or that preconstruction surveys be conducted by qualified ornithologist for work scheduled during the breeding season (March through August). If active songbird or raptor nests are found in the work area, buffers shall be established until the young have fledged. With implementation of M-BI-2, this impact would be less than significant. (DEIR IV.J.8)

**Impact BI-4: The new buildings would adversely impact bird movement and migration.** (DEIR IV.J.10-11) The *Standards for Bird-Safe Buildings* provide guidelines for evaluating the hazards posed to birds by glazing and proximity to landscaping. The Standards identify building designs and glazing treatments that may pose hazards, and identify treatments that will provide safe buildings for birds. M-BI-4 requires the Project to conform to applicable requirements of the *Standards for Bird-Safe Buildings*, Public Review Draft, October 2010. In the event that Standards for Bird Safe Buildings are adopted and effective at the time a building permit for the project is sought, the Project is required to comply with the adopted Standards in addition to any provisions contained in the Public Review Draft, October 2010 that in the ERO's judgment would provide greater protection for birds. Final *Standards for Bird-Safe Buildings* were adopted by the City, effective October 7, 2011, and the project is required to comply with those standards. Implementation of M-BI-4 would ensure that the Project would not result in a significant impact related to bird strikes. (DEIR IV.J.11)

D. Noise

- The proposed project would expose persons to pile driving noise during foundation construction. (DEIR I.18; Initial Study 54-55, 114)

Mitigation Measure Noise-1 requires pre-drilling site holes to the maximum depth feasible, scheduling pile-driving activity for times of the day that would disturb the fewest people, using state-of-the-art noise shielding and muffling devices, and providing at least 48 hours prior notification of pile-driving activities to owners and occupants within 200 feet of the Project site. Based on implementation of Mitigation Measure Noise-1, and given the short-

term, temporary period of pile driving activity, pile driving noise would not be considered a significant environmental impact. (DEIR I.18; Initial Study, 114)

- Residents of the proposed project would be exposed to traffic noise along adjacent roadways. (DEIR I.18; Initial Study 57)

**Mitigation Measure Noise-2** requires a detailed analysis of noise reduction requirements for the proposed buildings. Noise insulation features identified and recommended by the analysis must be included in the building design to reduce potential interior noise levels to the maximum extent feasible. Implementation of Mitigation Measure Noise-2 would reduce the impact of exterior noise levels on the proposed residences would not be a significant impact. (DEIR I.18; Initial Study, 57, 114)

#### E. Hazards and Hazardous Materials

- If hazardous materials are present in the soil, groundwater, or within existing buildings on the project site, project site clearance, demolition, grading, and excavation activities could result in a release of hazardous materials. (DEIR I.18; Initial Study 102-105). Based on the historic presence of hydrocarbons in the soil and groundwater and the potential for methane in filled areas, flammable vapors could be present that could pose a fire or explosion risk to workers and the public during construction, and/or cause nuisance vapors, adverse health effects, or flammable or explosive conditions during Project operations.
- **Mitigation Measure Hazards-1** requires a soil vapor survey to evaluate the presence of potentially flammable vapors prior to final design of the proposed building. Should the survey identify the potential presence of flammable vapors at levels greater than the lower flammability limit or lower explosive limit, then the Project Applicant shall require the construction contractor to include measures to control flammable gases during construction (such as ventilation) in the construction site safety plan and to implement these measures. With this measure, potential impacts related to exposure to flammable or explosive vapors during construction would be reduced to less than significant. (DEIR I.18; Initial Study 102, 115)
- **Mitigation Measure Hazards-2** requires a screening evaluation, site-specific evaluation, and implementation of remediation or engineering measures to control vapor intrusion in accordance with guidance developed by the California Department of Toxic Substances Control as well as monitoring, if needed on the basis of the soil vapor survey conducted in accordance with Mitigation Measure Hazards-1. With this measure, potential impacts

related to exposure to flammable vapors during Project operation would be reduced to less than significant. (DEIR I.18; Initial Study, 103-04, 115-16)

**F. Mitigation Measures from Initial Study That Have Been Superseded or Replaced**

The NOP/Initial Study identified the following two mitigation measures to reduce the initial proposed project's potential environmental impacts to less than significant. The Agency finds that based on substantial evidence in the record these two mitigation measures have been superseded and replaced by the analysis and mitigation measures of the Draft EIR as well as new law as set forth below.

- **Mitigation Measure Bio-1 (Protection of Birds During Tree Removal):** The NOP/Initial Study identified this mitigation measure to implement protective measures to assure implementation of the Migratory Bird Treaty Act and compliance with state regulations during tree removal. (Initial Study 77-78, 115). The topic of Biological Resources is restudied in the Draft EIR due to the publication of the draft Standards for Bird-Safe Buildings in October 2010 after publication of the NOP/Initial Study. (DEIR Intro.5). The Agency finds that the NOP/Initial Study analysis of Biological Resources is superseded by that of the FEIR, and that Mitigation Measure Bio-1 is replaced with Mitigation Measure BI-2, which similarly requires preconstruction survey and the creation of buffer zones if active nests are found (DEIR Intro.5; I.19, IV.J.8)
- **Mitigation Measure AQ-1 (Construction Air Quality):** The NOP/Initial Study identified this mitigation measure to reduce the quantity of dust generated during site preparation and construction, and to reduce construction exhaust emission of PM10. (Initial Study pp. 59, 114). Since publication of the NOP/Initial Study, the Bay Area Air Quality Management District (BAAQMD) adopted new BAAQMD CEQA Guidelines in June 2010, and the construction related air quality impacts of the Project were restudied in the Draft EIR (IV.E.13). The FEIR identified a new mitigation measure, Mitigation M-AQ-3 (Construction Equipment), to reduce the air quality impacts of construction equipment as recommended by the updated BAAQMD CEQA Guidelines. (IV.E.23-24). The FEIR also identified Mitigation Measures M-AQ-6 and M-AQ-7 to reduce the operation air quality impacts on sensitive receptors (IV.E.28-29, 33). In addition, the San Francisco Board of Supervisors approved a series of amendments to the San Francisco Building and Health Codes called the Construction Dust Control Ordinance (Ordinance 176-08, effective July 30, 2008) to reduce the quantity of dust generated during site preparation, demolition, and construction work. The Ordinance requires that all site preparation work, demolition, or other construction activities within San Francisco which have the potential to create dust or to expose or disturb

more than 10 cubic yards or 500 square feet of soil comply with specified dust control measures whether or not the activity requires a permit from DBI. For project sites greater than one half-acre in size, such as the project site, the Ordinance requires that the project sponsor submit a Dust Control Plan for approval by the San Francisco Health Department. (DEIR E.14, 19-20). The Agency finds that analysis of air quality impacts in the Final EIR has superseded the analysis in the NOP/Initial Study, and that the Project's compliance with the Construction Dust Control Ordinance and with the new air quality mitigation measures identified in the FEIR has replaced and superseded Mitigation Measure AQ-1 of the NOP/Initial Study.

#### IV. SIGNIFICANT IMPACTS THAT CANNOT BE AVOIDED OR REDUCED TO A LESS THAN SIGNIFICANT LEVEL

The DEIR identified a number of significant environmental effects (or impacts) to which the Project would cause or contribute. Some of these significant effects can be avoided or reduced to a less-than-significant level through the adoption of feasible mitigation measures; these effects are described in Section III above. Other effects are significant and unavoidable. Some of these unavoidable significant effects can be substantially lessened by the adoption of feasible mitigation measures, but still remain significant and unavoidable with mitigation. Other significant and unavoidable effects cannot be substantially lessened or avoided by the adoption of feasible mitigation measures. For reasons set forth in the Statement of Overriding Considerations in Section VIII below, however, the Agency has determined that overriding economic, social, and other considerations outweigh the significant and unavoidable effects of the Project.

Based on substantial evidence in the whole record of these proceedings, the Agency finds that, where feasible, changes or alterations have been required, or incorporated into, the Project to reduce the significant environmental impacts identified in the Final EIR. The Agency finds that the mitigation measures in the Final EIR and described below are appropriate, and that changes have been required in, or incorporated into, the Project that may substantially lessen, but do not avoid (i.e., reduce to less than significant levels), some of the potentially significant or significant environmental effects associated with implementation of the Project as described in FEIR Chapter IV. The Agency adopts all of these mitigation measures as proposed in the FEIR that are relevant to the Project and are within the Agency's jurisdiction as set forth in the MMRP, more particularly described in Exhibit A.

Based on the analysis contained within the Final EIR and the standards of significance, the Agency finds that because some aspects of the Project would cause potentially significant impacts for which feasible mitigation measures are not available to reduce the impact to a less-than-significant level, these impacts are *significant and unavoidable*. The Agency recognizes that although mitigation measures are

identified in the Final EIR that would reduce many potentially significant impacts to less-than-significant levels, for some potentially significant and unavoidable impacts, the measures would not fully mitigate impacts to a less than significant level, or are uncertain, infeasible, or within the jurisdiction of another agency, and therefore those impacts remain significant and unavoidable or potentially significant and unavoidable.

The Agency determines that the following significant impacts on the environment, as reflected in the Final EIR, are unavoidable, but under Public Resources Code Section 21081(a)(3) and (b), and CEQA Guidelines Sections 15091(a)(3), 15092(b)(2)(B), and 15093, the Agency determines that the impacts are acceptable due to the overriding considerations described in Section VIII below. This finding is supported by substantial evidence in the record of this proceeding.

**A. Transportation**

- **Impact TR-9: The proposed project would make a considerable contribution to cumulative traffic impacts at study intersections.** (DEIR IV.D.34-35) Under 2035 cumulative conditions, the operation of The Embarcadero / Washington Street intersection would degrade to LOS F. The Project's contribution to the 2035 cumulative impacts would be considerable, and thus would be considered significant. Implementation of Mitigation Measure M-TR-9 would reduce the Project's contribution to cumulative impacts but because it is uncertain how much reduction in Project traffic would result from the mitigation measure, the impact would remain *significant and unavoidable*. The Embarcadero / Washington Street intersection would operate at an acceptable level of service in 2035 if the recommendations of the Northeast Embarcadero Study regarding Washington Street were not implemented and number of lanes were maintained at the status quo with minor adjustments to the traffic signal timings.
- **Mitigation Measure M-TR-9: *Travel Demand Management Plan*.** The Project Applicant will develop and implement a basic Travel Demand Management (TDM) Plan for the residential and commercial uses at the site. The Plan will build upon those TDM elements already being provided as part of the Project, such as secured bicycle parking and care share spaces, to which it will add additional components such as facilitating maps of local pedestrian and bicycle routes, transit stops and routes, and providing a taxi call service for the restaurant. The mitigation measure will be triggered if and at the time the changes to The Embarcadero/Washington Street identified in the Northeast Embarcadero Study are implemented. (DEIR IV.D.35)

**B. Sea Level Rise**

- **Impact SLR-3: The proposed project would expose people or structures to increased risk of flooding due to climate-induced sea level rise.** (DEIR IV.I.15) The difference between the Project site's elevation and a 100-year flood event is 1.2 feet, and under the higher sea-level-rise estimates, the Project site would be inundated during a 100-year event. Measures such as raising the underlying grade of the project site or constructing a berm around the project site to protect it against inundation are not available to this urban infill site. Raising the underlying grade would impede the easy and level flow of pedestrians and wheelchairs into the ground floor, and would require interior or exterior steps, landings, ramps and/or lifts to comply with Americans with Disabilities Act (ADA) and Building Code requirements, which would substantially reduce the amount and marketability of ground-floor space and, with the elevated position of the ground floor above the street, would impede visual, spatial and physical connectivity between pedestrians at street level and ground floor activities. For these reasons, raising the elevation of the Project site alone, without an area-wide approach that similarly raised the grade of the entire area, would not be feasible. Pursuant to *Ballona Wetlands Land Trust v. City of Los Angeles* (2011) 201 Cal.App.4th 455, 473-475, an impact to a project caused by the environment is not an impact that must be analyzed in an EIR. This decision was issued after the Agency prepared the EIR. Nevertheless, out of an abundance of caution, and in light of the fact that another court may not adopt the reasoning set forth in this decision, the Agency notes that this impact was identified and discussed within the EIR and this impact was determined to be *significant and unavoidable*. Although the Mitigation Measure M-SLR-3 would not reduce this impact to a less-than-significant level, it would serve to reduce this risk to residents and businesses. The Agency therefore adopts this measure.

**Mitigation Measure M-SLR-3: Emergency Plan.** The Project Applicant in conjunction with the building manager must prepare an initial Emergency Plan that includes at a minimum: monitoring by the building manager of agency forecasts of tsunamis and floods, methods for notifying residents and businesses of such risks, and evacuation plans. The plan must be prepared prior to occupancy of any part of the Project, and the plan must be updated annually. The building manager must provide educational meetings for residents and businesses at least three times per year and conduct drills regarding the Emergency Plan at least once per year. (DEIR IV.I.16)

C. **Air Quality**

- **Impact AQ-3: Construction of the proposed project would expose sensitive receptors to substantial levels of PM2.5 and other TACs, including DPM.** (DEIR IV.E.20-22) The excess



cancer risk and incremental PM<sub>2.5</sub> concentrations at the maximally exposed individual due to project construction emissions exceed the significance thresholds established by the BAAQMD CEQA Guidelines. Mitigation Measure M-AQ-3 calls for all off-road construction equipment to be equipped with Tier 3 diesel engines or better. Because the analysis is based on default construction equipment inventory, it is not possible to know whether retrofitting with Level 3 verified diesel emission controls for all equipment would be feasible, or to quantify the resulting reduction in DPM for the mitigated scenario. However, even with implementation of the most effective measures to reduce DPM emissions, construction health risks would not be mitigated to below the excess incremental cancer risk significance threshold of 10 in a million. Thus, even with all feasible mitigation, the Project's construction emissions would have a *significant and unavoidable* health risk impact to nearby sensitive receptors.

**Mitigation M-AQ-3: Construction Equipment.** All off-road construction equipment is required to be equipped with Tier 3 (Tier 2 if greater than 750 hp) diesel engines or better to the extent feasible. Certain types of equipment – including but not limited to excavators, backhoes, and concrete boom pumps, are identified as candidates for retrofitting with CARB-certified Level 3 verified diesel emission controls (Level 3 VDECs, which are capable of reducing DPM emissions by 85% or better). For the purposes of this mitigation measure, "feasibility" refers to the availability of newer equipment in the subcontractor's fleet that meets these standards, or the availability of older equipment in the subcontractor's fleet that can be feasibly modified to incorporate Level 3 VDECs. All diesel generators used for Project construction must meet Tier 4 emissions standards. (DEIR IV.E.23-24)

- **Impact AQ-7: The proposed project would expose new (on-site) sensitive receptors to significant levels of PM<sub>2.5</sub> and other TACs from a single source.** (DEIR IV.E.29-33) The maximum estimated single-source cancer risk for new residents due to an individual source within 1,000 feet of the project boundary exceeds the significance threshold of 10 in a million cancer risk and the significance threshold of 0.3 ug/m<sup>3</sup> for PM<sub>2.5</sub>. Therefore, the health risk impacts associated with siting sensitive receptors at the site near single sources of PM<sub>2.5</sub> and TACs is considered significant.

Mitigation measures may involve reducing emissions from the project or reducing a receptor's exposure to emissions. The project does not have the ability to mitigate emissions from offsite emission sources. Offsite stationary source emission rates are regulated by BAAQMD through the operator's air permits, while emission standards for vehicles and marine vessels are regulated by U.S. EPA and CARB. The proposed project would reduce

emissions from the proposed project's emergency generator through implementation of Mitigation Measure M-AQ-6, and emissions from the proposed project's mobile sources would be reduced to the maximum extent feasible with measures to reduce automobile trips to and from the Project site.

Potential mitigation measures to reduce exposure for on-site receptors to emissions from on-site and off-site sources also include installation of mechanical ventilation with high-efficiency particulate air (HEPA) filters in project building ventilation systems, and planting trees at the site. However, although tree planting may reduce certain risks at lower level units, trees may be ineffective for reducing risks to residents that reside on higher floors. To further protect the Project's residential uses from nearby TACs the Project shall implement Mitigation Measure M-AQ-7, below. This mitigation measure would reduce risk associated with DPM exposure only when the receptor is indoors at home and the ventilation system is in operation.

While some commenters proposed other potential mitigation measures to address Impact AQ-7, including phasing development of the residential portion of the project to allow time for CARB diesel regulations to take effect, tiered plantings between the project and The Embarcadero, continuous ventilation, and inoperable windows, and eliminating outdoor decks, these measures are infeasible for the reasons more fully set forth in the Draft EIR and C&R. While the project would be required to plant trees, trees may be ineffective at reducing risks to residents on the higher floors, and planting more trees of tiered plantings would not change this conclusion. Furthermore, the effectiveness of plantings to reduce air pollutant concentrations depends on multiple factors, including the type of tree and wind speed, many of which are not currently quantifiable, therefore the potential success of this mitigation is not known and the mitigation is considered to be infeasible. Eliminating the options of opening windows, using outdoor decks and open space, and controlling a residential unit's ventilation system would seriously reduce the marketability of the residential units, and therefore these measures are infeasible. Phasing of the residential development to allow time for CARB diesel regulations to take effect is not feasible because the reduction in diesel emissions is a continuing process, and there is no one future point in time when the regulations will take effect in lowering diesel emissions. Furthermore, the impacts of future CARB regulations on diesel emissions were included in the EIR analysis to the extent feasible. Despite implementation of all feasible mitigation, this potential impact relating to single-source risk on new receptors would remain *significant and unavoidable*. (DEIR IV.E.33) (C&R IV.4-12)

*M-AQ-6: Emergency Generator Emissions Standards and Operating Hours.* (Discussed in Section III above under Impact AQ-6) (DEIR IV.E.28-29)

*M-AQ-7: Building Design and Ventilation Requirements.* The Project Applicant is required to submit a ventilation plan for the proposed buildings that show that the building ventilation systems remove at least 80 percent of the PM2.5 pollutants from habitable areas. The ventilation system is required to be designed by an engineer certified by ASHRAE, who must provide a written report documenting that the system offers the best available technology to minimize outdoor to indoor transmission of air pollution. In addition to installation of an air filtration system, the project sponsor shall present a plan that ensures ongoing maintenance for the ventilation and filtration systems. Disclosures to buyers and renters must inform occupants about the air quality analysis and the proper use of any installed air filtration system.

- **Impact AQ-8: The proposed project would expose new (on-site) sensitive receptors to cumulatively considerable levels of PM2.5 and other TACs from off-site and on-site sources.** (DEIR IV.E.34-35) The estimated cumulative cancer risk for new residents due to the on-site sources, off-site stationary sources, roadway sources and ferry terminal sources within 1,000 feet of the Project boundary exceeds the significance threshold of 100 in a million for cumulative impacts. The PM2.5 concentration exceeds the significance threshold of 0.8 ug/m3. While implementation of Mitigation Measure M-AQ-6 would reduce emissions from the Project's on-site generator by restricting operating hours and requiring emissions standards equivalent to a Tier 2 engine equipped with Level 3 VDEC, there is no additional feasible mitigation for this on-site source. Implementation of Mitigation Measure M-AQ-7 would reduce exposure of the on-site residential uses to health risks by requiring that the building's ventilation systems reduce PM2.5 level by at least 80 percent in habitable areas, thereby also reducing the potential for increased cancer risks at the site. The remaining off-site sources are not within the control of the Project Applicant or the City, and thus the Project does not have the ability to reduce emissions from these offsite sources. Despite implementation of all feasible mitigation, the Project would result in a *significant and unavoidable* impact with respect to exposing new sensitive receptors to cumulatively considerable levels of PM2.5 and other TACs from off-site and on-site sources.

*M-AQ-6: Emergency Generator Emissions Standards and Operating Hours.* (Discussed in Section III above under Impact AQ-6) (DEIR IV.E.28-29)

*M-AQ-7: Building Design and Ventilation Requirements.* (Discussed above under Impact AQ-7) (DEIR IV.E.33)

- **Impact AQ-10: Project construction activities would result in a considerable contribution to cumulatively significant levels of PM2.5 and other TACs on off-site receptors.** (DEIR IV.E.36) Operational emissions from roadways, ferry operations and off-site stationary sources total greater than 100 in a million excess cancer risk. In addition, the estimated cancer risk from Project construction is approximately 198 in a million, which by itself exceeds the cumulative construction health risk thresholds. Construction of the Project would exceed the project level thresholds for construction-related excess cancer risk and incremental annual average PM2.5 levels; therefore construction of the proposed project would result in a considerable contribution to cumulatively significant health risks impact on offsite sensitive receptors. Mitigation measures for project construction are described in Mitigation Measure M-AQ-3 regarding construction equipment. No additional feasible mitigation, beyond that already identified in mitigation M-AQ-3, has been identified to reduce health risks to offsite receptors from Project emissions; thus, this impact would be *significant and unavoidable* despite incorporation of all feasible mitigation.
- **M-AQ-3: Construction Equipment.** (Discussed above under Impact AQ-3) (DEIR IV.E.23-24)

**V. IMPROVEMENT MEASURES THAT WOULD FURTHER REDUCE IMPACTS IDENTIFIED AS LESS THAN SIGNIFICANT**

This section identifies improvement measures included in the Final EIR that would further reduce impacts identified as less than significant. The Agency finds that the improvement measures identified in this Section V would provide further reductions in impacts that are already less than significant. The Agency adopts the following improvement measures as conditions of project approval. These measures are also identified the MMRP.

- **Impact TR-1: The proposed project would not result in significant transportation impacts in the project vicinity due to vehicle traffic.** (DEIR IV.D.22-23). Project-generated vehicle trips would result in minor increases in the average delay per vehicle at all intersections; however, these intersections would continue to operate at acceptable service levels, and the Project would not cause significant traffic impacts.

**Improvement Measure TR-1: Garage Signage.** To minimize the possibility of traffic congestion due to vehicles queuing on Washington Street when entering the proposed garage, an electronic sign, to be activated when the garage is full, will be installed by the garage entrance on Washington Street. The sign will also direct motorists towards the Golden Gateway garage (1,350 spaces), located two blocks to the west of the project site, as an alternative parking location. (DEIR IV.D.23)

- **Impact TR-3: The proposed project would not result in significant impacts to pedestrians in the proposed project vicinity.** (DEIR IV.D.24-26) While conflicts between pedestrians and vehicles could occur at the Project garage driveway, the Project would not cause any major conflict or interfere with pedestrian movements in the area.

**Improvement Measure TR-3: Pedestrian Alert Device.** In order to improve the visibility and awareness of cars and pedestrians at the garage entrance, the Project Applicant will install an audible and visual device at the garage entrance to automatically alert pedestrians when a vehicle is exiting the facility, and will install a sign at the top of the garage ramp facing exiting vehicles with the words "Caution – Watch for Pedestrians" to warn motorists to be observant of pedestrians on the sidewalk. (DEIR IV.D.26) (C&R IV.24)

- **Impact TR-8: Construction of the proposed project would not cause a significant increase in traffic near the project site.** (DEIR IV.D.31-32) While construction truck traffic on streets near the Project site would cause a temporary lessening of their traffic-carrying capacities due to the slower movement and larger turning radii of trucks, all of the transportation impacts connected with construction of the Project would be temporary in duration and would be less than significant.

**Improvement Measure TR-8a: Limitation on Trucking Hours.** During construction, the Project Applicant agrees to limit truck movements to the hours between 9 AM and 3:30 PM (or other times, if approved by SFMTA) to minimize construction traffic occurring between 7 and 9 AM or between 3:30 and 6 PM peak traffic hours, when trucks could temporarily impede traffic and transit flow. (DEIR IV.D.32)

**Improvement Measure TR-8b: Agency Consultation.** The Project Applicant and construction contractor(s) will meet with the Traffic Engineering Division of SFMTA, the Fire Department, Muni, and the Planning Department to determine the best method to minimize traffic congestion and potential negative effects to pedestrian or bicycle circulation during construction of the proposed project. (DEIR IV.D.32)

## **VI. MITIGATION MEASURES AND PROJECT MODIFICATIONS PROPOSED BY COMMENTERS**

Several commenters on the DEIR suggested additional mitigation measures and/or modifications to the measures recommended in the DEIR. In considering specific recommendations from commenters, the Agency has been cognizant of its legal obligation under CEQA to substantially lessen or avoid significant environmental effects to the extent feasible. The Agency recognizes, moreover, that comments frequently

offer thoughtful suggestions regarding how a commenter believes that a particular mitigation measure can be modified, or perhaps changed significantly, in order to more effectively, in the commenter's eyes, reduce the severity of environmental effects. The Agency is also cognizant, however, that the mitigation measures recommended in the DEIR reflect the professional judgment and experience of the Agency's expert staff and environmental consultants and have been carefully considered. In considering commenters' suggested changes or additions to the mitigation measures as set forth in the DEIR, the Agency, in determining whether to accept such suggestions, either in whole or in part, considered the following factors, among others:

- (i) Whether the suggestion relates to a significant and unavoidable environmental effect of the Project, or instead relates to an effect that can already be mitigated to less than significant levels by proposed mitigation measures in the DEIR;
- (ii) Whether the proposed language represents a clear improvement, from an environmental standpoint, over the draft language that a commenter seeks to replace;
- (iii) Whether the proposal may have significant environmental effects, other than the impact the proposal is designed to address, such that the proposal is environmentally undesirable as a whole;
- (iv) Whether the proposed language is sufficiently clear as to be easily understood by those who will implement the mitigation as finally adopted;
- (v) Whether the language might be too inflexible to allow for pragmatic implementation;
- (vi) Whether the suggestions are feasible from an economic, technical, legal, or other standpoint; and
- (vii) Whether the proposal is consistent with the Project objectives.

For this project, several potentially significant and unavoidable impacts were identified and comments were received suggesting ways to further reduce those impacts. (See, e.g., C&R III.L.5, C&R III.N.5). These suggested measures either are already incorporated in the mitigation measures proposed for adoption or were considered and rejected as infeasible. (See, e.g., C&R III.L.8-12, C&R III.N.13-14). The reasons for rejecting mitigation proposed by commenters that were received during the comment period are explained in the C&R and are incorporated herein by reference.

## VII. EVALUATION OF PROGRAM ALTERNATIVES

This Section VII describes the Project as well as the Project alternatives (the "Alternatives") and the reasons for approving the Project and for rejecting the Alternatives. This Section VII also outlines the Project's purposes and provides a context for understanding the reasons for selecting or rejecting Alternatives.

CEQA mandates that every EIR evaluate a reasonable range of alternatives to the Project or the Project location that generally reduce or avoid potentially significant impacts of the Project. CEQA requires that every EIR also evaluate a "No Project" alternative. Alternatives provide a basis of comparison to the Project in terms of their significant impacts and their ability to meet Project objectives. This comparative analysis is used to consider reasonable, potentially feasible options for minimizing environmental consequences of the Project.

**A. Reasons for Selection of the Project**

The overall goal of the Project is to develop a high-quality, sustainable, and economically feasible high-density, primarily residential project that complements and enhances the character of the surrounding neighborhood. The Project will provide numerous public benefits, as explained in greater detail in Section VIII, including the following:

- **Housing.** The Project will increase the City's housing stock by providing up to 134 new housing units, and will contribute to the production of affordable housing in the City by complying with the City's Residential Inclusionary Affordable Housing Program.
- **Parks and Open Space.** The Project would create new publicly accessible parks and open space. The Project would provide Jackson Commons, an approximately 10,450 square foot public open space and view corridor north of the proposed residential buildings that would connect the City with the waterfront along the Jackson Street alignment. The Project would also create Pacific Park, an approximately 11,840 square foot publicly accessible park at the northern end of the Project site, which would connect the City with the waterfront along the Pacific Avenue alignment. Pacific Park will include a children's interpretive sculpture garden with an interactive water feature. The Project would also provide approximately 2,890 additional square foot of open space along the existing Drumm Street pedestrian path.
- **New Neighborhood-Serving Retail Uses.** The Project would create approximately 19,800 square feet of new restaurant, café, and retail space, and replace the existing 9 outdoor tennis courts, two outdoor pools, basketball outdoor half-court and offsite 7,355 square foot fitness center with a new 16,350 square foot indoor fitness center with new outdoor swimming pool facilities, which would serve existing residents in the Golden Gateway area as well as new residents and waterfront visitors.

- **Benefits to the Port.** The Project would provide substantial benefits to the Port, including both onetime payments in connection with the Project Applicant's purchase of portions of Seawall Lot 351, and ongoing payments in perpetuity in connection with the transfer of the dwelling units that will be developed on the Project site. The Project would also replace the existing surface parking lot on Seawall Lot 351 with below grade parking facilities.
- **Transportation.** The Project would provide pedestrian and circulation improvements, including the widening of the sidewalks along The Embarcadero, Washington Streets, and Drumm Street.
- **Land Use and Urban Design.** The Project would redevelop an underutilized urban infill site that includes a large surface parking lot with a new mixed use, high-density development with housing, ground floor retail uses, and new public parks and open space.
- **Economic Development and Jobs.** The Project would generate construction jobs during the construction of the Project as well as permanent employment opportunities to support the Project's new residential and commercial uses during a period of high unemployment in the City and the region.

**B. Alternatives Rejected and Reasons for Rejection**

The Agency is approving the Project Variant, with the minor modifications explained previously. To the extent that the Project differs from the Project as proposed in the DEIR, the Agency rejects the Project as described in the DEIR and the Agency rejects the Alternatives set forth in the Final EIR and listed below because the Agency finds, in addition to the reasons described in Section VIII below, that there is substantial evidence, including evidence of economic, legal, social, technological, and other considerations described in this Section under CEQA Guidelines 15091(a)(3), that make infeasible such Alternatives. In making these determinations, the Agency is aware that CEQA defines "feasibility" to mean "capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, legal, and technological factors."

**1. Alternative A: No Project Alternative**

Consistent with Section 15126.6(e)(1) of the CEQA Guidelines, this alternative assumes that the Project site would remain in its existing condition. The No Project Alternative ("Alternative A") is rejected because it would not achieve any of the Project objectives identified in Section I. In particular, the No Project Alternative would not further any of the Project Applicant's objectives, or any of the Port's urban design, land use, and financial objectives for Seawall Lot 351.



Alternative A would fail to convert the existing surface parking and private health club uses of the Project site into a new mixed-use, residential project with ground floor retail uses that create an enlivened pedestrian experience along The Embarcadero and Washington Street, below grade parking, new publicly accessible open spaces, and new health club and swimming facilities. Alternative A would not create any new jobs, either during construction or operation of the project. Furthermore, Alternative A would not result in the production of any housing units or the payment of in lieu fees to support the construction of affordable housing.

Thus, while Alternative A would avoid impacts associated with the Project, this alternative would not further any of the Project Applicant's or Port's objectives or provide any of the benefits contemplated by the Project, and is therefore rejected. The Agency rejects Alternative A on each of these grounds independently. All of the reasons provide sufficient independent grounds for rejecting Alternative A.

## 2. Alternative B: Existing Height and Bulk

The purpose of the Existing Height and Bulk Alternative ("Alternative B") is to provide an alternative that complies with the existing height and bulk requirements to serve as a point of comparison for the height and bulk of the Project. (DEIR.VI.5) Under Alternative B, the project site would be developed under the existing RC-4 zoning and 84-E height and bulk designations. (DEIR.VI.5) Under Alternative B, Seawall Lot 351 would be combined with the 8 Washington site, and the Project Applicant would develop the Project site with two buildings: a south building (south of the Jackson Street alignment and 40 to 65 feet tall) and a north building (north of the Jackson Street alignment and 40-65 feet tall). (DEIR.VI.6) There would be a total of 297 residential units, which would be approximately twice as many as under the Project (the Project would provide 134 residential units). (DEIR.VI.6, C&R.III.Q.27-28) Compared to the Project, Alternative B would substantially reduce the number of residential parking spaces (there would be 75 spaces instead of 127 spaces) and public parking spaces (there would be 120 spaces, including 90 spaces for the Port, whereas the Project would provide 255 public parking spaces, including the 90 parking spaces for the Port (DEIR.VI.6, C&R.III.Q.27-28) Alternative B would provide publicly accessible open space in similar quantities, locations, and configurations as would the Project, including the creation of the proposed Jackson Common and Pacific Avenue Park. (DEIR.VI.6, C&R.III.Q.27-28)

Environmental Impacts Compared to Proposed Project. Alternative B would generally result in the same impacts as the Project. While none of the Project's significant and unavoidable impacts would be avoided with Alternative B, Alternative B would lessen the Project's shadow impacts. (DEIR.VI.11; C&R.III.Q.32) Because the overall height of buildings is reduced under Alternative B compared to the Project, shadow on some public open spaces would be reduced, although Alternative B would have similar shadow impacts on Sue Bierman Park, the Embarcadero Promenade, and the Port Walk

Promenade. (DEIR.VI.11; C&R.III.Q.32) Under Alternative B, there would be more daily person trips due to the greater number of residential units than under the Project, and these additional trips would translate into additional vehicle trips during the PM peak hour. (DEIR.VI.9, C&R III.Q.30). The increased number of vehicle trips under this alternative, however, would have a marginal effect on the intersections studied in the Final EIR. The construction air quality impacts of Alternative B would be slightly greater than those for the Project due to the greater amount of construction, and operational emissions for Alternative B would be proportional to vehicle trip generation, which would be higher than that of the Project. (DEIR.VI.10, C&R III.Q.31) The risk of encountering archaeological resources during construction would increase under the Alternative B between the Jackson Street and Pacific Avenue alignments because of the residential building that would be constructed there, although the potential for encountering archeological resources would decrease south of Jackson Street because Alternative B's parking garage would only be two levels instead of three levels. (DEIR.VI.9, C&R.III.Q.28-30)

Although Alternative B would generally meet most project objectives, and while Alternative B provides an alternative that would comply with existing height and bulk requirements, the Agency rejects this alternative as infeasible within the meaning of CEQA for the following reasons:

- The block perimeter configuration for residential buildings north and south of the Jackson Street alignment could result in units with closed courtyard exposure that would make them less marketable.
- Alternative B would generally result in the same impacts as the Project and would not avoid any of the Project's significant and unavoidable impacts. Although shadow impacts would be reduced, Alternative B would result in slightly greater air quality and transportation impacts due to the greater number of residential units and construction and, therefore, does not provide a marked environmental benefit as compared to the Project.
- Alternative B does not include any replacement outdoor recreational facilities and would not further the Project Applicant's objective to construct recreation facilities to serve Golden Gateway residents, San Francisco's residents, and waterfront visitors.
- Alternative B provides an inferior urban design form compared to that of the Project because Alternative B does not provide a stepped transition from the one-two story buildings located north of the Jackson Street alignment to the eight-twelve story residential building located at the corner of Drumm and Washington Streets.
- While Alternative B would provide the Port with 90 parking spaces, Alternative B would supply fewer total public parking spaces than the Project, and therefore is less likely to meet the Project Applicant's objective to increase the supply of public underground parking to support the continued

economic viability of the Ferry Building Farmer's Market and the retail and restaurant uses at the Ferry Building, Pier 1 and Piers 1-1/2 – 5.

The Agency rejects Alternative B on each of these grounds independently. All of the reasons provide sufficient independent grounds for rejecting Alternative B.

### 3. Alternative C: Public Trust Conforming

The purpose of the Public Trust Conforming Alternative ("Alternative C"), Seawall Lot 351 is to consider a project scheme that is consistent with the public trust values applicable to Seawall Lot 351. (DEIR VI.12). Like the Project, Alternative C would combine the 8 Washington site with Seawall Lot 351, but a hotel would be developed on Seawall Lot 351 (a use that is consistent with the public trust), rather than the residential uses proposed under the Project. (DEIR VI.12, C&R III.Q.27-28). Under Alternative C, the Project Applicant would construct four buildings, similar in scale, configuration, location, and layout to the Project, except that the health club would be 12,800 feet and include four ground level tennis courts and two rooftop pools under Alternative C. (DEIR VI.14, C&R III.Q.27-28). Alternative C would include 111 residential units and 160 hotel rooms, whereas the Project would provide 134 residential units and no hotel rooms. (DEIR VI.14, C&R III.Q.27-28). The parking garage would include 111 residential spaces and 112 public spaces, including the 90 public spaces to serve the Ferry Building and waterfront uses. Alternative C would provide publicly accessible open space in similar quantities, locations, and configurations as with the Project. (DEIR VI.14, C&R III.Q.27-28).

#### Environmental Impacts Compared to Project.

Alternative C would generally result in the same impacts as the Project. While none of the Project's significant and unavoidable impacts would be avoided with Alternative C, Alternative C would reduce the potential for encountering archeological resources during construction because the below-grade parking would not be constructed on Seawall Lot 351, and because excavation for a two-level garage south of Jackson Street would be shallower than excavation for the Project three-level garage. (DEIR VI.14-18, C&R III.Q.28-34) With mitigation, the impacts to archeological resources would be less than significant under both Alternative C and the Project. Under this alternative, there would be more daily person trips due to the addition of a hotel into the mix of project uses, and these additional person-trips would translate into additional vehicle and transit trips during the PM peak hour compared to the Project. (DEIR VI.14-18, C&R III.Q.30-31). Parking demand under Alternative C would also be more intense. The demand for parking at the midday peak hour would be for about 459 parking spaces (versus 391 for the Project), but this alternative would supply fewer spaces (111 residential and 112 public for a total of 223, instead of the 400 total parking space for the proposed project), so the shortfall of parking would be greater at the midday peak hour than in the Project. (DEIR VI.15-16, C&R III.Q.30-31) Impacts

to land use, air quality, greenhouse gases, recreation, sea level rise, and biological resources would be similar to that of the Project. (DEIR VI.15-16, C&R III.Q.28-34)

Although Alternative C would generally meets most project objectives, and although Alternative C would not require a public trust exchange, the Agency rejects this alternative as infeasible within the meaning of CEQA for the following reasons:

- Alternative C would generally result in the same impacts as the Project and would not avoid any of the Project's significant and unavoidable impacts. Although the potential for encountering archeological resources would be reduced, as with the Project, all archeological resource impacts are mitigable and less than significant under both the Project and Alternative C
- Alternative C would only create a total of 111 residential units, up to 34 fewer than with the Project, which would result in fewer housing units being added to the City's housing stock, and a smaller in-lieu fee payment under the City's Residential Inclusionary Affordable Housing Program.
- While Alternative C would provide the Port with 90 parking spaces, Alternative C would supply fewer total public parking spaces than the Project, and therefore is less likely to meet the Project Applicant's objective to increase the supply of public underground parking to support the continued economic viability of the Ferry Building Farmer's Market and the retail and restaurant uses at the Ferry Building, Pier 1 and Piers 1-1/2 – 5.

The Agency rejects Alternative C on each of these grounds independently. All of the reasons provide sufficient independent grounds for rejecting Alternative C.

#### 4. Alternative D: Develop Only 8 Washington Lots

The purpose of the Develop Only 8 Washington Lots Alternative ("Alternative D"), is to analyze the independent development of the 8 Washington site without Seawall Lot 351 to serve as a comparison to the DEIR's proposed project. (DEIR VI.18) Under Alternative D, Seawall Lot 351 would not be included in the Project and instead would continue in its current use as a surface parking lot owned by the Port. The Project Applicant would develop the 8 Washington site with 162 residential units in two buildings: a south building (south of Jackson Street) along Drumm and Washington Streets, and a north building (north of Jackson Street), which would include an indoor athletic club and outdoor recreational facilities. (DEIR VI.19) A three level underground garage would provide a total of 325 parking spaces, whereas the Project would provide a total of 400 parking spaces in an underground garage. (DEIR VI.18; C&R III.Q.27-28) Alternative D would provide more restaurant and retail space than the Project (29,100 square feet versus 19,800), and smaller health club than the project (12,800 square feet versus 16,350 square feet).

(DEIR VI.18; C&R III.Q.27-28) Furthermore, whereas Alternative D would provide 3 tennis courts, the Project would not provide any tennis courts. Alternative D would provide less publicly accessible open space: only 6,200 sq. ft. of publicly accessible open space along the Jackson Street alignment (as opposed to the Project's 10,450 square feet), and about 1,500 sq. ft. of publicly accessible open space at the north end of the site (as opposed to the Project's 11,8400 square feet), and Alternative D would also not provide a widened Drumm Street walkway. (DEIR VI.18; C&R III.Q.27-28).

Environmental Impacts Compared to Project.

Alternative D would generally result in reduced environmental impacts compared to the Project, although these reduced impacts would not avoid the Project's significant and unavoidable impacts. Alternative D would continue an existing barrier to direct pedestrian access to The Embarcadero from Jackson Street and Pacific Avenue (which would be removed under the Project) because Seawall Lot 351 would not be part of the Alternative D. (DEIR VI.21, C&R III.Q.27) While Alternative D would have slightly fewer vehicle and person trips compared to the DEIR's proposed project because Alternative D would provide slightly fewer residential units than the DEIR's proposed project, there would be slightly more person-trips and vehicle trips under Alternative D when compared to the Project because the Project would provide fewer residential units (134 units) than either the DEIR's proposed project (165 units) or Alternative D (162 units). (DEIR IV.D.22, C&R III.Q.27-28, 30) Similarly, while Alternative D and the DEIR's proposed project's air quality impacts were similar, the Project would have slightly less operational emissions than the Alternative D due to reduced vehicle trip generation. (DEIR IV.D.22-23, C&R III.Q.27-28, 31) Due to a shift in building height and volume from Seawall Lot 351 to the north side of Jackson Common, Alternative D would have a greater shadow impact on the existing Drumm Street pedestrian path, the proposed Pacific Avenue Park, the proposed Jackson Common, and the proposed swimming pools. Impacts to air quality, greenhouse gases, sea level rise, and biological resources would be similar to that of the Project.

The Agency rejects this Alternative D as infeasible within the meaning of CEQA for the following reasons:

- While Alternative D would have slightly reduced transportation impacts compared to DEIR's proposed project, Alternative D would generally result in the same impacts as the Project and would not avoid any of the Project's significant and unavoidable impacts.
- Alternative D would not further the Project Applicant's objectives to improve the pedestrian realm along The Embarcadero and to improve pedestrian and visual connectivity with The Embarcadero because no pedestrian access to The Embarcadero would be provided through the Project site along

the alignments of Jackson Street and Pacific Avenue. Alternative D would also not further the objective to develop SWL 351 in conjunction with the 8 Washington site.

- Alternative D would not further any of the Port's urban design, land use, and financial objectives for Seawall Lot 351, as presented in its Request for Proposals for Seawall Lot 351, including the replacement of the existing surface parking with a below grade parking garage and the activation of the streetscape with ground floor retail uses along The Embarcadero.
- Alternative D would provide considerably less parks and open publicly accessible open space compared to the Project, thereby resulting in fewer benefits to the public.

The Agency rejects Alternative D on each of these grounds independently. All of the reasons provide sufficient independent grounds for rejecting Alternative D.

**5. Alternative E: Develop Only 8 Washington Lots under Existing Height and Bulk**

The purpose of the Develop Only 8 Washington Lots under Existing Height and Bulk Alternative ("Alternative E") is to analyze the independent development of the 8 Washington site without Seawall Lot 351 under existing height and bulk requirements to serve as a comparison to the DEIR's proposed project. (DEIR VI.18) Under Alternative E, Seawall Lot 351 would continue in its current use as a surface parking lot, a use consistent with the public trust. The Project Applicant would develop 8 Washington site with two buildings: a south building (south of Jackson Street) along Drumm and Washington Streets; and a north building (north of Jackson Street). The south building would be four stories tall (40 feet tall) and would include approximately 87 residential units, 17,000 square feet of retail space, and 12,100 square feet of restaurant space at the ground floor. (DEIR VI.25) The north building (approximately 40 feet tall) would contain four indoor tennis courts, 30,000 square feet of indoor athletic club facilities, as well as four rooftop outdoor tennis courts, and one ground-level outdoor tennis court (a total of nine tennis courts). (DEIR VI.18) The athletic club facility would also include two ground-level outdoor swimming pools. (DEIR VI.18) A two-level, underground parking garage would be constructed beneath the south building for 21 residential spaces and 120 public spaces (a total of 141 parking spaces). Alternative E would provide less open space than the Project, including approximately 6,200 square feet along the Jackson Street right-of-way, and approximately 6,200 square feet at the end of Pacific Avenue. (DEIR VI.18)

Environmental Impacts Compared to Project.

Alternative E would have reduced environmental impacts compared to the Project, although none of the proposed project's significant impacts would be avoided with Alternative E. While the mix of land uses

for Alternative E would be similar to the Project, land use impacts would be less under Alternative E because there would be substantially fewer residential units (87 units compared to 134 units). (DEIR VI.27; C&R.III.Q.27-28) Alternative E would continue an existing barrier to direct pedestrian access to The Embarcadero from Jackson Street and Pacific Avenue because Seawall Lot 351 would not be part of the Project. (DEIR VI.27; C&R.III.Q.27-28) Under this Alternative D, there would be fewer residential units than in the Project, resulting in fewer person-trips and fewer vehicle trips, and the transportation impacts would be less intense than under the Project. (DEIR VI.28; C&R.III.Q.30-31) Operational emissions for this alternative would be proportional to vehicle trip generation, which would be substantially less than that of the Project. (DEIR VI.28-29; C&R.III.Q.31) As a result of the 40 foot height of the south building, Alternative E would have less shadow impacts on Sue Bierman Park, Jackson Common and other open spaces, although the reduction in building height would not eliminate shadows. (DEIR VI.29-30; C&R.III.Q.32) Furthermore, Alternative E would increase shadow impacts to the Drumm Street walkway. Impacts relating to greenhouse gases, sea level rise, and biological resources would be similar to that of the Project.

Besides the No Project Alternative, Alternative E would be the environmentally superior alternative due to its reduced development program, site disturbance, and building heights. (DEIR VI.30)

The Agency rejects this Alternative E as infeasible within the meaning of CEQA for the following reasons:

- Alternative E would not further the Project Applicant's objectives to improve the pedestrian realm along The Embarcadero and to improve pedestrian and visual connectivity with The Embarcadero because no pedestrian access to The Embarcadero would be provided through the Project site along the alignments of Jackson Street and Pacific Avenue. Alternative D would also not further the objective to develop SWL 351 in conjunction with the 8 Washington site.
- Alternative E would not further any of the Port's urban design, land use, and financial objectives for Seawall Lot 351, as presented in its Request for Proposals for Seawall Lot 351, including the replacement of the existing surface parking with a below grade parking garage and the activation of the streetscape with ground floor retail uses along The Embarcadero.
- Alternative E would provide considerably less parks and publicly accessible open space compared to the Project, thereby resulting in fewer benefits to the public.
- Alternative E would only create a total of 87 residential units, up to 58 fewer than with the Project, which would result in fewer housing units being added to the City's housing stock, and a smaller in-lieu fee payment under the City's Residential Inclusionary Affordable Housing Program.

- While Seawall Lot 351 would continue in its existing surface parking lot use under Alternative E, this alternative would supply fewer public parking spaces than the Project and therefore is less likely to meet Project Applicant's objective to increase the supply of public underground parking to support the continued economic viability of the Ferry Building Farmer's Market and the retail and restaurant uses at the Ferry Building, Pier 1 and Piers 1-1/2 – 5.

The Agency rejects the Alternative E on each of these grounds independently. All of the reasons provide sufficient independent grounds for rejecting Alternative E.

#### 6. The Proposed Project Analyzed in the FEIR

As previously discussed, the Project is the same as the Large Fitness Center Project Variant ("Project Variant") that was analyzed in the Final EIR, Chapter VII, C&R IV.37-44, except that the Project Variant would provide 160 residential units whereas the Project would provide 134 residential units, 26 fewer units than under the Project Variant and 38 fewer parking spaces than the project as described in the DEIR. Furthermore, the Project Variant would provide 420 parking spaces (160 residential and 260 public parking spaces), whereas the Project would provide 382 parking spaces (127 residential and 255 public parking spaces), 38 parking spaces fewer than under the Project Variant. Under the Project Variant, the café to be constructed at the corner of The Embarcadero and Jackson Street would be approximately 1,915 square feet, whereas it would be approximately 1,800 square feet under the Project. A more detailed summary of the Project Variant and its environmental analysis is contained in Sections I.C and I.D.

The Project has slightly different environmental impacts than the FEIR's proposed project, although the impacts and mitigation measures would be substantially the same for the Project as they are for the FEIR's proposed project. (C&R IV.38-44) While the base isolation structural system of the Project would require excavating foundation for the residential buildings 3 to 5 feet deeper than for the Draft EIR's proposed project, the Project's impacts with respect to archeological resources would remain less than significant with the mitigation. (C&R IV.38-39). Compared to the Draft EIR's proposed project, the Project would generate fewer vehicular trips to and from the site during the peak hour resulting in reduced transportation impacts. (C&R III.Q.30-31). However, with the base isolation structural system, excavation for foundations would be slightly deeper for the Project, resulting in additional haul truck trips to remove more soil from the project site during construction. (C&R III.Q.30-31)

With respect to air quality impacts, while there would be an approximately 15 percent increase in the number of truck trips generated during construction for the additional excavation with the Project, resulting in greater construction related air quality impacts. (C&R III.Q.31) While the larger fitness center would generate more vehicle trips than the Draft EIR's proposed project, this increase would be



offset by the reduction in trips from the fewer residential units and retail and restaurant space of the project. (C&R III.Q.31) The Draft EIR's proposed project would replace 4 of the existing tennis courts on the project site and the Project would not provide any tennis courts, thereby resulting in a greater reduction of tennis courts under the Project; nevertheless, impacts on recreation would remain less than significant for both the Draft EIR's proposed project and the Project, and the number of residents per tennis court would remain lower under the Project than the recommended standard of 1 court for every 5,000 residents. (C&R IV.42-44)

The Agency rejects the Draft EIR's proposed project as infeasible within the meaning of CEQA for the following reasons:

- While the Draft EIR's proposed project would generally meet the Project Sponsor's and Port's objectives for the project, the design of the health club under the Draft EIR's proposed project does not respond to comments from the public requesting that the swimming pools be on the ground instead of on the roof and that the swimming facilities be enlarged. (C&R.III.Q.22-23) The Project responds to these comments by modifying the design of the health club to provide larger swimming facilities on the ground level. (C&R.III.Q.28-29).
- The Project would result in fewer vehicular trips generated compared to the Draft EIR's proposed project because the Project would provide fewer residential units and less retail and residential space. In this respect, the Project incorporates those elements of project alternatives that proposed reducing transportation impacts (and associated air quality impacts) by reducing the number of units in the project.

The Agency rejects the Draft EIR's proposed project on each of these grounds independently. All of the reasons provide sufficient independent grounds for rejecting Draft EIR's proposed project.

#### **C. Alternatives Considered but not Analyzed in Detail**

The EIR explains that an Initial Project Proposal Alternative, Hotel Only / Preservation of Existing Health Club Alternative, Offsite Alternative / Broadway Alternative, Reduced Sea Level Rise Impact Alternative were considered but rejected because they either would not achieve most of the Project Applicant's and the Port's objectives, would not reduce significant environmental project impacts, and/or do not represent feasible alternatives for other economic, social or environmental reasons. (EIR VI.31-34). The Agency finds each of these reasons provide sufficient independent grounds for rejecting these alternatives.

In addition, several comments received in comments on the DEIR suggested that the EIR should analyze

additional alternatives, such as a no parking garage alternative, a zero or reduced parking alternative that has more emphasis on public transit, a parking code alternative, a parking validation system alternative, a more practical reduced height alternative, a design options alternative that keeps all of the existing Athletic Club's outdoor uses, or an alternative consistent with the Asian Neighborhood Design's Community Vision for San Francisco's Northeast Waterfront. (C&R III.Q.1-7, 16-20). The C&R document explains that the alternatives proposed by commenters would not achieve most of the Project Applicant's and Port's objectives, would not reduce significant environmental project impacts, and/or do not represent feasible alternatives for other economic, social or environmental reasons, or are similar to alternatives that were considered but rejected in the Draft EIR. (C&R III.Q.13-16, 21-22). The Agency finds each of these reasons provide sufficient independent grounds for rejecting these Alternatives.

#### VIII. STATEMENT OF OVERRIDING CONSIDERATIONS

Pursuant to CEQA section 21081 and CEQA Guideline 15093, the Agency hereby finds, after consideration of the Final EIR and the evidence in the record, that each of the specific overriding economic, legal, social, technological and other benefits of the Project as set forth below independently and collectively outweighs these significant and unavoidable impacts and is an overriding consideration warranting approval of the Project. Any one of the reasons for approval cited below is sufficient to justify approval of the Project. Thus, even if a court were to conclude that not every reason is supported by substantial evidence, the Agency will stand by its determination that each individual reason is sufficient. The substantial evidence supporting the various benefits can be found in the preceding findings, which are incorporated by reference into this Section VIII, and in the documents found in the record of proceedings relating to the Final EIR.

On the basis of the above findings and the substantial evidence in the whole record of this proceeding, the Agency specifically finds that there are significant benefits of the proposed Project to support approval of the Project in spite of the unavoidable significant impacts, and therefore makes this Statement of Overriding Considerations. Specifically, notwithstanding the significant and unavoidable impacts to Transportation (Impact TR-9), and Air Quality (Impacts AQ-3, AQ-7, AQ-8, AQ-10), the Project benefits as described below and described elsewhere in this document, outweigh these impacts.

As noted in Section IV.B, pursuant to *Ballona Wetlands Land Trust v. City of Los Angeles* (2011) 201 Cal.App.4th 455, 473-475, Impact SLR-3, as an impact to the Project caused by the environment, is not an impact that must be analyzed in the EIR. Nevertheless, out of an abundance of caution the EIR analyzed this impact, and concluded that this impact is significant and unavoidable. The Agency finds that, even if this impact were a significant and unavoidable impact for CEQA purposes, the benefits described below and described elsewhere in this document, also outweigh this impact.

The Agency further finds that, as part of the process of obtaining Project approval, all significant effects on the environment from implementation of the Project have been eliminated or substantially lessened where feasible. All mitigation measures proposed in the FEIR that are applicable to the Project are adopted as part of this approval action. Furthermore, the Agency has determined that any remaining significant effects on the environment found to be unavoidable are acceptable due to the following specific overriding economic, technical, legal, social and other considerations. Any alternatives proposed by the public are rejected for the reasons set forth in the DEIR, C&R, the preceding findings, and the reasons set forth herein.

The Project has the following benefits:

- **Housing.** The Project will increase the City's housing stock by providing up to 134 new housing units. The Project will also contribute to the production of affordable housing units in the City by paying an in lieu fee in compliance with the City's Residential Inclusionary Affordable Housing Program. Furthermore, because there are no existing housing units on the Project site, the Project will not result in the demolition of any existing housing units or the displacement or relocation of any residents.
- **Parks and Open Space.** The Project would create new parks and publicly accessible open space where none currently exists. In particular, the Project would create a 10,450 square foot public open space corridor north of the proposed residential buildings that would reconnect the City with the waterfront along the Jackson Street alignment (Jackson Commons). The Project would also create an 11,840 square foot publicly accessible park at the northern end of the site along and north of the Pacific Avenue alignment (Pacific Park). These new open spaces would both visually and physically reconnect the City with the waterfront. In addition, the Project would provide an additional 2,890 square feet of publically accessible open space along the existing Drumm Street pedestrian path.
- **New Neighborhood-Serving Retail Uses.** The Project would create approximately 19,800 square feet of ground floor, restaurant, retail and café space, where none currently exists, which would serve existing residents in the Golden Gateway area as well as new residents and waterfront visitors.
- **Benefits to the Port.** The Project would provide substantial benefits to the Port, including both one time payments in connection with the Project applicant's purchase of portions of Seawall Lot 351, and ongoing payments in perpetuity in connection with the transfer of condominium units that will be developed on the Project site. These revenues would be used to support the Port's public trust responsibilities. The Port would also receive revenue from the infrastructure financing district that would be established as part of the Project, and these revenues would be

used to fund a variety of Port improvement projects. The Project would also provide the Port with underground public parking facilities, including at least [90] public parking spaces to serve and support the continued economic viability of the Ferry Building and the Waterfront area. Furthermore, the Project would beautify and enliven the Ferry Building and Waterfront area by replacing the existing surface parking lot on Seawall Lot 351 with a dense, mixed use development with underground parking and ground floor retail uses.

- **Transportation.** The Project would provide pedestrian and circulation improvements, including pedestrian access through the former Jackson Street and Pacific Avenue rights-of-way which are currently blocked by the Golden Gateway Tennis & Swim Club. The Project would be located near an abundance of transit options and adjacent to the Downtown, Chinatown, and North Beach areas, which would encourage residents, visitors, and workers to travel to and from the project site by transit, bicycle and foot, rather than by private automobile.
- **Land Use and Urban Design.** The Project would redevelop an underutilized urban infill site, which currently consists of a surface parking lot and health club facilities surrounded by a 14 foot tall chain-link fence, with a new mixed use, high-density development with housing, ground floor retail uses, and new public parks open space. The Project would enliven and activate the pedestrian experience along The Embarcadero and Washington Street by including multiple, ground floor, retail uses and well-designed public open space that would be located within walking distance of multi-modal transit stations. The Project would reconnect the Downtown and landside neighborhoods with the Waterfront and would make the area inviting to workers and local residents as well as visitors.
- **Economic Development and Jobs.** The Project would generate jobs during the construction of the Project as well as permanent employment opportunities to support the Project's new residential and commercial uses during a period of high unemployment in the City and the region. The Project would encourage participation by small and local business enterprises through a comprehensive employment and contracting policy. The Project's new retail uses would provide opportunities for resident employment and business ownership, and the proposed addition of up to 134 new households would strengthen business at existing establishments in the vicinity of the project site. Furthermore, the Project will provide the City with net new property value by developing an underutilized infill site with new residential and commercial uses, taxes on which will help fund critical City services and programs.

Having considered these benefits, the Agency finds that the benefits of the Project outweigh the unavoidable adverse environmental effects, and that the adverse environmental effects are therefore acceptable. The Agency further finds that each of the above considerations is sufficient to approve the

Project. For each of the reasons stated above, and all of them, the Project should be implemented notwithstanding the significant unavoidable adverse impacts identified in the Final EIR.

### DECISION

That based upon the Record, the submissions by the Applicant, the staff of the Department and other interested parties, the oral testimony presented to this Commission at the public hearings, and all other written materials submitted by all parties, the Commission hereby **ADOPTS FINDINGS** under the California Environmental Quality Act, including rejecting alternatives as infeasible, adopting a Statement of Overriding Considerations, and adopting Mitigation, Monitoring, and Reporting Programs attached as Exhibit A.

I hereby certify that the Planning Commission ADOPTED the foregoing Motion on March 22, 2012.

Linda D. Avery  
Commission Secretary

AYES: Fong, Antonini, Borden, Miguel

NAYS: Sugaya, Wu

ABSENT: Moore

ADOPTED: March 22, 2012



## SAN FRANCISCO PLANNING DEPARTMENT

Subject to: (Select only if applicable)

- |   |   |
|---|---|
| <input checked="" type="checkbox"/> Affordable Housing (Sec. 415) | <input checked="" type="checkbox"/> First Source Hiring (Admin. Code) |
| <input type="checkbox"/> Jobs Housing Linkage Program (Sec. 413)  | <input type="checkbox"/> Child Care Requirement (Sec. 414)            |
| <input type="checkbox"/> Downtown Park Fee (Sec. 412)             | <input checked="" type="checkbox"/> Other                             |

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### Planning Commission Motion 18567

HEARING DATE: MARCH 22, 2012

*Date:* March 22, 2012  
*Case No.:* 2007.0030ECKMRZ  
*Project Address:* 8 Washington Street  
*Zoning:* RC-4 (Residential-Commercial, High Density) District  
84-E Height and Bulk District  
*Block/Lot:* 0168/058; 0171/069; 0201/012-013 (including Seawall Lot 351)  
*Project Sponsor:* Simon Snellgrove  
San Francisco Waterfront Partners II, LLC  
Pier 1, Bay 2, The Embarcadero  
San Francisco, CA 94111  
*Staff Contact:* Kevin Guy - (415) 558-6163  
kevin.guy@sfgov.org

ADOPTING FINDINGS RELATED TO THE APPROVAL OF A CONDITIONAL USE AUTHORIZATION FOR A PLANNED UNIT DEVELOPMENT, INCLUDING SPECIFIC MODIFICATIONS OF PLANNING CODE REQUIREMENTS REGARDING BULK LIMITATIONS, REAR YARD, OFF-STREET LOADING, AND OFF-STREET PARKING, AND TO ALLOW DEVELOPMENT EXCEEDING 50 FEET IN HEIGHT WITHIN AN RC DISTRICT, TO ALLOW A NON-ACCESSORY OFF-STREET PARKING GARAGE, TO ALLOW COMMERCIAL USES ABOVE THE GROUND FLOOR, AND TO ALLOW NON-RESIDENTIAL USES EXCEEDING 6,000 SQUARE FEET, PURSUANT TO PLANNING CODE SECTIONS 209.7(d), 209.8(c), 209.8(f), 253, 303, AND 304, WITH RESPECT TO A PROPOSAL TO DEMOLISH AN EXISTING SURFACE PARKING LOT AND HEALTH CLUB, AND TO CONSTRUCT A NEW HEALTH CLUB, RESIDENTIAL BUILDINGS RANGING FROM FOUR TO TWELVE STORIES IN HEIGHT CONTAINING 134 DWELLING UNITS, GROUND-FLOOR RETAIL USES TOTALING APPROXIMATELY 20,000 SQUARE FEET, AND 382 OFF-STREET PARKING SPACES, WITHIN THE RC-4 (RESIDENTIAL-COMMERCIAL, HIGH DENSITY) DISTRICT AND THE 84-E HEIGHT AND BULK DISTRICT, AND ADOPTING FINDINGS UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT.

## PREAMBLE

On April 25, 2011, Neil Sekhri, acting on behalf of San Francisco Waterfront Partners, II, LLC ("Project Sponsor") filed an application with the Planning Department ("Department") for Conditional Use Authorization to allow development exceeding 50 feet in height within an RC District, to allow a non-accessory off-street parking garage, to allow commercial uses above the ground floor, and to allow non-residential uses exceeding 6,000 square feet, and to approve a Planned Unit Development, pursuant to Planning Code Sections ("Sections") 209.7(d), 209.8(c), 209.8(f), 253, 303, and 304, to allow a project that would demolish an existing surface parking lot and health club and construct a new health club, residential buildings ranging from four to twelve stories in height containing 145 dwelling units, ground-floor retail uses totaling approximately 20,000 square feet, and 400 off-street parking spaces, located at 8 Washington Street, Lot 058 within Assessor's Block 0168, Lot 069 within Assessor's Block 0171, Lot 012 of Assessor's Block 0201, and Seawall Lot 351, which includes Lot 013 of Assessor's Block 0201 ("Project Site), within the RC-4 (Residential-Commercial, High Density) District and the 84-E Height and Bulk District. The project requests specific modifications of Planning Code requirements regarding bulk limitations, rear yard, off-street loading, and off-street parking quantities through the Planned Unit Development process specified in Section 304 (collectively, "Project"). On February 17, 2012, the Project Sponsor amended the Project application to reduce the number of dwelling units from 145 to 134, and to reduce the number of residential parking spaces from 145 to 134.

On January 3, 2007, the Project Sponsor submitted an Environmental Evaluation Application with the Department, Case No. 2007.0030E. The Department issued a Notice of Preparation of Environmental Review on December 8, 2007, to owners of properties within 300 feet, adjacent tenants, and other potentially interested parties.

On June 15, 2011, the Department published a draft Environmental Impact Report (EIR) for public review. The draft EIR was available for public comment until August 15, 2011. On July 21, 2011, the Planning Commission ("Commission") conducted a duly noticed public hearing at a regularly scheduled meeting to solicit comments regarding the draft EIR. On December 22, 2011, the Department published a Comments and Responses document, responding to comments made regarding the draft EIR prepared for the Project.

On March 22, 2012, the Commission reviewed and considered the Final EIR and found that the contents of said report and the procedures through which the Final EIR was prepared, publicized, and reviewed complied with the California Environmental Quality Act (California Public Resources Code Sections 21000 et seq.) ("CEQA"), 14 California Code of Regulations Sections 15000 et seq. ("the CEQA Guidelines"), and Chapter 31 of the San Francisco Administrative Code ("Chapter 31").

The Commission found the Final EIR was adequate, accurate and objective, reflected the independent analysis and judgment of the Department and the Commission, and that the summary of comments and responses contained no significant revisions to the draft EIR, and approved the Final EIR for the Project in compliance with CEQA, the CEQA Guidelines and Chapter 31.

The Planning Department, Linda Avery, is the custodian of records, located in the File for Case No. 2007.0030E, at 1650 Mission Street, Fourth Floor, San Francisco, California.

Department staff prepared a Mitigation Monitoring and Reporting program ("MMRP"), which material was made available to the public and this Commission for this Commission's review, consideration and action.

On March 13, 2007, the Project Sponsor submitted a request for review of a development exceeding 40 feet in height, pursuant to Section 295, analyzing the potential shadow impacts of the Project to properties under the jurisdiction of the Recreation and Parks Department (Case No. 2007.0030K). Department staff prepared a shadow fan depicting the potential shadow cast by the development and concluded that the Project could have a potential impact to properties subject to Section 295. A technical memorandum, prepared by Turnstone Consulting, dated December 13, 2011, concluded that the Project would cast approximately 4,425 square-foot-hours of new shadow on Sue Bierman Park, equal to approximately 0.00067% of the theoretically available annual sunlight ("TAAS") on Sue Bierman Park.

Pursuant to Section 295, the Planning Commission and the Recreation and Park Commission, on February 7, 1989, adopted standards for allowing additional shadows on the greater downtown parks (Resolution No. 11595). At the time the standards were adopted, Sue Bierman Park did not exist in its present form and configuration. Therefore, no standards have been adopted establishing an absolute cumulative limit for Sue Bierman Park, in its present configuration. The Planning Commission and the Recreation and Park Commission held a duly advertised joint public hearing on March 22, 2012 and adopted Resolution No. 18562 establishing an absolute cumulative shadow limit equal to 0.00067 percent of the TAAS for Sue Bierman Park.

On March 22, 2012, the Recreation and Park Commission conducted a duly noticed public hearing at a regularly scheduled meeting and recommended that the Planning Commission find that the shadows cast by the Project on Sue Bierman Park will not be adverse. On March 22, 2012, the Planning Commission conducted a duly noticed public hearing at a regularly scheduled meeting and adopted Motion No. 18563 determining that the shadows cast by the Project on Sue Bierman Park will not be adverse, and allocating the absolute cumulative shadow limit of 0.00067 percent to the Project.

On August 9, 2011, the Project Sponsor submitted a request to amend Height Map HT01 of the Zoning Maps of the San Francisco Planning Code to reclassify two portions of the southwestern area of the development site from the 84-E Height and Bulk District to the 92-E Height and Bulk District in one portion, and the 136-E Height and Bulk District in another portion (Case No. 2007.0030Z). On March 22, 2012, the Planning Commission conducted a duly noticed public hearing at a regularly scheduled meeting and adopted Resolution No. 18566, recommending that the Board of Supervisors approve the requested Height Reclassification.

On August 9, 2011, the Project Sponsor submitted a request to amend "Map 2 - Height and Bulk Plan" within the Northeastern Waterfront Area Plan of the General Plan, to reclassify two



Motion 18567  
March 22, 2012

CASE NO. 2007.0030ECKMRZ  
8 Washington Street

portions of the southwestern portion of the development site from the existing 84-foot height limit to a height of 92 feet in one portion, and 136 feet in another portion. On December 8, 2011, the Commission conducted a duly noticed public hearing at a regularly scheduled meeting and adopted Resolution No. 18501, initiating the requested General Plan Amendment. On March 22, 2012, the Planning Commission conducted a duly noticed public hearing at a regularly scheduled meeting and adopted Resolution No. 18564, recommending that the Board of Supervisors approve the requested General Plan Amendment.

On December 1, 2011, the Project Sponsor submitted a request for a General Plan Referral, Case No. 2007.0030R, regarding the exchange of Public Trust Land, changes in use of various portions of the property (including the publicly-owned Seawall Lot 351), and subdivision associated with the Project. On March 22, 2012, the Planning Commission conducted a duly noticed public hearing at a regularly scheduled meeting and adopted Motion No. 18565 determining that these actions are consistent with the objectives and policies of the General Plan and the Priority Policies of Section 101.1.

On March 22, 2012, the Commission adopted Motion No. 18561, adopting CEQA findings, including a Statement of Overriding Considerations, and adopting the MMRP's, which findings and adoption of the MMRP's are hereby incorporated by reference as though fully set forth herein.

On March 22, 2012, the Commission conducted a duly noticed public hearing at a regularly scheduled meeting on Conditional Use Application No. 2007.0030C.

The Commission has heard and considered the testimony presented to it at the public hearing and has further considered written materials and oral testimony presented on behalf of the applicant, Department staff, and other interested parties.

**MOVED**, that the Commission hereby authorizes the Conditional Use requested in Application No. 2007.0030C, subject to the conditions contained in "EXHIBIT A" of this motion, based on the following findings:

#### **FINDINGS**

Having reviewed the materials identified in the preamble above, and having heard all testimony and arguments, this Commission finds, concludes, and determines as follows:

1. The above recitals are accurate and constitute findings of this Commission.
2. **Site Description and Present Use.** The majority of the Project Site is occupied by the Golden Gateway Swim and Tennis Club, which includes nine outdoor tennis courts, two outdoor pools, a seventeen-space surface parking lot, and seven temporary and permanent structures housing a clubhouse, pro shop, dressing rooms, lockers, showers, and other facilities. The southeasterly portion of the Project Site is comprised of Seawall Lot 351 (currently owned by the Port of San Francisco), which is developed with a 105-

space public surface parking lot. The site is irregular, but roughly triangular in shape. The widest portion of the lot fronts along Washington Street, between Drumm Street and the Embarcadero. The site tapers to a narrow point at its northernmost portion, which fronts along the Embarcadero. The Project Site measures approximately 138,681 square feet in total.

3. **Surrounding Properties and Neighborhood.** The property is located within the Northeastern Waterfront and within the former Golden Gateway Redevelopment Area, which expired in 2009. The existing buildings in the Golden Gateway Center are comprised of predominantly residential uses, within towers and low-rise buildings. Commercial uses, including a full-service grocery store, are situated at the ground floors of some of the buildings within the Center. The Financial District is situated to the south and southwest of the project site, and is characterized by an intense, highly urbanized mix of office, retail, residential, hotel uses, primarily within mid- to high-rise structures. Further to the west is the Jackson Square Historic District, a collection of low-rise structures that survived the 1906 Earthquake and Fire, which are now primarily occupied by office and retail uses. The waterfront extends along the Embarcadero across from the Project Site, and is characterized by the Ferry Building, along with a series of numbered piers and bulkhead buildings. These structures house a wide variety of maritime, tourism, and transportation functions, retail and office spaces, and public pathways and recreational areas. A number of significant parks and open spaces are located in the vicinity of the project, including Sue Bierman Park, Justin Herman Plaza, and Harry Bridges Plaza to the south, Maritime Plaza to the southwest, the Drumm Street Walkway and Sydney Walton Square to the west, Levi Plaza to the northwest, and Herb Caen Way, a linear pedestrian and bicycle path that runs along the waterfront side of the Embarcadero.
4. **Project Description.** The proposal is to demolish the existing Golden Gateway Swim and Tennis Club and the existing surface parking lot on Seawall 351, and construct a new health club, residential buildings ranging from four to twelve stories in height containing 134 dwelling units, ground-floor retail uses totaling approximately 20,000 square feet, and 400 off-street parking spaces. The health club would be situated in the northern portion of the site, between the ends of the Jackson Street and Pacific Avenue rights-of-way. The enclosed portion of the club would front along the Embarcadero, hosting gym and studio spaces, changing rooms, a cafe, a reception area, and mechanical and support spaces. The undulating roofline would reach a maximum height of approximately 35 feet, and would be planted as a non-occupied green roof. Green "living walls" are also proposed for portions of the Embarcadero elevation of the building. The exterior portion of the club includes a large rectangular lap pool, a Jacuzzi, deck and seating areas, and other recreational amenities.

The residential portion of the Project would be constructed within two buildings situated on the southerly portion of the site, with frontage along the Embarcadero, as well as Washington and Drumm Streets. The westerly building fronts along Drumm Street and a portion of Washington Street, reaching a height of eight stories (92-foot roof height) near

the intersection of Jackson Street, stepping up to a height of twelve stories (136-foot roof height) at the corner of Washington Street. The easterly building is primarily at a height of six stories (70-foot roof height), stepping down to a height of five stories (59-foot roof height) near the health club building. The residential buildings are articulated as a series of vertical masses of approximately 35 feet in width, each divided by a recess measuring approximately eleven feet wide and eight feet deep. An oval-shaped private open space area would be situated between the two buildings.

The project would include a three level subterranean parking garage, accessed from a driveway on Washington Street. The garage holds a total of 400 vehicular spaces and 81 bicycle parking spaces. A total of 134 parking spaces are proposed serve the residential units, at a ratio of one space per dwelling unit. Conditions of approval have been added to reduce the residential parking to 127 spaces. A total of 255 parking spaces would operate as general public parking, to serve the health club and other commercial uses on-site, as well as other uses in the vicinity. These spaces are intended, in part, to fulfill contractual obligations of the Port of San Francisco ("Port") to provide parking to serve the uses in the vicinity of the Ferry Building. Several other parking facilities near the Ferry Building have been recently removed, or are planned for future removal.

The Project includes several new and renovated open space areas. These open space areas consist of areas currently under Port jurisdiction, and areas of private property to be conveyed to the Port pursuant to a public trust exchange authorized under existing state legislation. Shortly after Planning Commission certification of the EIR, the Port Commission is scheduled to consider for approval the design for the open space areas as described here and transactional documents governing the project sponsor's obligations to construct and maintain the public improvements.

An area known as "Jackson Commons" would be located between the residential buildings and the health club, aligned with the existing terminus of Jackson Street. This area includes a meandering pathway, landscaping, and seating areas, serving as a visual and physical linkage through the site to the Embarcadero. The existing Drumm Street walkway, which is aligned north-south between Jackson Street and the Embarcadero, would be re-landscaped and widened by approximately seven feet. A new open space known as "Pacific Park" would be situated at the triangular northerly portion of the Project Site. The park would measure approximately 11,500 square feet, and is proposed to include grass seating areas, a play fountain and other children's play areas, and seating for the adjacent cafe. This park would be accessible from a mid-block pedestrian network that includes the Drumm Street walkway to the south, as well as a pedestrian extension of the Pacific Avenue right-of-way to the west. Immediately adjacent to Pacific Park to the south would be a new retail building to be developed on Port property which would include a restaurant and/or other commercial recreation amenities compatible with the Pacific Park use.

5. **Public Comment.** The Department has received a number of communications in support of the Project from individuals, business owners, and non-profit organizations.

These communications express support the height and density of the project, the provision of new open spaces, creation of public parking, and the restoration of an active streetwall along the Embarcadero. Although the Department has not received any specific communications in opposition to the requested entitlements, residents and organizations have expressed opposition to the Project at various public meetings and in response to the Project EIR. Specifically, these comments express concerns over topics such as increased heights near the waterfront, loss of public views, excessive parking, and changes in Public Trust lands to allow housing.

6. **Planning Code Compliance:** The Commission finds that the Project is consistent with the relevant provisions of the Planning Code in the following manner:

- a. **Use and Density.** Per Section 209.1(l), dwelling units are principally permitted within the RC-4 District at a density of one dwelling unit per 200 square feet of lot area. Per Section 209.8(a), a commercial uses is principally permitted at the ground floor within the RC-4 District if the use is principally permitted at the ground floor within the NC-3 District, and a commercial use above the ground floor may be permitted through Conditional Use authorization if the use is permitted as a principal or conditional use at the ground floor within the NC-3 District. Per Section 209.8(f), non-residential uses exceeding 6,000 square feet within the RC-4 District may be permitted through Conditional Use authorization. Per Section 209.7(d), a non-accessory parking garage within the RC-4 District may be permitted through Conditional Use Authorization, subject to the criteria of Section 157.

*The Project Site measures 138,681 square feet, therefore, up to 693 dwelling units would be allowed on the subject property. The 134 dwelling units proposed for the Project complies with the density limitations for the RC-4 District. At the ground floor, the Project includes a health club (classified as "Personal Service", per the definition in section 790.116), is principally permitted within the NC-3 District. Therefore, this use is permitted within the RC-4 District. The Project Sponsor is requesting Conditional Use authorization for that portion of the health club above the ground floor. The Project includes a variety of other retail and restaurant spaces, however, no specific uses are proposed at this time. Specific commercial uses within the proposed retail spaces could require Conditional Use authorization, and may seek such authorization in the future as specific tenants are proposed. The Project Sponsor is requesting Conditional Use Authorization for non-residential uses exceeding 6,000 square feet, and for a non-accessory parking garage (see further discussion under #8 below).*

- b. **Height and Bulk.** The subject property is located within the 84-E Height and Bulk District. Pursuant to Section 253, projects exceeding 50 feet within RC Districts are subject to Planning Commission review of specified criteria. Buildings within "-E" Bulk Districts are limited to a maximum horizontal dimension of 110 feet, and a maximum diagonal dimension of 140 feet above a height of 65 feet. The Planning Commission may grant modifications to these criteria through the PUD process, or through the exception process of Section 271.

*The health club is proposed at a maximum height of 35 feet, therefore, this building complies with the height limitation and is not subject to the "-E" bulk limitations. The residential buildings are stepped in height across the site. The easterly residential building reaches a maximum roof height of 70 feet, and therefore complies with the height limitation. At a height of 65 feet, this building reaches a maximum horizontal dimension of approximately 220 feet, and a maximum diagonal dimension of approximately 238 feet. Therefore, this building exceeds the "-E" bulk limitations.*

*The westerly residential building reaches roof height of 92 and 136 feet, with the tallest portion located near the intersection of Washington and Drumm Streets. This building exceeds the height limitation, therefore, the Project Sponsor is requesting height reclassifications that would allow construction at these heights. At a height of 65 feet, this building reaches a maximum horizontal dimension of approximately 258 feet, and a maximum diagonal dimension of approximately 266 feet. Therefore, this building exceeds the "-E" bulk limitations. The Project Sponsor is requesting a modification of the bulk limitations of the project through the PUD process, as discussed further under Items #10 and #11.*

- c. **Floor Area Ratio.** In the RC-4 District, Section 124 allows a Floor Area Ratio (FAR) of up to 4.8. The project site has an area of 138,681 square feet, therefore the allowable FAR would permit a building of up to 665,669 square feet of Gross Floor Area as defined in Section 102.9.

*The Project would measure approximately 571,925 square feet, and therefore complies with the maximum allowable FAR.*

- d. **Rear Yard.** Section 134(a)(1) of the Planning Code requires a rear yard equal to 25 percent of the lot depth to be provided at the first level containing a dwelling unit, and at every subsequent level.

*The residential portion of the Project is divided into two buildings separated by an oval-shaped courtyard, distinct masses. The configuration of this courtyard does not meet the requirements for a rear yard, and thus the Project requires a modification of the rear yard requirement through the PUD process. Compliance with the PUD criteria is discussed under Item #11.*

- e. **Usable Open Space.** Section 135 requires that a minimum of 36 square feet of private usable open space, or 47.9 square feet of common usable open space be provided for dwelling units within the RC-4 District. This Section specifies that the area counting as usable open space must meet minimum requirements for area, horizontal dimensions, and exposure.

*The Project includes private balconies or decks for nearly all of the dwelling units. In addition, the oval-shaped courtyard between the residential buildings contains approximately 10,000 square feet of common usable open space that meets the exposure requirements of Section 135. The project complies with the usable open space requirements of the Planning Code.*

- f. **Streetscape and Pedestrian Improvements.** Section 138.1 requires that the Project include streetscape and pedestrian improvements appropriate to the site in accordance with the Better Streets Plan, as well as the planting of street trees.

*The conceptual plans for the Project show substantial improvements and amenities proposed for the public right-of-way, including street trees, landscaping, enhanced paving, benches, bicycle racks, and trash receptacles along the entire frontage of the Project Site. In addition, the Project includes widened sidewalks along the Washington and Drumm Street frontages. The conditions of approval require the future submittal of a streetscape plan. Staff from the Planning Department, Port, and other appropriate agencies will coordinate with the Project Sponsor to refine the details of streetscape improvements during the building permit review to ensure compliance with Section 138.1.*

- g. **Dwelling Unit Exposure.** Section 140 requires that at least one room of all dwelling units face onto a public street, a rear yard, or other open area that meets minimum requirements for area and horizontal dimensions.

*The majority of the dwelling units have exposure onto Drumm Street, Washington Street, or the Embarcadero. A number of units have exposure only on the interior courtyard. Section 140 specifies that an open area (such as the courtyard) must have minimum horizontal dimensions of 25 feet at the lowest floor containing a dwelling unit and floor immediately above, with an increase of five feet in horizontal dimensions for each subsequent floor above. According to this methodology, the open area above the courtyard would need to measure at least 30 feet in horizontal dimensions at the 3rd floor, 35 feet at the 4th floor, 40 feet at the 5th floor, and 45 feet at the 6th floor of the Project. At its narrowest point, the courtyard measures approximately 60 feet in width at the sixth floor. Therefore, the project complies with the exposure requirements of Section 140.*

- h. **Street Frontages.** Section 145.1 requires active uses to be located at the ground-floor of the Project, with the exception of space allow for parking, building egress, and access to mechanical systems. Active uses may include commercial uses with transparency along the sidewalk, walk-up residential units, and spaces accessory to residential uses.

*Nearly the entire street frontage of the Project is occupied by ground-floor retail spaces, the health club, or open spaces would activate and enliven the streetscape. In locations where there are interruptions in active ground-floor uses (such as the residential entry and garage entry on Washington Street, or the loading entries on Drumm Street), art vitrines have been*

*added to the exterior that would create interest for pedestrians. The project complies with Section 145.1.*

- i. **Off-Street Parking and Car Sharing.** Section 151 establishes the minimum off-street parking requirements for uses within the RC-4 District. Residential uses must provide one space for each four dwelling units. Restaurant spaces that exceed 5,000 square feet must provide one parking space for each 200 square feet for floor area. Parking requirements for the uses within the health club vary based on the type and area of each use. Section 204.5 specifies a maximum number of accessory parking spaces equal to 150 percent of the required accessory spaces. Section 166 requires that the Project provide one car-share parking space based on the quantity of dwelling units, and five car-share parking spaces based on the quantity of non-residential car-share spaces.

*Based on the requirements of Section 151, 34 spaces would be required to serve the residential uses, and a maximum of 51 accessory spaces would be allowed. One of the retail spaces (identified in the plans for a restaurant) measures approximately 5,500 square feet, and therefore requires 28 spaces. The various uses within the health club require 62 spaces. Therefore, a minimum of 90 spaces would be required to serve the non-residential uses on the site, and a maximum of 135 accessory spaces would be allowed.*

*The Project proposes 134 parking spaces to serve the residential uses. Therefore, the Project exceeds the maximum number of permitted accessory spaces, and the Project Sponsor is requesting a modification of this limitation through the PUD process. The conditions of approval would reduce the amount of residential parking in the project from the proposed 134 spaces to 127 spaces (i.e. a ratio of approximately .95 spaces per unit).*

*The Project proposes 80 spaces to serve the non-residential uses on-site. Therefore, the Project does not provide sufficient non-residential parking, and the Project Sponsor is requesting a modification of these requirements through the PUD process. See further discussion of the PUD modifications under Item #11 below. In addition to the accessory parking for on-site uses, the Project Sponsor proposes an additional 175 spaces within the garage to serve as general public parking for the various uses in the vicinity. The Project Sponsor is requesting Conditional Use authorization for these additional spaces as a "non-accessory parking garage use", per Section 209.7(d). See further discussion of this use under Item #8 below.*

*The Project provides six car-share parking spaces, and therefore complies with the requirements of Section 166.*

- j. **Off-Street Loading.** Section 152 provides a schedule of required off-street freight loading spaces for all uses in districts other than C-3 or South of Market. Pursuant to this Section, residential uses measuring between 200,001 to 500,000 square feet require two off-street loading spaces. In addition, commercial uses measuring between 10,001 to 60,000 square feet require one off-street loading space.

*The Project proposes approximately 307,000 square feet of residential uses, and approximately 36,000 square feet of commercial uses. Therefore, three off-street loading spaces are required for the Project. The Project provides two loading spaces accessed via Drumm Street, as well as two "substituted service vehicle spaces" located on the second level of the parking garage. At the Commission hearing on March 22, 2012, the Project Sponsor requested an additional PUD modification to allow the substitution of two service vehicle spaces in-lieu of providing one of the required standard loading spaces. Conditions of approval have been added to ensure that these service vehicle spaces meet the size requirements of Planning Code Section 154(b)(3).*

- k. **Residential Affordable Housing Program.** Planning Code Section 415 sets forth the requirements and procedures for the Inclusionary Affordable Housing Program. Under Planning Code Section 415.3, the current percentage requirements apply to projects that consist of five or more units, where the first application (EE or BPA) was applied for on or after July 18, 2006. Pursuant to Planning Code Section 415.5, the Project must pay the Affordable Housing Fee ("Fee"). This Fee is made payable to the Department of Building Inspection ("DBI") for use by the Mayor's Office of Housing for the purpose of increasing affordable housing citywide.

*The Project Sponsor has submitted a 'Affidavit of Compliance with the Inclusionary Affordable Housing Program: Planning Code Section 415,' to satisfy the requirements of the Inclusionary Affordable Housing Program through payment of the Fee, in an amount to be established by the Mayor's Office of Housing at a rate equivalent to an off-site requirement of 20%. The project sponsor has not selected an alternative to payment of the Fee. The EE application was submitted on January 3, 2007.*

7. **Planning Code Section 303** establishes criteria for the Planning Commission to consider when reviewing applications for Conditional Use authorization. Projects that proposed a Planned Unit Development through the Conditional Use authorization process must meet these criteria, in addition to the PUD criteria of Section 304, discussed under 'Item 11. On balance, the project complies with the criteria of Section 303, in that:

- a. The proposed use or feature, at the size and intensity contemplated and at the proposed location, will provide a development that is necessary or desirable for, and compatible with, the neighborhood or the community.

*The Project would add significant housing opportunities at a density suitable for an urban context that is well served by public transit. In addition, the project would add new retail spaces that would provide employment opportunities, and would serve the residents of the Project and the larger neighborhood. By targeting infill, mixed-use development at such locations, residents of the Project would be able to walk, bicycle, or take transit to commute, shop, and meet other needs without reliance on private automobile use. The retail uses and public realm improvements along the streetscape would create a vibrant focal point for the area, activating the sidewalks and creating visual interest for pedestrians.*



*The existing development in the area surrounding the Project Site is varied in scale and intensity. The Project represents a continuation of an urban form that transitions from taller heights within the Financial District, to lower buildings along the waterfront. The residential buildings are expressed as a series of vertical modules punctured by voids that create texture and break down the massing of the buildings.*

*The Project is necessary and desirable for, and is compatible with the neighborhood.*

- b. The use or feature as proposed will not be detrimental to the health, safety, convenience, or general welfare of persons residing or working in the vicinity, or injurious to property, improvements, or potential development in the vicinity, with respect to aspects including, but not limited to the following:
  - i. The nature of the proposed site, including its size and shape, and the proposed size, shape, and arrangement of structures.

*The Project site is an irregularly-shaped, roughly triangular lot that is adequately sized to accommodate the development. The taller residential program is situated in the larger, more regularly-shaped area at the south of the Project Site. The lower-scaled health club building and open spaces are focused toward the narrower areas to the north of the site. In lieu of providing a Code-complying rear yard, the residential buildings are arranged around a central courtyard that establishes a pattern of mid-block open space that is currently lacking on the subject block. Existing development in the vicinity varies in size and intensity, and the massing of the Project is compatible with both the taller existing development to the west and south of the Project Site, as well as the lower-scaled development that exists along the Embarcadero north of the Project Site. The Project is designed with recesses, as well as varying heights and fenestration patterns to reduce the apparent scale of the Project. The shape and size of development on the subject property would not be detrimental to persons or adjacent properties in the vicinity.*

- ii. The accessibility and traffic patterns for persons and vehicles, the type and volume of such traffic, and the adequacy of proposed off-street parking and loading and of proposed alternatives to off-street parking, including provisions of car-share parking spaces, as defined in Section 166.

*The Project provides three loading spaces and six car-share parking spaces, in accordance with Planning Code requirements. The conditions of approval would reduce the amount of residential parking in the project from the proposed 134 spaces to 127 spaces. This reduced ratio is compatible with the parking ratios permitted within C-3 Districts nearby, and would therefore be appropriate to the transit-rich, pedestrian-friendly context of the Project Site. The Project also includes 255 spaces within the garage that would be accessible to the general public, in order to serve the uses on-site, and to provide parking to serve the uses in the vicinity of the Ferry Building. Several other parking facilities near the Ferry Building have been recently removed, or are planned for future*

removal. Therefore, the amount of non-residential parking proposed is appropriate for the Project.

- iii. The safeguards afforded to prevent noxious or offensive emissions such as noise, glare, dust, and odor.

*The Project includes residential and commercial uses that are typical of the area, and should not introduce operational noises or odors that are detrimental, excessive, or atypical for the area. While some temporary increase in noise can be expected during construction, this noise is limited in duration and would be regulated by the San Francisco Noise Ordinance which prohibits excessive noise levels from construction activity and limits the permitted hours of work. The building would not utilize mirrored glass or other highly reflective materials, therefore, the Project is not expected to cause offensive amounts of glare.*

- iv. Treatment given, as appropriate, to such aspects as landscaping, screening, open spaces, parking and loading areas, service areas, lighting, and signs.

*The Project provides open space in the form of private decks, common open space for residents of the Project, and publicly-accessible open spaces within the widened and renovated Drumm Street Walkway, the newly-created Jackson Commons toward the center of the site, and the newly-created Pacific Park at the northern portion of the site. In addition, the Project would provide landscaping, furnishings, and other pedestrian amenities within the public rights-of-way fronting the Project Site, including widened sidewalks along Washington and Drumm Streets. Parking is provided within a subterranean garage accessed via Washington Street, and would not adversely impact the quality of the streetscape. Conditions of approval require that, as the Project proceeds through the review of building permits, the Project Sponsor will continue to work the Department staff to refine details of project massing, lighting, signage, materials, street trees, and other aspects of the design.*

- c. Such use or feature as proposed will comply with the applicable provisions of this Code and will not adversely affect the General Plan.

*The Project generally complies with the applicable sections of the Code, with certain exceptions. The uses contemplated for the Project, and the proposed density are permitted within the RC-4 District. The Project seeks a number of modifications to the requirements of the Planning Code through the PUD process. The purpose of the PUD process is to allow well-designed development on larger sites to request modifications from the strict requirements of the Planning Code, provided that the project generally meets the intent of these Planning Code requirements and would not adversely affect the General Plan. The requested modifications, and compliance with the PUD criteria are discussed under Item #11.*

*Considered as a whole, the Project would add housing, commercial goods and services, and new open space areas, to create an vibrant, active mixed-use node. The Project Site is well-served by transit and commercial services, allowing residents to commute, shop, and reach amenities by walking, transit, and bicycling. The Project conforms with multiple goals and policies of the General Plan, as described in further detail in Item #12.*

8. **Planning Code Section 157** establishes criteria for the Commission to consider when reviewing applications for parking exceeding accessory amounts. On balance, and as modified by conditions of approval, the Project complies with said criteria as follows:

*The Project proposes 134 parking spaces to serve the residential uses, exceeding the number of accessory spaces permitted within the RC-4 District. The conditions of approval would reduce the amount of residential parking in the project from the proposed 134 spaces to 127 spaces. This reduced ratio is compatible with the parking ratios permitted within C-3 Districts nearby, and would therefore be appropriate to the transit-rich, pedestrian-friendly context of the Project Site. The Project also includes 255 spaces within the garage that would be accessible to the general public, in order to serve the uses on-site, and to provide parking to serve the uses in the vicinity of the Ferry Building. Several other parking facilities near the Ferry Building have been recently removed, or are planned for future removal. Therefore, the amount of non-residential parking proposed is appropriate for the Project. The specific Section 157 findings are set forth below:*

(a) Demonstration that trips to the use or uses to be served, and the apparent demand for additional parking, cannot be satisfied by the amount of parking classified by this Code as accessory, by transit service which exists or is likely to be provided in the foreseeable future, by car pool arrangements, by more efficient use of existing on-street and off-street parking available in the area, and by other means;

*Residential Parking:* The 51 residential spaces that the proposed project is permitted to provide under the RC-4 zoning controls, equaling a parking ratio of 0.375 spaces per dwelling unit, would not adequately accommodate the automobiles of the residents and therefore result in an increased demand for the on-street neighborhood parking. The provision of 127 residential parking spaces for 134 residential units (representing a parking ratio of approximately 0.95) would provide a sufficient but not excessive amount of off-street parking. Such a parking ratio would also be comparable to allowed in the neighboring C-3 District. The Project's transportation study found no evidence that transit, car pooling, or existing parking facilities could accommodate the total demand for parking.

*Public Parking Garage:* The 90 spaces to serve the Ferry Building, Piers 1.5 - 5 and Ferry Building waterfront area will largely replace the surface parking spaces that currently exist on Seawall Lot 351, which currently accommodate approximately 105 cars on a valet basis. The 90 spaces for Port uses are a continuation of existing parking that the Port is contractually obligated to provide. These parking spaces are necessary to support the continued viability of the Ferry Building, the Ferry Plaza Farmer's Market, Piers 1.5 - 5, and the Ferry Building waterfront area. While the Ferry Building is well served by transit, the economic vitality of the Ferry Building and Farmer's Market depends upon weekday support by local residents and businesses, many of whom purchase large quantities of goods that require transport by automobile with conveniently located

*parking. Adjacent weekday parking is not readily available, as parking in the Embarcadero Center is fully occupied by building tenants and visitors, parking on the plaza behind the Ferry Building is currently prohibited under existing BCDC permits, and Pier ½ is slated for removal. Limited on-street parking along The Embarcadero exists, but is unavailable during the hours of 3:00 p.m.-7:00 p.m. Furthermore, a parking study commissioned by the Port and completed in 2008 concluded that a minimum of 250 – 500 new parking spaces would need to be constructed to meet the future demand of the area.*

(b) Demonstration that the apparent demand for additional parking cannot be satisfied by the provision by the applicant of one or more car-share parking spaces in addition to those that may already be required by Section 166 of this Code.

*Residential Parking: The proposed project would provide car-share parking spaces in compliance with Section 166 of the Planning Code, and other car-share parking spaces are generally abundant in the area. There is no evidence that providing more car-share spaces than the number required by the Code would satisfy any of the unsatisfied off-street parking demand.*

*Public Parking Garage: There is no evidence that providing more car-share spaces than the number required by the Code would satisfy any of the unsatisfied off-street parking demand for the Ferry Building, Pier 1.5 – 5 and the Ferry Building waterfront area. Such spaces serve customers whose trips originate in the area, but are traveling else. Additional car-share spaces would not accommodate "destination" visitors arriving in the area.*

(c) The absence of potential detrimental effects of the proposed parking upon the surrounding area, especially through unnecessary demolition of sound structures, contribution to traffic congestion, or disruption of or conflict with transit services;

*Residential Parking: The proposed additional residential parking would not have detrimental effects on the surrounding area. The additional residential parking would be accommodated within the below ground garage that is already part of the proposed project, thus no structures would be demolished in order to provide the additional residential parking. Furthermore, the additional residential parking spaces above the maximum amount permitted under the RC-4 parking controls would have a negligible contribution to traffic congestion and conflict with transit services. Given the proposed project's close proximity to transit, it is anticipated that residents will generally use transit, walk and ride bicycles for the majority of trips to and from the project site. The EIR prepared for the proposed project concluded that the proposed project would not result in significant impacts to transit systems, pedestrians, or bicycles in the vicinity of the proposed project.*

*Public Parking Garage: The proposed 175 spaces would not have detrimental effects on the surrounding area because the majority of those spaces would serve as a continuation of an existing parking use on Seawall Lot 351. Furthermore, the proposed parking would be beneficial by moving the existing surface parking lot on Seawall Lot 351 and replacing it with an underground parking facility. In place of the existing surface parking lot, Seawall Lot 351 would be developed with new residential, retail, restaurant, and open spaces uses that would enliven and activate Washington Street and The Embarcadero. The 175 parking spaces would be*

*accommodated within the below ground garage that is already part of the proposed project, thus no structures would be demolished in order to provide the additional residential parking.*

(d) In the case of uses other than housing, limitation of the proposed parking to short-term occupancy by visitors rather than long-term occupancy by employees; and

*Residential Parking: The additional parking would support residential uses. Thus, this criterion is not applicable to the Project.*

*Public Parking Garage: The 175 spaces will be used to serve visitors to the retail, restaurant, and waterfront uses of the Ferry Building, Pier 1.5 - 5 and Ferry Building waterfront area. The spaces will not be used for long term occupancy.*

(e) Availability of the proposed parking to the general public at times when such parking is not needed to serve the use or uses for which it is primarily intended.

*Residential Parking: The residential parking spaces will be used on a continuous basis by residents of the proposed project, and it is not anticipated that there will be times when the general public could use these spaces. Furthermore, for operational and security reasons, the residential parking will be separate from the public parking garage. The proposed project will also include a public parking component, which will be available to serve the general public who are visiting the project's commercial uses and the Ferry Building waterfront area.*

*Public Parking Garage: The 175 spaces would be provided primarily to serve the Ferry Building, Piers 1.5 - 5 and Ferry Building waterfront area, including the Ferry Plaza Farmer's Market. To the extent that these uses did not require some or all of the 175 spaces, then the space could be available for other uses, including the project's onsite commercial uses.*

9. Planning Code Section 253 specifies that, because the Project exceeds 50 feet in height within an RC District, the Commission shall consider the expressed purposes of the Code, of the RC Districts, and of the height and bulk districts.

a. RC-4 (Residential-Commercial, High Density) District. Section 206.3 describes that the RC-4 District contains, "...a mixture of high-density dwellings similar to those in RM-4 Districts with supporting commercial uses."

*The Project would add 134 dwelling units, a new health club, and numerous ground-floor retail spaces in a manner that is appropriate for the context of the Project Site. The retail uses would provide goods and services to residents and visitors in the area, and would activate the adjacent public rights-of-way. The Project is compatible with the dense residential development of the existing complex of buildings within the Golden Gateway, as well as the urban intensity and mix of uses found in the nearby C-3 District.*

b. 84-E Height and Bulk District. Section 251 establishes that the general purposes of the height and bulk district are to relate the scale of new development to be

harmonious with existing development patterns and the overall form of the City, respect and protect public open spaces and neighborhood resources, and to synchronize levels of development intensity with an appropriate land use and transportation pattern.

*The Project is massed over the Project Site in a manner that situates the tallest portions of the project at the southwestern corner, relating to the background of taller existing buildings within the Embarcadero Center and the Golden Gateway Center. Buildings within the project step down in height toward the north and to the east, with the eastern residential building and the health club relating to the Embarcadero at a height lower than the permitted 84-foot height limit. The northernmost portion of the Project Site left as a new public open space area ("Pacific Park"), further reinforcing the stepped massing of the overall project. This transition in height sculpts the form of the Project in a manner that is sympathetic to the shorter residential, commercial, and bulkhead buildings situated along the Embarcadero, and preserves the legibility of the progression of taller buildings within the Financial District to the southwest. The Project Sponsor is requesting height reclassifications at the southwestern portion of the Project Site that would enable this urban form.*

10. Planning Code Section 271 identifies a process whereby the Commission may permit exceptions to the applicable bulk limitations if a project meets one of the following reasons:

- a. Achievement of a distinctly better design, in both a public and a private sense, than would be possible with strict adherence to the bulk limits, avoiding an unnecessary prescription of building form while carrying out the intent of the bulk limits and the principles and policies of the General Plan; or
- b. Development of a building or structure with widespread public service benefits and significance to the community at large, where compelling functional requirements of the specific building or structure make necessary such a deviation.

*Because the Project is seeking a modification of the bulk limitations through the PUD process, the process described by Section 271 does not apply. It should be noted, however, that the project meets both of the specified reasons for granting bulk exceptions.*

*Given the size of the Project Site, strict adherence to bulk limitations would artificially constrain the building forms that could be proposed for the Project. The design of the Project achieves the intent of the bulk limitations by arranging the residential portion within two separate buildings separated by a wide, oval-shaped courtyard. The buildings are articulated as a series of vertical masses of approximately 35 feet in width, each divided by a recess measuring approximately eleven feet wide and eight feet deep. The pedestrian realm is defined by a tall ground floor with extensive glazing providing views into active retail spaces, framed by a procession of awnings. The uppermost floors*

*of the residential buildings are setback in a penthouse configuration, finished with curtain wall glazing that is distinct from the grid of solid walls at lower floors. These three elements create a tripartite arrangement that visually breaks the massing of the Project into discrete, legible elements.*

*Clustering the residential program of the Project at the southern portion of the site facilitates an overall site plan that delivers numerous public benefits, including the provision of new open spaces and pedestrian connections to the waterfront. In addition, the Project would provide substantial streetscape improvements along all frontages, as well as a publicly-accessible parking garage that would bolster the commercial viability of the Ferry Building and enable broader access to the recreational amenities of the waterfront.*

11. **Planned Unit Development.** Section 304 establishes criteria and limitations for the authorization of PUD's over and above those applicable to Conditional Uses in general and contained in Section 303 and elsewhere in the Code. In cases of projects that exhibit outstanding overall design and are complementary to the design and values of the surrounding area, such projects may merit modification of certain Code requirements. On balance, the Project complies with said criteria in that it

- a. Affirmatively promotes applicable objectives and policies of the General Plan;

*See discussion under Item #12.*

- b. Provides off-street parking adequate for the occupancy proposed.

*The project proposes 134 parking spaces to serve the residential uses, exceeding the number of accessory spaces permitted within the RC-4 District. The conditions of approval would reduce the amount of residential parking in the project from the proposed 134 spaces to 127 spaces. This reduced ratio is compatible with the parking ratios permitted within C-3 Districts nearby, and would therefore be appropriate to the transit-rich, pedestrian-friendly context of the Project Site. The Project also includes 255 spaces within the garage that would be accessible to the general public, in order to serve the health club and commercial uses on-site, and to provide parking to serve the uses in the vicinity of the Ferry Building. Several other parking facilities near the Ferry Building have been recently removed, or are planned for future removal. Therefore, the amount of non-residential parking proposed by the Project Sponsor is appropriate for the Project.*

- c. Provides open space usable by the occupants and, where appropriate, by the general public, at least equal to the open space required by this Code;

*The Project provides open space in the form of private decks, common open space for residents of the Project, and publicly-accessible open spaces within the widened and renovated Drumm Street Walkway (adding approximately 2,890 square feet to this area), the newly-created Jackson Commons (measuring approximately 10,450 square feet) toward the center of the site, and the newly-created Pacific Park at the northern portion of the site (measuring approximately 11,840*

*square feet). In addition, the Project would provide landscaping, furnishings, and other pedestrian amenities within the public rights-of-way frontage the Project Site, including widened sidewalks along Washington and Drumm Streets.*

d. Be limited in dwelling unit density to less than the density that would be allowed by Article 2 of the Code for a district permitting a greater density, so that the Planned Unit Development will not be substantially equivalent to a reclassification of property.

*The proposed residential density is permitted within the RC-4 District.*

e. Under no circumstances be excepted from any height limit established by Article 2.5 of this Code, unless such exception is explicitly authorized by the terms of this Code. In the absence of such an explicit authorization, exceptions from the provisions of this Code with respect to height shall be confined to minor deviations from the provisions for measurement of height in Sections 260 and 261 of this Code, and no such deviation shall depart from the purposes or intent of those sections.

*As discussed under Item #6(b) above, the Project Sponsor is requesting height reclassifications for the southwestern portion of the site, allowing the westerly residential building to exceed the existing 84-foot height limit. Should these height reclassifications be approved, the Project would conform to the height limits established by Article 2.5. The Project does not request any deviations from the provisions for measurement of height.*

**Planned Unit Development Modifications.** The Project Sponsor requests a number of modifications from the requirements of the Planning Code. These modifications are listed below, along with a reference to the relevant discussion for each modification:

- i. Rear Yard Configuration: Item #6(d)
- ii. Parking Quantities: Items #6(i) and #8
- iii. Bulk Limitations: Items #6(b) and #10]
- iv. Off-Street Loading: Item #6(j)

12. **General Plan Compliance.** The Project is, on balance, consistent with the following Objectives and Policies of the General Plan:

**COMMERCE AND INDUSTRY ELEMENT:**

**Objectives and Policies**

**OBJECTIVE 6**

**MAINTAIN AND STRENGTHEN VIABLE NEIGHBORHOOD COMMERCIAL AREAS EASILY ACCESSIBLE TO CITY RESIDENTS.**

**Policy 6.4:**



Motion 18567  
March 22, 2012

CASE NO. 2007.0030ECKMRZ  
8 Washington Street

Encourage the location of neighborhood shopping areas throughout the city so that essential retail goods and personal services are accessible to all residents.

**Policy 6.10:**

Promote neighborhood commercial revitalization, including community-based and other economic development efforts where feasible.

*The Project would replace an existing surface parking lot and health club with an intense, mixed-use development suited to an urban context. The Project includes 134 dwelling units. Residents of these units would shop for goods and services in the area, bolstering the viability of the existing businesses. In addition, the Project would provide 20,000 square feet of commercial uses, as well as a new health club that would contribute to the economic vitality of the area, fulfill a recreational needs for residents, and would activate the streetscape.*

**URBAN DESIGN ELEMENT:**

**Objectives and Policies**

**OBJECTIVE 1**

**EMPHASIS OF THE CHARACTERISTIC PATTERN WHICH GIVES TO THE CITY AND ITS NEIGHBORHOODS AN IMAGE, A SENSE OF PURPOSE, AND A MEANS OF ORIENTATION.**

**Policy 1.1:**

Recognize and protect major views in the city, with particular attention to those of open space and water.

**Policy 1.2:**

Recognize, protect, and reinforce the existing street pattern, especially as it is related to topography.

**OBJECTIVE 3**

**MODERATION OF MAJOR NEW DEVELOPMENT TO COMPLEMENT THE CITY PATTERN, THE RESOURCES TO BE CONSERVED, AND THE NEIGHBORHOOD ENVIRONMENT.**

**Policy 3.1:**

Promote harmony in the visual relationship and transitions between new and older buildings.

**Policy 3.5:**

Relate the height of buildings to important attributes of the city pattern and to the height and character of existing development.

*The Project massing is arranged to locate the tallest portions of the project at the southwestern corner, relating to the background of taller existing buildings within the Embarcadero Center and the Golden Gateway Center. Buildings within the project step down in height toward the north and to the east, with the eastern residential building and the health club relating to the Embarcadero at a height lower than the permitted 84-foot height limit. The northernmost portion of the Project Site left as a new public open space area ("Pacific Park"), further reinforcing the stepped massing of the overall project. This transition in height sculpts the form of the Project in a manner that is sympathetic to the shorter residential, commercial, and bulkhead buildings situated along the Embarcadero, and preserves the legibility of the progression of taller buildings within the Financial District to the southwest.*

#### **NORTHEASTERN WATERFRONT AREA PLAN:**

##### **Objectives and Policies.**

###### **OBJECTIVE 2**

TO DIVERSIFY USES IN THE NORTHEASTERN WATERFRONT, TO EXPAND THE PERIOD OF USE OF EACH SUBAREA, AND TO PROMOTE MAXIMUM PUBLIC USE OF THE WATERFRONT WHILE ENHANCING ITS ENVIRONMENTAL QUALITY.

###### **Policy 3.1:**

Develop uses which generate activity during a variety of time periods rather than concentrating activity during the same peak periods.

###### **OBJECTIVE 7**

TO STRENGTHEN AND EXPAND THE RECREATION CHARACTER OF THE NORTHEASTERN WATERFRONT AND TO DEVELOP A SYSTEM OF PUBLIC OPEN SPACES AND RECREATION FACILITIES THAT RECOGNIZES ITS RECREATIONAL POTENTIAL, PROVIDES UNITY AND IDENTITY TO THE URBAN AREA, AND ESTABLISHES AN OVERALL WATERFRONT CHARACTER OF OPENNESS AND VIEWS, WATER AND SKY, AND PUBLIC ACCESSIBILITY TO THE WATER'S EDGE.

###### **Policy 7.1:**

Develop recreation facilities attractive to residents and visitors of all ages and income groups.

###### **Policy 7.2:**

Provide a continuous system of parks, urban plazas, water-related public recreation, shoreline pedestrian promenades, pedestrian walkways, and street greenways throughout the entire Northeastern Waterfront.

**OBJECTIVE 10**

TO DEVELOP THE FULL POTENTIAL OF THE NORTHEASTERN WATERFRONT IN ACCORD WITH THE UNUSUAL OPPORTUNITIES PRESENTED BY ITS RELATION TO THE BAY, TO THE OPERATING PORT, FISHING INDUSTRY, AND DOWNTOWN; AND TO ENHANCE ITS UNIQUE AESTHETIC QUALITIES OFFERED BY WATER, TOPOGRAPHY, VIEWS OF THE CITY AND THE BAY, AND ITS HISTORIC MARITIME CHARACTER.

**Policy 10.1:**

Preserve the physical form of the waterfront and reinforce San Francisco's distinctive hill form by maintaining low structures near the water, with an increase in vertical development near hills or the downtown core area. Larger buildings and structures with civic importance may be appropriate at important locations.

**Policy 10.2:**

Preserve and create view corridors which can link the City and the Bay.

**OBJECTIVE 22**

TO DEVELOP A MIXTURE OF USES WHICH WILL PROVIDE A TRANSITION BETWEEN THE INTENSE CONCENTRATION OF OFFICE ACTIVITY IN THE DOWNTOWN AREA AND THE RECREATION ACTIVITIES OF THE WATERFRONT, WHICH WILL GENERATE ACTIVITY DURING EVENINGS AND WEEKENDS TO COMPLEMENT THE WEEKDAY OFFICE USES IN THE ADJACENT DOWNTOWN AREA.

**Policy 26.1:**

Maintain the Golden Gateway residential community and neighborhood-serving retail uses.

*The Project incorporates dwelling units, multiple retail and restaurant spaces, and a new health club, diversifying the mix of land uses in the area and creating new opportunities for residents to satisfy convenience needs in the immediate area. This mix of uses would help to generate pedestrian activity and attract visitors from beyond the immediate area to contribute to an environment that is vibrant throughout the day and evening hours. The provision of public parking would serve help to broaden access to the recreational amenities of the waterfront, and would bolster the viability of the businesses in and around the Ferry Building. The site planning and heights of the buildings proposed buildings within the Project represent a continuation of an*

*urban form that transition from taller heights within the Financial District, to lower buildings along the waterfront.*

*Portions of the project to be approved by the Port Commission would widen and enhance the existing Drumm Street walkway, and would create a new linear open space ("Jackson Commons") that extends from the existing terminus of Jackson Street. These spaces strengthen and expand an existing network of richly landscaped pedestrian connections that link important open spaces, including Sydney Walton Square, Sue Bierman Park, and Justin Herman Plaza. In addition, Jackson Commons would create a new visual and physical linkage through the site to the waterfront. The project also contributes to the variety of recreational opportunities through the creation of Pacific Park at the northerly portion of the site. This Park is proposed to include passive recreational areas, as well as a play fountain and other play equipment for children, fulfilling a recreational need that is lacking in the area.*

## HOUSING ELEMENT:

### Objectives and Policies

#### OBJECTIVE 1

TO PROVIDE NEW HOUSING, ESPECIALLY PERMANENTLY AFFORDABLE HOUSING, IN APPROPRIATE LOCATIONS WHICH MEETS IDENTIFIED HOUSING NEEDS AND TAKES INTO ACCOUNT THE DEMAND FOR AFFORDABLE HOUSING CREATED BY EMPLOYMENT DEMAND.

##### Policy 1.1:

Encourage higher residential density in areas adjacent to downtown, in underutilized commercial and industrial areas proposed for conversion to housing, and in neighborhood commercial districts where higher density will not have harmful effects, especially if the higher density provides a significant number of units that are affordable to lower income households.

##### Policy 1.3

Identify opportunities for housing and mixed-use districts near downtown and former industrial portions of the City.

##### Policy 1.4:

Locate in-fill housing on appropriate sites in established residential neighborhoods.

*The Project would add residential units to an area that is well-served by transit, services, and shopping opportunities. The site is suited for dense, mixed-use development, where residents can commute and satisfy convenience needs without frequent use of a private automobile. The Project Site is located immediately adjacent to employment opportunities within the Financial District, and is in an area with abundant local- and region-serving transit options.*

13. Planning Code Section 101.1(b) establishes eight priority-planning policies and requires review of permits for consistency with said policies. On balance, the project does comply with said policies in that:

- A. That existing neighborhood-serving retail uses be preserved and enhanced and future opportunities for resident employment in and ownership of such businesses be enhanced.

*The new residents in the Project would patronize area businesses, bolstering the viability of surrounding commercial establishments. In addition, the Project would include retail spaces to provide goods and services to residents in the area, contribute to the economic vitality of the area, and would define and activate the streetscape.*

- B. That existing housing and neighborhood character be conserved and protected in order to preserve the cultural and economic diversity of our neighborhoods.

*The project would not diminish existing housing stock, and would add dwelling units in a manner that enhances the vitality of the neighborhood.*

- C. That the City's supply of affordable housing be preserved and enhanced,

*No housing is removed for this Project. The Project Sponsor would be required to contribute to the City's Inclusionary Affordable Housing Program.*

- D. That commuter traffic not impede MUNI transit service or overburden our streets or neighborhood parking.

*A wide variety of goods and services are available within walking distance of the Project Site without reliance on private automobile use. In addition, the area is well served by public transit, providing connections to all areas of the City and to the larger regional transportation network.*

- E. That a diverse economic base be maintained by protecting our industrial and service sectors from displacement due to commercial office development, and that future opportunities for resident employment and ownership in these sectors be enhanced.

*The Project would demolish the existing health club on the site, however, a new health club would be constructed. In addition, the project would include retail spaces that would provide employment and ownership opportunities for area residents.*

- F. That the City achieve the greatest possible preparedness to protect against injury and loss of life in an earthquake.

*The Project is designed and would be constructed to conform to the structural and seismic safety requirements of the City Building Code.*

G. That landmarks and historic buildings be preserved.

*A landmark or historic building does not occupy the Project site.*

H. That our parks and open space and their access to sunlight and vistas be protected from development.

*The Project would cast minor additional shadows on Sue Bierman Park, however, these new shadows would not be adverse to the use of the Park. The Project would provide substantial new open space areas that are accessible to the public.*

14. The Project is consistent with and would promote the general and specific purposes of the Code provided under Section 101.1(b) in that, as designed, the Project would contribute to the character and stability of the neighborhood and would constitute a beneficial development.
15. The Commission hereby finds that approval of the Conditional Use authorization would promote the health, safety and welfare of the City.

Motion 18567  
March 22, 2012

CASE NO. 2007.0030ECKMRZ  
8 Washington Street

### DECISION

That based upon the Record, the submissions by the Applicant, the staff of the Department and other interested parties, the oral testimony presented to this Commission at the public hearings, and all other written materials submitted by all parties, the Commission hereby APPROVES Conditional Use Application No. 2007.0030C subject to the following conditions attached hereto as "EXHIBIT A" in general conformance with plans on file, dated March 22, 2012, and stamped "EXHIBIT B", which is incorporated herein by reference as though fully set forth.

APPEAL AND EFFECTIVE DATE OF MOTION: Any aggrieved person may appeal this Conditional Use Authorization to the Board of Supervisors within thirty (30) days after the date of this Motion No. 18567. The effective date of this Motion shall be the date of this Motion if not appealed (After the 30-day period has expired) OR the date of the decision of the Board of Supervisors if appealed to the Board of Supervisors. For further information, please contact the Board of Supervisors at (415) 554-5184, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

I hereby certify that the Planning Commission ADOPTED the foregoing Motion on March 22, 2012.

Linda D. Avery  
Commission Secretary

AYES: Fong, Antonini, Borden, Miguel

NAYS: Sugaya, Wu

ABSENT: Moore

ADOPTED: March 22, 2012

PORT COMMISSION  
CITY AND COUNTY OF SAN FRANCISCO

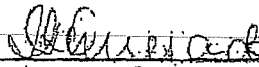
RESOLUTION NO. 12-46

- WHEREAS, The 8 Washington/Seawall Lot 351 Project ("**Project**") comprises the development of approximately 134 residential units, ground floor restaurant and retail space, publicly accessible open spaces, a health club, and an underground parking garage with up to 389 parking spaces on a project site that includes Seawall Lot 351 ("**SWL 351**") and an adjacent, privately held parcel, and includes a public trust exchange to transfer the public trust designation from a portion of SWL 351 to that portion of the project site that will be improved with uses that benefit the public trust and which will be under the jurisdiction of the Port Commission; and
- WHEREAS, On June 15, 2011, the San Francisco Planning Department published a Draft Environmental Impact Report ("**EIR**") which was available for public comment until August 15, 2011, and on July 21, 2011 the Planning Commission held a public hearing to solicit comments regarding the Draft EIR. On December 22, 2011, the Planning Department published the Comments and Responses on the Draft EIR which together with the Draft EIR constitute the Final EIR; and
- WHEREAS, On March 22, 2012, the Planning Commission reviewed and considered the Final Environmental Impact Report ("**Final EIR**") in Planning Department File No. 2007.0030E and found that the contents of said report and the procedures through which the Final EIR was prepared, publicized; and reviewed complied with the provisions of the California Environmental Quality Act ("**CEQA**"), the CEQA Guidelines and Chapter 31 of the San Francisco Administrative Code and found further that the Final EIR reflects the independent judgment and analysis of the City and County of San Francisco, is adequate, accurate and objective, and that the Comments and Responses document contains no significant revisions to the Draft EIR, and certified the completion of said Final EIR in compliance with CEQA and the CEQA Guidelines; and
- WHEREAS, The Port Commission has reviewed and considered the information contained in the Final EIR, all written and oral information provided by the Planning Department, the public, relevant public agencies and the administrative files for the Project and the Final EIR; and
- WHEREAS, The Project and EIR files have been made available for review by the Port Commission and the public, and those files are part of the record before the Port Commission; and



- WHEREAS, The Planning Department, Linda Avery, is the custodian of records, located in Case Number 2007.0030E, and those files are part of the record before this Port Commission; and
- WHEREAS, Port staff has prepared findings, as required by CEQA ("**CEQA Findings**"), which are attached to this resolution as Attachment A, which includes a Mitigation Measure and Reporting Program ("**MMRP**"); and
- WHEREAS, The CEQA Findings and the MMRP were made available to the public and the Port Commission for the Port Commission's review, consideration and action; now therefore, be it
- RESOLVED, The Port Commission has reviewed and considered the Final EIR and adopts the CEQA Findings and MMRP for the Project, as presented in Attachment A, and incorporates those findings, including the Statement of Overriding Considerations, in this resolution by this reference; and, be it further
- RESOLVED, The Port Commission, in exercising its independent judgment, has relied upon and reviewed the information contained in the CEQA Findings, which describe the Project and Final EIR, and rejects alternatives to the Project for the reasons set forth in the CEQA Findings; and, be it further
- RESOLVED, The Port Commission adopts the CEQA Findings and the MMRP as the required mitigation measures to be implemented as part of the Project, where the Port Commission finds that all of the mitigation measures set forth in the Final EIR are feasible, and hereby adopts all mitigation measures as described in Attachment A in support of the approval of the Project, including any other actions necessary to secure other regulatory approvals to implement the Project, construction implementation, approval of the Development and Disposition Agreement, Purchase and Sale Agreement, Ground Lease, Trust Exchange Agreement with the California State Lands Commission, Maintenance Agreement, and related actions to implement the Project involving use of SWL 351 located along The Embarcadero waterfront between Washington Street and Broadway.

*I hereby certify that the foregoing resolution was adopted by the Port Commission at its meeting of May 29, 2012.*

  
Secretary

PORT COMMISSION  
CITY AND COUNTY OF SAN FRANCISCO

RESOLUTION NO. 12-47

WHEREAS, Charter Section B3.581 empowers the Port Commission ("**Port**") with the authority and duty to use, conduct, operate, maintain, manage, regulate and control the lands within Port jurisdiction; and

WHEREAS, The Port of San Francisco Waterfront Land Use Plan, including the Design and Access Element (collectively, the "**Waterfront Plan**") is the Port's adopted land use document for property within Port jurisdiction, which provides the policy foundation for waterfront development and improvement projects; and

WHEREAS, The Port owns Seawall Lot 351 ("**SWL 351**"), a triangular lot located at Washington Street and The Embarcadero, which lot is also within both of the Waterfront Plan's Ferry Building Waterfront area and Ferry Building Mixed Use Opportunity Area, and is adjacent to the Golden Gateway residential site having an address at 8 Washington Street ("**8 Washington site**," together with SWL 351, the "**Project Site**"); and

WHEREAS, SWL 351 is subject to the common law public trust for commerce, navigation, and fisheries and the statutory trust imposed by the Burton Act, Chapter 1333 of the Statutes of 1968, as amended, by which the State of California (the "**State**") conveyed to the City and County of San Francisco (the "**City**"), in trust and subject to certain terms, conditions and reservations, the State's interest in certain tidelands (collectively, the "**Public Trust**"); and

WHEREAS, The Waterfront Plan includes the following Development Standards for the Ferry Building Mixed Use Opportunity Area:

*"Explore the possibility of obtaining economic value from SWL 351 by combining it with the adjacent Golden Gateway residential site [the 8 Washington site] to provide expanded opportunities for mixed residential and commercial development.*

*"Maximize efficient use of new and existing parking to serve existing business, further promote public use of the Ferry and Agriculture Buildings, stimulate reuse of Piers 1, 1-1/2, 3 and 5.*

*"The design of new development should respect the character of the Ferry Building, the mid-Embarcadero open space improvements, and the Golden Gateway project.*

*"The design of new development should minimize the perceived barrier of The Embarcadero and encourage a pleasant pedestrian connection between the City and the waterfront.*

*"Allow...restaurants and other eating and drinking establishments that both attract and benefit from visitors to the waterfront. (Waterfront Plan, pp. 128-130);" and*

WHEREAS, The acceptable land uses for SWL 351 identified in the Waterfront Plan include open space, residential, parking, and retail (including restaurants), recreational enterprises and visitor services (*Waterfront Plan, Table (1, 2, 3, 4), p. 126*); and

WHEREAS, By Resolution No. 08-45, the Port Commission authorized Port staff to issue a Request for Proposals (the "RFP") to solicit proposals from qualified parties to develop and operate on SWL 351 a mixed-use project to promote Public Trust purposes and the Waterfront Plan, including the Development Standards for the Ferry Building Mixed Use Opportunity Area; and

WHEREAS, The Port Commission (i) reviewed and evaluated the summary and analyses of San Francisco Waterfront Partners II, LLC's ("**Developer**") proposal prepared by Port staff, its independent real estate economics consultant, and the evaluation panel, (ii) reviewed the Port staff recommendations set forth in the Staff Report accompanying Resolution 09-12, (iii) considered the public testimony on Developer's proposal given to the Port Commission, and (iv) determined that the Developer's proposal met the requirements set out in the RFP and achieved the Port's objectives for SWL 351; and

WHEREAS, By Resolution 09-12, the Port Commission (i) awarded to Developer an exclusive right to negotiate with the Port to develop the Project Site, and (ii) directed Developer and Port staff to participate in a community planning process (the "**NES**") led by the San Francisco Planning Department, as recommended in the February 19, 2009 letter to the Port Commission from Supervisor David Chiu; and

WHEREAS, The Port and Developer entered into an Exclusive Negotiating Agreement, effective August 26, 2009 (as may be amended from time to time, the "**ENA**"), setting forth the process, terms and conditions upon which the Port and Developer agreed to negotiate certain transaction documents for the development of the Project Site and requiring the Port and Developer to negotiate a term sheet to describe the basic elements of the proposed project, site plan, use program, economic parameters, and other fundamental terms that will serve as the basis for negotiating the transaction documents (the "**Term Sheet**"); and

- WHEREAS, By Resolution 10-66, the Port Commission approved the Term Sheet containing the business terms for the proposed Project (as defined below); and
- WHEREAS, Developer is proposing to build on portions of the Project Site that will be held in private ownership after the Trust Exchange (as defined below), the following improvements: (i) two mixed-use buildings containing approximately 134 residential units, (ii) an underground parking garage for residents of the buildings and the public, (iii) a new fitness and health club, and (iv) a café adjacent to the new fitness and health club (collectively, the "**Developer Improvements**"); and
- WHEREAS, Developer is proposing to build on portions of the Project Site the Port will own after the Trust Exchange, the following improvements: (i) approximately 10,450 square feet of public open space to be known as "**Jackson Commons**" located on the former Jackson Street right-of-way, (ii) approximately 11,840 square feet of public open space to be known as "**Pacific Park**" immediately north of the Trust Retail Parcel, (iii) approximately 2,890 square feet of additional public open space along the Drumm Street pedestrian path, (iv) an approximately 4,000 square foot, one-story, 18-foot-tall retail building on a parcel adjacent to Pacific Park (the "**Trust Retail Parcel**"), and (v) approximately 4,835 square feet of improved and widened sidewalk along the west side of The Embarcadero, immediately south of Pacific Park and fronting a portion of the east side of the newly built fitness and health club (collectively, the "**Public Improvements**," together with the Developer Improvements, the "**Project**"); and
- WHEREAS, In connection with the use of Jackson Commons and Pacific Park as public open space, the Port and Developer are proposing that Jackson Commons and all or a portion of Pacific Park be dedicated as a public right-of-way for use as parks and open space only; and
- WHEREAS, In order to develop the proposed Project, the California State Lands Commission ("**State Lands Commission**") must approve a Public Trust exchange authorizing a realignment of the Public Trust between the 8 Washington site and SWL 351 pursuant to Section 5 of Chapter 310, Statutes of 1987 ("**Chapter 310**") (the "**Trust Exchange**") and the Port has negotiated with the State Lands Commission staff a trust exchange agreement (the "**Trust Exchange Agreement**") whereby the Public Trust will be lifted from approximately 23,020 square feet of SWL 351 (the "**Trust Termination Parcel**") in exchange for impressing the Public Trust on approximately 28,241 square feet of the 8 Washington site that is not currently subject to the Public Trust (the "**Trust Parcel**"); and
- WHEREAS, As required by Chapter 310, the Port Commission makes the following findings with respect to the Trust Termination Parcel:

1. *The Trust Termination Parcel has been filled and reclaimed.* The Trust Termination Parcel is a portion of SWL 351, which was filled as part of the Port's program of reclaiming lands between the new seawall and the previously existing City front, for the purpose of generating revenues used to support the improvement of the harbor.

2. *The Trust Termination Parcel is cut off from access to the waters of the Bay.* All of the Trust Termination Parcel is located on filled land, located on the landside of the 100 foot wide Embarcadero Roadway, which consists of 6 traffic lanes and the MUNI light-rail corridor. No immediate access to the waters of San Francisco Bay exists from any portion of the Trust Termination Parcel.

3. *The Trust Termination Parcel is a very small portion of the Port's trust grant.* The total area of the Trust Termination Parcel is approximately 22,650 square feet (approximately 1/2 acre). The total amount of granted tide and submerged lands held by the Port is approximately 725 acres, of which the Trust Termination Parcel represents 0.07%.

4. *The Trust Termination Parcel is no longer needed or required for the promotion of the Public Trust.* Except for ferry operations at the Ferry Building and limited boat docking at Pier 1 1/2 and 3, maritime activities are no longer significant in the Ferry Building Waterfront area. The Ferry Building Waterfront area abuts downtown San Francisco's diverse mix of urban activities. SWL 351 is immediately adjacent to a private swim and tennis club and is near low to high-rise residential and commercial development. For many years, the site has been used as a surface parking lot. Because SWL 351 is physically cut-off from the water, serves no purpose in furthering maritime commerce, navigation or fisheries, and the existing surface parking will be replaced with more public parking spaces in an underground parking garage, it is no longer needed or required for the promotion of the Public Trust. In addition, the San Francisco Public Utilities Commission ("SFPUC") operates a force main that serves much of the northeast waterfront which runs through the entire width of SWL 351. No structures can be built over the length of the force main, including a buffer zone around the force main, which in effect, further divides SWL 351 into two smaller and separate areas, making development of Public Trust consistent commercial uses that much more difficult. SWL 351's relatively small size and unusual shape (as currently configured), in addition to the inability to build structures over the SFPUC force main that runs through the entire width of SWL 351 (i) does not allow for the development of any of the uses that would further the overall Public

Trust goals of the Waterfront Plan or promote other Public Trust uses such as useable or desirable open space or park use, and (ii) makes development of a Public Trust-consistent commercial use, such as hotel or retail, economically infeasible, as further evidenced by the withdrawal of the only other respondent to the RFP before the Port's review of the proposal even began. Its current use for parking serving the Ferry Building Waterfront area could be better continued as sub-surface parking (as proposed), which would improve the appearance of the site and allow for development of better and additional public-serving Public Trust uses, as further described in item #5 below.

*5. The Trust Termination Parcel can be removed without causing substantial interference with Public Trust uses and purposes and the Trust Parcel is useful for the particular trust purposes authorized by the Burton Act.* In exchange for the lifting of the Public Trust from the Trust Termination Parcel, a greater square footage of land immediately adjacent to SWL 351 will be impressed with the Public Trust. By combining SWL 351 and the 8 Washington site, the resulting land configuration allows for the development of a mixed use project that further promotes Public Trust uses and purposes and realizes the vision put forth in the Waterfront Plan, by, among other things, (i) creating important new visual and pedestrian public access linking Jackson Street to The Embarcadero; (ii) achieving a long term solution to parking needs of the Ferry Building Waterfront area, as well as a central parking location for visitors to the northeastern waterfront; (iii) improving the visual quality of the Ferry Building Waterfront area by locating parking underground and creating an attractive mixed use development that enhances the land side of The Embarcadero and reconnects San Francisco with the waterfront; (iv) creating new parks along The Embarcadero, enhancing the waterfront visitor experience; (v) providing visitor-serving retail uses, including a café in prominent location adjacent to the proposed Pacific Park with waterfront views, (vi) creating new view corridors of the San Francisco Bay through the Project Site, and (vii) creating significant structures that recognize and respect the Port's bulkhead structures across The Embarcadero; and

WHEREAS, The City's Director of Property has determined based on an independent MAI appraisal that the Trust Termination Parcel has an appraised value of \$7,560,000 and the Trust Parcel has an appraised value of \$8,630,000; confirming that the value of the land to be exchanged into the Public Trust equals or exceeds the value of the land to be exchanged out of the Public Trust; and

WHEREAS, Developer is proposing to subdivide the Project Site into separate land and air space parcels such that, among other things, the Trust Retail Parcel and the portions of the Project Site that will be owned by the Port after the Trust Exchange (not including the Trust Retail Parcel, "**Open Space Parcel**") shall be their own separate legal parcels; and

WHEREAS, On November 21, 2011, the Waterfront Design Advisory Committee reviewed the design of the Project and found it consistent with the Waterfront Design and Access goals, objectives and criteria; and

WHEREAS, Schematic Drawings of the proposed Project, a copy of which is on file with the Port Commission are consistent with the Waterfront Plan applicable to the Ferry Building Waterfront Area; and

WHEREAS, Port staff and Developer have negotiated the terms of the (1) Disposition and Development Agreement, (2) Lease No. L-15110, (3) Purchase and Sale Agreement, (4) Trust Exchange Agreement, (5) Maintenance Agreement, and (6) related exhibits and attachments to all of the foregoing (collectively, the "**Project Documents**") described in the Memorandum accompanying this Resolution, copies of which are on file with the Port Commission Secretary; and

WHEREAS, The Purchase and Sale Agreement for the Project ("**PSA**") sets forth the terms and conditions under which (i) the Port will convey the Trust Termination Parcel to Developer; (ii) Developer will convey the Trust Parcel to the Port, (iii) Developer will develop the Developer Improvements; (iv) Developer will dedicate in perpetuity, no less than 175 parking spaces in the underground parking garage, which spaces may be provided on an independently accessible or valet basis to serve the Ferry Building Waterfront area; (v) the Port can exercise an option to purchase an air space parcel within the underground parking garage that can accommodate no less than 175 cars after completion of the Project until two years following the initial sale of the last residential condominium unit, and (vi) the Port may require Developer to provide replacement parking spaces in the event Developer fails to commence or complete construction of the underground parking garage; and

WHEREAS, In addition to receiving the Trust Parcel, the Port shall receive the following payments from the sale of the Trust Termination Parcel: (i) a lump sum payment of \$3 million, (ii) transfer fees (equaling 1.0% of the purchase price) in perpetuity from and after but not including the first sale (or lease with a term of thirty-five (35) years or longer) of each of the (a) residential condominiums, and (b) commercial condominiums (excluding the new fitness and health club), and (iii) an ongoing revenue stream of \$120,000 per year for 66-years, commencing upon completion of Public Improvements, adjusted every 5 years by the CPI with a minimum increase of 10% and a maximum of 20%; and

- WHEREAS, Developer will pay to Port or a City agency or its designee, an amount that will be used to fund affordable housing projects in the City, which amount will be determined by the number and type of residential units built in the Project as described in the Memorandum accompanying this Resolution and Port staff estimates that based on the number and type of residential units approved by the Planning Commission for the Project, the additional contribution Developer will make for affordable housing projects in the City is estimated to be around \$2.2 million, which may be adjusted upwards or downwards depending on the final number and type of units set forth in the Project's building permit; and
- WHEREAS, The Disposition and Development Agreement ("DDA") sets forth Developer's obligations to construct the Public Improvements, the conditions upon which the Port will deliver Lease No. L-15110 to Developer for the Trust Retail Parcel (the "Lease"), and public financing provisions for certain qualified costs of the Project; and
- WHEREAS, Material terms of the Lease include a 66-year term, permitted uses for visitor-serving commercial/recreation, including restaurant and recreational facilities (e.g. bicycle rental), construction period rent of \$60,000/annum, and percentage rent equal to 15% of gross revenues received by Developer from future retail operator(s); and
- WHEREAS, Upon issuance of a Certification of Completion for the Project, Port and Developer will enter into a Maintenance Agreement for the management, maintenance, repair, and operation by Developer of the Open Space Parcel requiring Developer, or its successor or assignee (which may be the homeowner's association for the condominium project), to be responsible for the management, maintenance, repair and operation of the Open Space Parcel at its sole expense; and
- WHEREAS, On March 22, 2012, the San Francisco Planning Commission by Motion No. 120272 found that the Project is consistent with the objectives and policies of the San Francisco General Plan, and the Priority Policies of Section 101.1; and
- WHEREAS, The Project Documents conform to all local laws and regulations and are not prohibited by the City's Charter; and
- WHEREAS, The Project is consistent with the Waterfront Plan uses and policies as described above; and
- WHEREAS, The Port and Developer are committed to improvements consistent with the Waterfront Plan and San Francisco General Plan policies intended to preserve the strong architectural and historic character of the Ferry Building Waterfront area; and



WHEREAS, City and Port staff and consultants have conducted substantial economic analysis of the Project impacts and benefits on the Port and City; and

WHEREAS, The Project will generate additional significant public benefits for the Port and the City, including: (i) the replacement of an underutilized Port seawall lot currently used for surface parking with a below grade parking structure that meets the needs of Port businesses and visitors; (ii) the creation of significant new jobs and economic development; and (iii) both a lump sum payment and an ongoing revenue stream for the Port to help the Port continue to promote Public Trust uses and purposes; and

WHEREAS, On March 22, 2012, the Planning Commission held a duly-noticed public hearing to consider certification of the Final Environmental Impact Report for the 8 Washington Street/Seawall Lot 351 Project (Planning Dept. Case No. 2007.0030E) (the "FEIR"), and certified the FEIR and made findings ("CEQA Findings") as required by the California Environmental Quality Act ("CEQA") and certified the completion of the FEIR in compliance CEQA, the CEQA Guidelines and Chapter 31 of the San Francisco Administrative Code; now therefore, be it

RESOLVED That the Port Commission has reviewed and considered the information contained in the FEIR, the CEQA Findings, and the Project Documents and all other matters and actions approved by the Port Commission by this Resolution reflect the Project examined in the FEIR for which the Port Commission by Resolution No. 12-46 has adopted findings with respect to the FEIR as required by CEQA, including the Statement of Overriding Considerations and a Mitigation Monitoring and Reporting Program, which findings are on file with the Secretary of the Port Commission; and be it further

RESOLVED, For reasons set forth herein, the Port Commission finds that the Project is consistent with the Public Trust and the Waterfront Plan; and be it further

RESOLVED, For reasons set forth herein, the Port Commission finds that the Trust Termination Parcel (i) has been filled and reclaimed, (ii) is cut off from access to the waters of the Bay, (iii) is a very small portion of the Port's trust grant, and (iv) is no longer needed or required for the promotion of the Public Trust; and be it further

RESOLVED, For reasons set forth herein, the Port Commission further finds that (i) the Trust Termination Parcel can be removed without causing substantial interference with Public Trust uses and purposes, (ii) the Trust Parcel is useful for the particular trust purposes authorized by the Burton Act, and (iii) the value of the land to be exchanged into the Public Trust equals or exceeds the value of the land to be exchanged out of the

Public Trust; and be it further

RESOLVED, The Trust Exchange Agreement is in conformance with the Burton Act and Chapter 310, subject to approval by the State Lands Commission; and be it further

RESOLVED, That the Port Commission approves the form and the substance of the Project Documents, including all attachments and exhibits thereto, and the transactions which such Project Documents contemplate, incorporating the material business terms set forth in the Memorandum accompanying this Resolution; and be it further

RESOLVED, That the Port Commission hereby approves the Schematic Drawings of the proposed Project, a copy of which is on file with the Port Commission Secretary, and authorizes the Executive Director to approve non-material changes in the Schematic Drawings; and be it further

RESOLVED, That it is in the City's and Port's best interest to convey the Trust Termination Parcel to Developer, that the public interest or necessity demands, or will not be inconvenienced by the sale of the Trust Termination Parcel directly to Developer pursuant to the PSA; and be it further

RESOLVED, That with the exchange of the Trust Termination Parcel for the Trust Parcel, the sales price of the Trust Termination Parcel is at least 100% of the City's Director of Property's appraisal of the Trust Termination Parcel; and be it further

RESOLVED, That the Port Commission authorizes and directs the Executive Director of the Port (the "**Executive Director**") to forward Lease No. L-15110, the PSA, and the Maintenance Agreement to the Board of Supervisors for approval pursuant to its authority under Charter Sections 9.118(b) and (c), and upon the effectiveness of such approval, to execute the DDA, and the PSA, and subject to the terms of the DDA and the PSA, as applicable, execute the Lease and Maintenance Agreement, in substantially the form of such agreements on file with the Port Commission Secretary, and in such final form as is approved by the Executive Director in consultation with the City Attorney; and be it further

RESOLVED, That the Port Commission authorizes and directs the Executive Director to forward the Trust Exchange Agreement to (i) the Board of Supervisors for approval pursuant to its authority under Charter Section 9.118(c), and (ii) the State Lands Commission for approval pursuant to its authority under Chapter 310, and upon the effectiveness of such approval and subject to the terms of the DDA and the PSA, as applicable, execute the Trust Exchange Agreement in substantially the form of such agreement on file with the Port Commission Secretary, and in such final form as is

approved by the Executive Director in consultation with the City Attorney; and be it further

RESOLVED, That the City's Director of Property and the Executive Director are hereby authorized and urged, in the name and on behalf of the City and the Port, to (i) accept the Trust Parcel from Developer, (ii) execute and deliver deeds conveying the Trust Termination Parcel and Trust Parcel to the State Lands Commission, (iii) accept the Trust Termination Parcel and the Trust Parcel from the State Lands Commission, and (iv) execute and deliver the deed to the Trust Termination Parcel to Developer, upon the closing in accordance with the terms and conditions of the Trust Exchange Agreement and the PSA, and to take any and all steps (including, but not limited to, the execution and delivery of any and all certificates, agreements, parking covenants, notices, consents, escrow instructions, closing documents and other instruments or documents) as they deem necessary or appropriate in order to consummate the conveyance of the Trust Termination Parcel to Developer and acceptance of the Trust Parcel from Developer pursuant to the PSA, or to otherwise effectuate the purpose and intent of this resolution, such determination to be conclusively evidenced by the execution and delivery by the Director of Property and/or Executive Director of any such documents; and be it further

RESOLVED, That the Executive Director shall determine satisfaction of the conditions precedent under the PSA to the conveyance of the Trust Termination Parcel and the acceptance by the Port of the Trust Parcel, such determination to be conclusively evidenced by the execution and delivery by the Executive Director and/or the City's Director of Property of the applicable deeds; and be it further

RESOLVED, That the Executive Director shall determine satisfaction of the conditions precedent under the DDA to the conveyance of the leasehold estate in the Trust Retail Parcel, such determination to be conclusively evidenced by the execution and delivery by the Executive Director of the Lease; and be it further

RESOLVED, That the Port Commission authorizes the Executive Director, and as to the PSA, Executive Director and/or the City's Director of Property, to enter into reciprocal easement agreements, easement agreements, and other covenants and property documents necessary to implement the transactions contemplated by the Project Documents, and to enter into any additions, amendments or other modifications to the Project Documents including preparation and attachment of, or changes to, any or all of the attachments and exhibits that the Executive Director, in consultation with the City Attorney, determines are in the best interests of the City, do not materially decrease the benefits or otherwise materially increase the obligations or liabilities of the City or Port, and

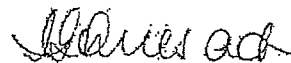
are necessary or advisable to complete the transactions that the Project Documents contemplate and effectuate the purpose and intent of this resolution, such determination to be conclusively evidenced by the execution and delivery by the Executive Director of such reciprocal easement agreements, easement agreements, and other covenants and property documents, additions, amendments or other modifications to the Project Documents; and be it further

RESOLVED, That the Port Commission authorizes the Executive Director and any other appropriate officers, agents or employees of the City to take any and all steps (including if necessary, obtaining Board of Supervisors approval and the execution and delivery of any and all applications, recordings, maps, certificates, agreements, notices, consents, and other instruments or documents) as they or any of them deems necessary or appropriate, in consultation with the City Attorney, in order to consummate the (i) dedication of Jackson Commons as a public right-of-way for parks and open space use only, (ii) widening of the sidewalk along the west side of The Embarcadero, immediately south of Pacific Park and fronting a portion of the east side of the newly built fitness and health club; and (iii) all or partial dedication of Pacific Park as a public right-of-way for parks and open space use only; and be it further

RESOLVED, That the Port Commission authorizes the Executive Director and any other appropriate officers, agents or employees of the City to take any and all steps (including the execution and delivery of any and all certificates, agreements, notices, consents, escrow instructions, closing documents and other instruments or documents) as they or any of them deems necessary or appropriate, in consultation with the City Attorney, in order to consummate the transactions contemplated under the Project Documents, in accordance with this resolution, or to otherwise effectuate the purpose and intent of this resolution, such determination to be conclusively evidenced by the execution and delivery by any such person or persons of any such documents; and be it further

RESOLVED, That the Port Commission approves, confirms and ratifies all prior actions taken by the officials, employees and agents of the Port Commission or the City with respect to the Project Documents.

***I hereby certify that the foregoing resolution was adopted by the Port Commission at its meeting of May 29, 2012.***



Secretary



**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SAN FRANCISCO**

**Document Scanning Lead Sheet**

Jul-20-2012 4:25 pm

Case Number: CPF-12-512355

Filing Date: Jul-20-2012 4:19

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PETITION FOR WRIT OF MANDATE/ PROHIBITION/  
CERTIFICATION

FERRY BUILDING INVESTORS, LLC VS. SAN FRANCISCO PORT OF  
COMMISSION

001C03694784

**Instructions:**

Please place this sheet on top of the document to be scanned.

ORIGINAL

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6 Attorneys for Petitioners  
7 FERRY BUILDING INVESTORS, LLC and  
8 FERRY BUILDING ASSOCIATES, LLC

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 CITY AND COUNTY OF SAN FRANCISCO

11 FERRY BUILDING INVESTORS, LLC and  
12 FERRY BUILDING ASSOCIATES, LLC,

13 Petitioners,

14 v.

15 SAN FRANCISCO PORT COMMISSION; CITY  
16 AND COUNTY OF SAN FRANCISCO; BOARD  
17 OF SUPERVISORS OF THE CITY AND  
18 COUNTY OF SAN FRANCISCO; and  
19 DOES 1-50, inclusive,

20 Respondents.

21 PACIFIC WATERFRONT PARTNERS, LLC,  
22 and SAN FRANCISCO WATERFRONT  
23 PARTNERS II LLC,

24 Real Parties in Interest.

**FILED**  
Superior Court of California  
County of San Francisco

JUL 20 2012

CLERK OF THE COURT  
BY: [Signature]  
Deputy Clerk

Case No. **CPF - 12 - 512355**

UNLIMITED JURISDICTION

**VERIFIED PETITION FOR WRIT  
OF MANDATE AND  
ADMINISTRATIVE MANDATE**

[CALIFORNIA ENVIRONMENTAL  
QUALITY ACT - CEQA CASE]

25 Petitioners FERRY BUILDING INVESTORS, LLC and FERRY BUILDING  
26 ASSOCIATES, LLC (collectively, "EOP" or "Petitioners") hereby petition for a peremptory writ  
27 of mandate pursuant to California Code of Civil Procedure sections 1085 and/or 1094.5, and  
28 California Public Resources Code sections 21168 and 21268.5, directing Respondents SAN  
FRANCISCO PORT COMMISSION, CITY AND COUNTY OF SAN FRANCISCO; and  
BOARD OF SUPERVISORS OF THE CITY AND COUNTY OF SAN FRANCISCO

(collectively "City") to set aside the City's approvals of the 8 Washington/Seawall Lot 351 Project ("Project") and certification of the Environmental Impact Report ("EIR") for the Project.

By this verified petition, Petitioners allege as follows:

#### **I. INTRODUCTION**

1. This action challenges violations of the California Environmental Quality Act ("CEQA"), Cal. Pub. Res. Code §§ 21000 *et seq.*, and its implementing guidelines ("CEQA Guidelines"), Cal. Code Regs. tit. 14, §§ 15000 *et seq.*, and the City's Administrative Code's CEQA procedures committed by Respondent CITY AND COUNTY OF SAN FRANCISCO, through actions, determinations and decisions of SAN FRANCISCO PORT COMMISSION and BOARD OF SUPERVISORS OF THE CITY AND COUNTY OF SAN FRANCISCO in certifying an Environmental Impact Report ("EIR") and issuing related project approvals for the 8 Washington/Seawall Lot 351 Project ("Project"). The City's violations of CEQA's most basic requirements constitute a prejudicial abuse of discretion that requires this Court to rescind the City's approvals of the Project.

2. As explained in greater detail below, the EIR was prepared in a manner contrary to CEQA and the City's Administrative Code and fails to satisfy the requirements of those laws in content. Among other deficiencies, the EIR failed to describe essential facts necessary to establish accurately the setting of the Project; lacked a stable and consistent project description; failed to provide adequate facts to support critical conclusions contained in the EIR; relied on inaccurate and outdated data; omitted consideration of legitimate alternatives to the Project that would reduce substantially or eliminate potentially significant environmental effects; understated substantially the potential impacts of the Project; and failed to identify and recommend adoption of mitigation measures that are feasible and, if adopted, would reduce substantially or eliminate potentially significant environmental effects of the Project. Moreover, the Final EIR also should have been recirculated because it contained substantial new information that was not included in the Draft EIR for the Project. For these reasons, among others, the EIR failed to adequately provide the City and the public with the necessary information for understanding the environmental consequences in deciding whether to approve this Project. As a result, the

1 required analysis for the Project was defective under CEQA and the EIR could not serve as a  
2 lawful basis for any approval or action by the City on the Project.

3 **II. PARTIES**

4 3. Petitioners FERRY BUILDING INVESTORS, LLC and FERRY BUILDING  
5 ASSOCIATES, LLC (collectively, "EOP") each are, and were at all times relevant hereto, limited  
6 liability companies doing business in the State of California. EOP has been and will be directly  
7 and adversely affected by the City's actions in approving the Project and certifying the EIR, and  
8 is a beneficially interested party as the holder of a long-term lease from the City on the San  
9 Francisco Ferry Building and the licensee from the City of Seawall Lot 351, the site of the  
10 Project. EOP has a strong interest in ensuring that development of the area surrounding the Ferry  
11 Building occurs in a manner that accounts for existing and reasonably foreseeable uses. As a  
12 result of its proximity to the Project, EOP has an interest in ensuring that the Project's  
13 environmental impacts are fully considered and actually mitigated to the extent feasible. This  
14 proximity also gives EOP an interest in ensuring that the impacts of the Project are minimized so  
15 that the Project can be developed in a manner that actually works within the context of the City's  
16 waterfront and infrastructure. EOP presented written comments on the Draft EIR, Final EIR and  
17 Project approvals to the City, copies of which are attached hereto at Exhibit A.

18 4. Respondents SAN FRANCISCO PORT COMMISSION, CITY AND COUNTY  
19 OF SAN FRANCISCO, and BOARD OF SUPERVISORS OF THE CITY AND COUNTY OF  
20 SAN FRANCISCO (collectively "City") are, and were at all times relevant hereto, public  
21 agencies that, under the City's Administrative Code section 31.04(a), acted as a single "local  
22 agency," "public agency" and "lead agency" that certified the EIR and approved the Project.

23 5. Real Parties in Interest PACIFIC WATERFRONT PARTNERS LLC and SAN  
24 FRANCISCO WATERFRONT PARTNERS II LLC (collectively "PWP") are, and were at all  
25 times relevant hereto, limited liability companies organized under the laws of Delaware and doing  
26 business in the State of California. PWP is the applicant for the 8 Washington Project.

27 6. Petitioners do not know the true names and capacities of the persons or entities  
28 sued as Respondent DOES 1 through 50, inclusive, and therefore sue these respondents by their



1 fictitious names. Petitioners will amend the Petition to set forth the names and capacities of the  
2 Doe respondents along with appropriate charging allegations when such information has been  
3 ascertained.

### 4 **III. JURISDICTION AND VENUE**

5 7. This Court has jurisdiction to issue a peremptory writ of mandate under either  
6 California Code of Civil Procedure section 1094.5 and California Public Resources Code section  
7 21168; or California Code of Civil Procedure section 1085 and California Public Resources Code  
8 section 21168.5.

9 8. Venue is proper in this Court under California Code of Civil Procedure sections  
10 393, 394 and 395 because the real property affected by Respondents' actions is located in San  
11 Francisco County.

### 12 **IV. LEGAL BACKGROUND**

13 9. CEQA encourages environmental protection by disclosing to decision-makers and  
14 the public the potential environmental effects of proposed projects and alternatives for reducing  
15 such impacts. Cal. Pub. Res. Code §§ 21100-21002; Cal. Code. Regs. tit. 14, §§ 15002(a)(1),  
16 15002(a)(4). As such, courts have repeatedly stated that informed decision-making and public  
17 participation are fundamental purposes of the CEQA process. *See Citizens of Goleta Valley v.*  
18 *Bd. of Supervisors*, 52 Cal. 3d 553 (1990); *Laurel Heights Improvement Ass'n v. Regents of Univ.*  
19 *of Cal.*, 47 Cal. 3d 376 (1988); *No Oil, Inc. v. City of Los Angeles*, 13 Cal. 3d 68 (1974).

20 10. The Environmental Impact Report, or EIR, is the "heart" of CEQA. *County of*  
21 *Inyo v. Yorty*, 32 Cal. App. 3d 795, 810 (1973); *Keep Berkeley Jets Over the Bay Comm. v. Port*  
22 *Comm'rs of Oakland*, 91 Cal. App. 4th 1344, 1355 (2001). The EIR's purpose is "to inform the  
23 public and its responsible officials of the environmental consequences of their decisions before  
24 they are made. Thus, the EIR protects not only the environment but also informed self-  
25 government." *Citizens of Goleta Valley v. Bd. of Supervisors*, 52 Cal. 3d 553, 564 (1990); *Keep*  
26 *Berkeley Jets*, 91 Cal. App. 4th at 1354; Cal. Code. Regs. tit. 14, § 15002(a)(2).

27 11. CEQA places the burden of environmental investigation and the development of  
28 "substantial evidence" on the public agency rather than on the public. Courts will set aside an

1 agency's findings that a project will not cause significant environmental impacts if there is not  
2 substantial evidence in the record to support such a finding. *See Sundstrom v. County of*  
3 *Mendocino*, 202 Cal. App. 3d 296, 311 (1988). Accordingly, the "agency should not be allowed  
4 to hide behind its own failure to gather relevant data." *Id.*; *see also City of Redlands v. County of*  
5 *San Bernardino*, 96 Cal. App. 4th 398 (2002).

## 6 V. GENERAL ALLEGATIONS

7 12. From the start, the City and PWP have ignored the most basic procedural and  
8 substantive requirements of CEQA and the City's administrative laws, and refused to involve  
9 essential stakeholders in the planning and development process. In doing so, the City and PWP  
10 have prepared a fatally flawed EIR that does not comply with CEQA or the City's procedural  
11 mandates nor adequately identify and address the environmental impacts of the Project and, thus,  
12 cannot support the City's approvals for the Project.

13 13. The 8 Washington/Seawall Lot 351 Project is a luxury condominium development  
14 proposed to be built on Seawall Lot 351. As previously stated, EOP holds a long-term lease from  
15 the City of the San Francisco on the Ferry Building located across The Embarcadero from the  
16 Project site. As an integral part of the privately funded redevelopment of the Ferry Building, the  
17 City granted exclusive control over Seawall Lot 351 to EOP for dedicated parking to serve the  
18 Ferry Building for the term of that Ferry Building lease, a public trust use.

19 14. On or about March 11, 2011, PWP submitted an Application for the Project.

20 15. On June 15, 2011, the City published the Draft EIR for the Project. The Final EIR  
21 was published on December 22, 2011. EOP and other stakeholders submitted extensive  
22 comments on both documents, identifying numerous procedural and substantive flaws, including,  
23 but not limited to:

- 24 • The Project Description Described a Different Project. The Project had been  
25 substantially reconfigured from that described in the Notice of Preparation and  
26 even in Draft EIR in a number of significant ways, including expansion of some  
27 uses and changes in design and layout. The EIR was required to be revised to  
28

1 identify the actual Project (and its impacts) before the City could certify the EIR  
2 and approve the Project.

- 3 • The Project Description Failed to Identify the Necessary Steps for the City's Use  
4 of Seawall Lot 351 for the Project. The Project Description also failed to  
5 adequately describe the actions that will be required for the City to shift the use of  
6 Seawall Lot 351 from EOP for dedicated parking to serve the Ferry Building to the  
7 Project. The EIR was required to state these requirements, and the City's manner  
8 of satisfying them, in the Project Description and approvals required for the  
9 Project.
- 10 • The Traffic and Parking Data Relied on by the City Were Outdated and  
11 Inadequate. The EIR relied on stale and incomplete data that misrepresented the  
12 conditions in the area today, and, indeed what it has been for the last several years.  
13 The northeastern waterfront had been transformed in recent years with the  
14 introduction of new businesses and the exploding popularity of the Ferry Building  
15 Farmers Market. The EIR based its traffic and parking assumptions on data from  
16 2007, before these changes occurred. Moreover, the chosen evaluation window—  
17 a single Wednesday evening—did not capture the true peak periods for this area  
18 during the Tuesday, Thursday and Saturday daytime Farmers Markets. EOP  
19 submitted a 2011 parking study to the City that demonstrated that parking was  
20 constrained during those times, yet the EIR failed to correct the deficiencies. As a  
21 result, the traffic and parking impacts were vastly understated.
- 22 • The Public Trust Impacts of the Project Should Have Been Properly Identified and  
23 Addressed in the Final EIR. An integral and necessary element of the Project is a  
24 land exchange, the first step of which was the extinguishment by the State Lands  
25 Commission of the public trust designation for Seawall Lot 351. This is a  
26 significant action requiring the approval of both the City and the State Lands  
27 Commission based on several required findings, including the finding that Seawall  
28 Lot 351 was "relatively useless" for public trust purposes and the removal of the

1 public trust designation would not interfere with any other public trust resources.  
2 These findings were not possible for either the City or the State Lands  
3 Commission because Seawall Lot 351 was currently being used (as it had been for  
4 almost ten years) for an important public trust purpose—parking specifically to  
5 serve the Ferry Building. The EIR failed to accurately identify these required  
6 actions or to analyze their environmental, public trust and related social and  
7 historical impacts.

8 • The EIR Ignored Cumulative Impacts from Other Existing and Proposed Projects.

9 The EIR failed to adequately account for the cumulative effects of several major  
10 projects (including, but not limited to, the America's Cup program, the opening of  
11 the Exploratorium and Teatro ZinZanni, and construction at 75 Howard) that will  
12 transform the area in the near future, dramatically increasing the number of  
13 vehicle, bicycle, and pedestrian trips in the area and compounding the traffic and  
14 parking impacts from the Project. Moreover, the EIR did not address how these  
15 projects' construction periods will overlap with the Project, clogging local streets  
16 with an excess of construction vehicles and exacerbating air quality, noise, safety,  
17 and aesthetics impacts.

18 • The Hydro-Geologic Analysis was Conspicuously Deficient. The EIR failed to  
19 adequately address the obvious potential impacts (such as dewatering and seismic  
20 issues) from building a massive parking garage 31 feet below grade, entirely in  
21 Bay fill. The Draft EIR was completely silent on this topic, and the Final EIR  
22 unsuccessfully attempted to "paper over" the gap by referencing three 1-2 page  
23 memoranda from the developer's contractors. The memoranda were conclusory  
24 and failed to provide meaningful information about dewatering, seismic and sea  
25 level rise issues—all critical oversights for a waterfront location.

26 • The EIR Failed to Include Meaningful Alternatives to the Project. Under CEQA,  
27 the City was required to analyze a reasonable range of alternatives that meet a  
28 specified criterion—these alternatives must avoid or substantially lessen the

1 significant environmental effects of the Project. The EIR failed to comply with  
2 this mandate. Other than the No Project Alternative, the EIR did not identify a  
3 single alternative that is intended to, or would, avoid or lessen the any of the  
4 potentially significant impacts that the EIR already identified—much less the other  
5 effects the EIR failed to disclose. As a result, the EIR failed to present to the  
6 public and decision-makers, as CEQA requires, a “reasonable range” of  
7 alternatives that would have served generally the same Project objectives but have  
8 fewer impacts, as CEQA requires.

9 • Significant Adverse Impacts Identified in the EIR Were Left Unmitigated—Even  
10 Though Mitigation Is Feasible. CEQA requires that an EIR identify, and that the  
11 government entity impose, all feasible measures to mitigate significant impacts.  
12 The EIR failed to incorporate all feasible mitigation for three of the Project’s  
13 significant impacts. For example, to mitigate the significant traffic impact at the  
14 intersection of the Embarcadero and Washington Street, the EIR proposed “a basic  
15 Travel Demand Management Plan” that repeated many of the features that are  
16 already part of the Project anyway. To mitigate the significant air quality impact  
17 from exposure to toxic air contaminants, the EIR proposed a ventilation system  
18 that would only operate when the building’s heat is on. Other feasible measures  
19 were rejected *because they would reduce the marketability of the Project*. This  
20 was not only an improper consideration under CEQA, for which “feasibility” is the  
21 standard (not a preference against a possible longer selling period for  
22 condominiums or a smaller profit to the developer), but also was unsubstantiated  
23 by any credible evidence. Finally, to mitigate the significant sea level rise impact  
24 from exposure to flooding, the EIR proposed an ineffectual Emergency Plan to be  
25 administered by the building manager, rather than consider widely published  
26 strategies to change the Project’s design and improve its resiliency.

27 • Because of the Numerous Changes to the Project and Analyses of its Impacts since  
28 the Draft EIR, the Final EIR Should Have Been Corrected and Recirculated. The

1 Final EIR (*i.e.*, the Comments and Responses on the Draft EIR) contained a  
2 substantial amount of significant new information—in fact, it was nearly the same  
3 page length as the Draft EIR—and materially altered the information and issues  
4 addressed in the Draft EIR. That alone was sufficient to require recirculation.  
5 Moreover, the data and information submitted by EOP and other stakeholders  
6 identified deficiencies in the Final EIR—including overlooked significant  
7 environmental impacts—that should have been correctly identified and  
8 recirculated to the public before any decision on the Project by the City.

9 16. Despite these and other written and oral objections from EOP and other  
10 stakeholders, on March 22, 2012, the City's Planning Commission certified the EIR for the  
11 Project.

12 17. On March 26, 2012, EOP filed a timely administrative appeal of the Planning  
13 Commission's EIR certification to the City's Board of Supervisors, pursuant to CEQA Guideline  
14 section 15090(b) and City Administrative Code section 31.16. EOP's appeal was consolidated by  
15 the City with the timely appeals of the certification of the EIR and the approval of the Conditional  
16 Use Permit filed by Friends of Golden Gateway.

17 18. On May 15, 2012, the Board of Supervisors heard and denied the appeals of the  
18 Planning Commission's certification of the EIR and approval of the Conditional Use Permit.

19 19. On May 31, 2012, the San Francisco Port Commission adopted motions and  
20 resolutions to (1) adopt findings, a Statement of Overriding Considerations and Mitigation  
21 Monitoring and Reporting Program under CEQA; (2) approve the execution of the following  
22 documents with San Francisco Waterfront Partners: (i) Disposition and Development Agreement,  
23 (ii) Lease No. L-15110, (iii) Purchase and Sale Agreement, (iv) Trust Exchange Agreement, and  
24 (v) Maintenance Agreement; and (3) approve schematic drawings for the development for the  
25 Project, over the written and oral objections of EOP and other stakeholders.

26 20. On June 4, 2012, the Land Use Committee of the Board of Supervisors held a  
27 hearing on the Project and passed out, without recommendation, certain ordinances necessary for  
28

1 the development of the Project, over the written and oral objections of EOP and other  
2 stakeholders.

3 21. On June 6, 2012, the Budget and Finance Subcommittee of the Board of  
4 Supervisors held a hearing on the Project and passed out, without recommendation, certain  
5 agreements necessary for the development of the Project, over the written and oral objections of  
6 EOP and other stakeholders.

7 22. On June 12, 2012, the Board of Supervisors adopted motions and resolutions to  
8 approve and authorize (1) a Purchase and Sale Agreement, (2) a Trust Exchange Agreement,  
9 (3) Lease No. L-15110; (4) a Maintenance Agreement; (5) an ordinance to amend Sheet HT01 of  
10 the Zoning Map of the City and County of San Francisco; and (6) an ordinance to amend the San  
11 Francisco General Plan Map 2 of the Northeastern Waterfront Area Plan, as well as the adoption  
12 of certain related findings and authorizations, over the written objections of EOP.

13 23. On June 22, 2012, the San Francisco City Clerk posted the City's CEQA Notice of  
14 Determination ("NOD") for the Project, a copy of which is attached as Exhibit B to this Petition.

15 **VI. EXHAUSTION OF ADMINISTRATIVE REMEDIES**

16 24. Petitioners have performed all conditions precedent to the filing of this petition by  
17 raising its objections before the City and by exhausting all of its available administrative  
18 remedies. Petitioners, interested groups and individuals made oral and written comments on the  
19 EIR and the Conditional Use Permit, and related Project approvals, and raised each of the legal  
20 deficiencies asserted in this Petition. Copies of Petitioners' comment letters on the EIR provided  
21 to the City are attached as Exhibit A.

22 25. Petitioners have no plain, speedy and adequate remedy in the ordinary course of  
23 law, other than the relief sought in this petition.

24 26. Petitioners have requested that the City provide a true and correct copy of the  
25 administrative record to Petitioners. A copy of this request is attached as Exhibit C.

26 Accordingly, a true and correct copy of the record will be lodged with the court before the  
27 hearing date on the peremptory writ of mandate.  
28

1 **VII. NOTICE OF COMMENCEMENT OF CEQA PROCEEDING**

2 27. Petitioners have performed all conditions precedent to filing this action by  
3 complying with the requirements of California Public Resources Code section 21167.5 by serving  
4 prior notice of the petition in this action. A copy of the written notice and proof of service is  
5 attached as **Exhibit D** to the Petition in this action.

6 28. Petitioners will provide notice of this action to the Attorney General of the State of  
7 California, by serving a copy of this Petition along with a notice of filing, as required by  
8 California Public Resources Code section 21167.7 and California Code of Civil Procedure section  
9 338.

10 **PETITION FOR WRIT OF MANDATE**

11 **Writ of Mandate for Violation of State and Local CEQA Requirements**

12 **(Cal. Pub. Res. Code §§ 21000 *et seq.*, Cal. Code Regs. tit. 14, §§ 15000 *et seq.*,  
13 City Administrative Code Chapter 31)**

14 29. Petitioners incorporate by reference the allegations set forth in paragraphs 1  
15 through 28, above.

16 30. Petitioners state this claim under California Code of Civil Procedure section 1085  
17 and California Public Resources Code section 21168.5, or, in the alternative, under California  
18 Code of Civil Procedure section 1094.5 and California Public Resources Code section 21168; and  
19 the City's Administrative Code.

20 31. The City prejudicially abused its discretion and failed to proceed in a manner  
21 required by law by approving the Project in reliance on the EIR, despite substantial evidence of  
22 unaddressed or unidentified environmental impacts, numerous identified deficiencies in the EIR  
23 and multiple failures to comply with the procedural mandates of CEQA and City's Administrative  
24 Code.

25 32. The City violated CEQA and the City's Administrative Code for each and every  
26 reason stated in Petitioner's written and oral objections to the EIR and Project approvals, which  
27 are hereby incorporated by reference as if set forth in full. Among other deficiencies, the EIR  
28 failed to describe essential facts necessary to establish accurately and fully the setting of the



1 Project; lacked a stable and consistent project description; failed to provide adequate facts to  
2 support critical conclusions contained in the EIR; relied on inaccurate and outdated data; omitted  
3 consideration of legitimate alternatives to the Project that would reduce substantially or eliminate  
4 potentially significant environmental effects; understated substantially the potential impacts of the  
5 Project; and failed to identify and recommend adoption of mitigation measures that are feasible  
6 and, if adopted, would have reduced substantially or eliminated potentially significant  
7 environmental effects of the Project. As a result, the EIR's content and the required analysis for  
8 the Project were defective under the substantive requirements of CEQA and the City's  
9 Administrative Code.

10 33. In certifying the EIR and approving the Project, the City also violated the  
11 procedural requirements of CEQA and the City's Administrative Code. The Final EIR was  
12 required to be recirculated because it contained substantial new information that was not included  
13 in the Draft EIR and not provided to the public and decision-makers before the City approved the  
14 Project.

15 34. As a result of these foregoing defects, the City prejudicially abused its discretion,  
16 by violating the procedural and substantive requirements of CEQA, the CEQA Guidelines and the  
17 City's own CEQA Administrative Procedures in certifying the EIR and approving the Project. As  
18 such, the City's certification of the EIR and its approval of the Project in reliance on the EIR are  
19 invalid as a matter of law and must be set aside.

#### 20 PRAYER FOR RELIEF

21 WHEREFORE, Petitioners respectfully pray for judgment as follows:

- 22 1. For alternative and peremptory writs of mandate directing the City to vacate and  
23 set aside its certification of the EIR and the Project Approvals;
- 24 2. For alternative and peremptory writs of mandate directing the City to comply with  
25 CEQA;
- 26 3. For a stay and/or injunctive relief restraining the City and its agents, servants, and  
27 employees, and all others acting in concert with the City or on its behalf, including  
28 Real-Parties-in-Interest, from issuing any grading, building, or other permits or

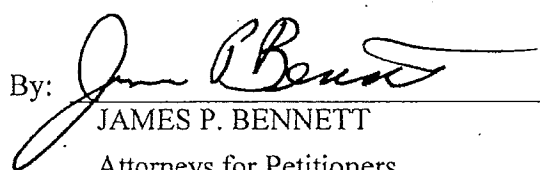
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approvals, permitting or undertaking any construction, or taking any other action to implement the Project in any way pending full compliance with the requirements of CEQA;

- 4. For costs of the suit herein and reasonable attorneys' fees as allowed by law; and
- 5. For such other and further relief as the Court deems just and reasonable.

Dated: July 20, 2012

MORRISON & FOERSTER LLP

By:   
JAMES P. BENNETT  
Attorneys for Petitioners  
FERRY BUILDING INVESTORS, LLC and  
FERRY BUILDING ASSOCIATES, LLC

1  
2  
3 VERIFICATION

4 I, Eric Luhrs, declare as follows:

5 I am the Vice President – Portfolio Management of EQUITY OFFICE MANAGEMENT,  
6 L.L.C., the non-member manager of EOM GP, L.L.C., the general partner of CA-FERRY  
7 BUILDING INVESTOR LIMITED PARTNERSHIP, the managing member of FERRY  
8 BUILDING INVESTORS, LLC and FERRY BUILDING ASSOCIATES, LLC, the Petitioners  
9 herein, and I am authorized to make this verification on their behalf.

10 I have read the foregoing Verified Petition for Peremptory Writ of Mandate and  
11 Administrative Mandate, and know the contents thereof. The same is true of my own knowledge,  
12 except as to those matters that are therein stated on information and belief, and, as to those  
13 matters, I believe them to be true.

14 I declare under penalty of perjury under the laws of the State of California that the  
15 foregoing is true and correct.

16 Executed on July 19, 2012, at San Mateo, CA

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**TABLE OF EXHIBITS**

Exhibit A ..... Equity Office Properties comment letters re:  
1. Draft EIR (August 15, 2012)  
2. Final EIR (March 20, 2012)  
3. Final approval by Board of Supervisors (June 11, 2012)

Exhibit B ..... Notice of Determination issued by the City and County of  
San Francisco (June 22, 2012)

Exhibit C ..... Petitioners' Request for Preparation of the Administrative Record

Exhibit D ..... Petitioners; Notice of Intent to File CEQA Petition (with proof of  
service)

# Exhibit A

**Exhibit A**

August 15, 2011

Writer's Direct Contact  
415.268.7145  
ZGresham@mofo.com

Via Hand Delivery and U.S. Mail

Bill Wycko, Environmental Review Officer  
San Francisco Planning Department  
1650 Mission Street, Suite 400  
San Francisco, CA 94103

Re: Comments on the Draft Environmental Impact Report for the 8 Washington Street /  
Seawall Lot 351 Project

Dear Mr. Wycko:

Equity Office Properties (EOP) submits these comments on the Draft Environmental Impact Report (DEIR) for the 8 Washington Street / Seawall Lot 351 Project (Project).

EOP holds a long-term lease from the City and County of San Francisco (City)<sup>1</sup> on the San Francisco Ferry Building and is the licensee from the City for the term of that lease of Seawall Lot 351 for parking to serve the Ferry Building. Accordingly, EOP has a strong interest in ensuring that development of the area surrounding the Ferry Building occurs in a manner that accounts for existing and reasonably foreseeable uses. The first step is any such development is adequate review under the California Environmental Quality Act (CEQA). Unfortunately, after a close review of the DEIR, it is clear that the Project as designed, and the City's environmental review of the Project in the DEIR, is flawed. The DEIR fails to describe essential facts necessary to establish the setting of the Project, it fails to provide a factual basis for critical conclusions contained in the DEIR, it relies on inaccurate and outdated data, and it understates substantially the potential impacts of the Project.

At this time, EOP does not take a position on the Project itself. The deficiencies of the DEIR are such that no sensible conclusions properly may be drawn from that document. Indeed, pursuant to CEQA, before it may proceed, the City must correct the many material deficiencies in the DEIR. Because such deficiencies are so substantial, the City must recirculate the corrected document as a new draft environmental impact report, so that the

<sup>1</sup> The City acts administratively through subdivisions of the City, such as the Port of San Francisco, the Department of Parking and Traffic and the Recreation and Park Department. All such actions are, of course, actions of the City. Accordingly, although these comments sometimes refer to the various departments of the City, those references all are to the City and County of San Francisco.

Bill Wycko, Environmental Review Officer

August 15, 2011

Page Two

public, will have the meaningful opportunity to review the Project's potential environmental impacts as CEQA requires.

We begin with some crucial facts. For ten years, EOP has been the steward of the Ferry Building and has transformed it into the "jewel of the San Francisco waterfront." Parking is critical to the Ferry Building's success. Not only does the Ferry Building serve local residents, it is a major draw to the City and a major tourist destination for out-of-town visitors who drive into the City. Many patrons who shop at the one-of-a-kind retailers and the Farmers Market must park near the Ferry Building. Other patrons, including those with mobility challenges, are able to visit the Ferry Building only if accessible parking is available nearby.

From the outset, both the City and EOP recognized that adequate parking was essential to make the renovation of the Ferry Building successful. That is why, when EOP entered into the ground lease for the Ferry Building, EOP and the City entered into a Parking Agreement, to assure long-term parking for Ferry Building tenants and patrons through the expiration of the ground lease in 2066.

The Parking Agreement as amended to date grants EOP the exclusive rights to control the entirety of Seawall Lot 351 for Ferry Building parking, while reserving ten unassigned spaces for parking Port vehicles and visitors. The Parking Agreement provided about 70 additional spaces on Pier 1/2, but in 2008 the Port took those away from EOP when the City closed that Pier for safety reasons. As a result, Seawall Lot 351 is now the most highly used parking area for Ferry Building tenants and patrons due to (1) its close proximity to the Ferry Building, (2) the availability of parking validation, and (3) its easy access and visibility directly off The Embarcadero.

Under the Parking Agreement, as a condition to any redevelopment of Seawall Lot 351, the City must provide to EOP parking equal to that currently located on Seawall Lot 351, both short and long term. If the City meets that condition, the City may develop Seawall Lot 351 as a parking facility to serve the Ferry Building area. The Port's ability to take away the Ferry Building parking at Seawall Lot 351 from EOP is conditioned explicitly on the provision to EOP of equal parking, both temporary and permanent. Despite this clear contractual obligation, the Project fails to meet these criteria.

Because the DEIR's analysis of the area's parking and traffic is so flawed, EOP engaged Arup, the global engineering and consulting firm, to conduct an independent assessment of the area's parking and access supply and demand. *San Francisco Ferry Building Comprehensive Access and Parking Study*, Arup (August 2011) (Arup Report). As the Arup Report confirms, the DEIR grossly underestimates the area's parking demand and supply. Highlights of the Arup Report are discussed below, and the full report is attached to this letter as Exhibit A.

Bill Wycko, Environmental Review Officer  
August 15, 2011  
Page Three

### The DEIR Fails to Comply with CEQA

#### **A. The DEIR Fails to Accurately Describe and Account for Parking Agreement's Restrictions on Development of Seawall Lot 351**

An accurate project description enables the public to understand the full scope of the project and its potential effects on the environment. "A curtailed or distorted project description may stultify the objectives of the reporting process. Only through an accurate view of the project may affected outsiders and public decision-makers balance the proposal's benefit against its environmental cost, consider mitigation measures, assess the advantage of terminating the proposal . . . and weigh other alternatives in the balance. An accurate, stable and finite project description is the *sine qua non* of an informative and legally sufficient EIR." *County of Inyo v. City of Los Angeles*, 71 Cal. App. 3d 185, 192-93 (App. Ct. 1977).

1. The Project Description does not accurately state the facts about Seawall Lot 351, the Parking Agreement, the rights of EOP, and the obligations of the Port. The Environmental Setting correctly acknowledges that "The entire Seawall Lot 351 is controlled by the ground lessee of the Ferry Building pursuant to a Parking Agreement with the Port, in satisfaction of parking rights granted to the ground lessee." DEIR at IV.A.2. In other words, EOP has the *exclusive right to control* the entire Seawall Lot 351. Under the Parking Agreement, the Port may develop Seawall Lot 351 as a parking facility to serve the Ferry Building area only if the Port provides to EOP equal parking, both temporary and permanent. Development of Seawall Lot 351 is thus restricted until the Port satisfies its contractual obligations to EOP.

Despite EOP's exclusive right to control, the Project Description states that the proposed parking will include "90 spaces required to serve the Ferry Building waterfront area . . . with no access restrictions." DEIR at II.17. Unrestricted public parking that is *available* to waterfront visitors does not satisfy EOP's *exclusive right to control* the parking for the Ferry Building. Thus, the Port has not met its obligations under the Parking Agreement to provide to EOP equal replacement parking and violates the contractual restrictions on development of Seawall Lot 351.

2. The DEIR also fails to account for the requirement that the Port provide EOP with temporary replacement parking during construction of the Project. Although this equal replacement parking must be within close proximity to the Ferry Building, as specified in the Parking Agreement, the DEIR is silent on how this parking will be provided. The provision of temporary parking is a part of development of Seawall Lot 351 and under CEQA must be included in the Project Description. Impacts to traffic flow, parking, air quality, safety, and noise that could result from the designation of a new parking area to satisfy the Port's obligation must be evaluated in the DEIR.



Bill Wycko, Environmental Review Officer

August 15, 2011

Page Four

3. It is telling that the Authors and Persons Consulted includes the Port as "Property Owner, Seawall Lot 351," but EOP was not consulted as the long-term licensee with exclusive control of the property. See DEIR at VII.3. EOP must be consulted when the DEIR is revised and recirculated.

4. The Project Description on page II.20 states that an objective of the Project is "To increase the supply of public underground parking to support the continued economic viability of the Ferry Building Farmers Market and the retail and restaurant uses at the Ferry Building, Pier 1 and Piers 1½ - 5."

The proposed Project is inconsistent with this goal because it would negatively impact the economic viability of the Ferry Building. The Project would remove one of the most highly used parking areas and replace it with a public garage that would not be accessible or visible from The Embarcadero, would increase walking time, and would not provide validation services. These are significant deterrents for Ferry Building tenants and patrons, leading to decreased use of the Ferry Building and decreased economic viability.

5. The Project Description on page II.22 states that the Port's objectives for the Project include avoiding parking access from The Embarcadero, encouraging pedestrian flow from the Ferry Building through location of parking, including no fewer than 90 parking spaces for visitors to the Ferry Building waterfront area, and operating parking in a manner to optimize utilization.

The proposed Project is inconsistent with these goals, which themselves are contradictory. First, it is not possible to remove parking access from The Embarcadero and simultaneously to encourage pedestrian flow from the Ferry Building, which is located on the other side of the Embarcadero from the Project. The location of the entrance to the proposed parking will discourage pedestrian flow. Second, the proposed parking garage does not include "90 spaces for Ferry Building visitors" because the spaces have not been provided to EOP for its exclusive management and control, which is required under the terms of the Parking Agreement. Third, to optimize utilization of parking at Seawall Lot 351, the parking must be accessible to the Ferry Building and the current validation services must be continued. Neither of those characteristics are present in the proposed Project.

6. The Project Description on page II.23 omits from the list of Required Approvals the Port's obligation under the Parking Agreement to provide to EOP temporary and permanent replacement spaces equal to those currently controlled by EOP on Seawall Lot 351 through the expiration of our ground lease and Parking Agreement in 2066. The Port must satisfy these obligations before any disturbance of EOP's rights to Seawall Lot 351.

Bill Wycko, Environmental Review Officer  
August 15, 2011  
Page Five

**B. The DEIR Underestimates Transportation and Parking Impacts Because It Relies on an Unreasonably Narrow and Outdated Data Set**

The most glaring omissions and inadequacies are in the DEIR's analysis of transportation and parking impacts. CEQA requires that an EIR provide sufficient analysis and detail about the proposed project and its potential environmental impacts to enable informed decision-making by the agency and informed participation by the public. See CEQA Guidelines § 15151; *Kings County Farm Bureau v. City of Hanford*, 221 Cal. App. 3d 692 (Ct. App. 1990). An EIR must contain facts and analysis, not just an agency's bare conclusions. *Citizens of Goleta Valley v. Bd. of Supervisors*, 52 Cal. 3d 553, 568 (1990).

1. The analysis in the DEIR is based on outdated information that does not reflect current conditions. "[U]sing scientifically outdated information" in a DEIR does not constitute "a reasoned and good faith effort to inform decision makers and the public" about the effects of a project. *Berkeley Keep Jets Over the Bay Committee v. Bd. of Port Commissioners*, 91 Cal. App. 4th 1344, 1367 (2001). This is particularly so when updated information was reasonably available.

Most significantly, although the Project is proposed for a congested area that has undergone significant changes in use in recent years, the intersection operating conditions were evaluated based on a *single PM peak period during a single Wednesday in 2007*<sup>2</sup>. The DEIR claims that this period was chosen because it "represents the time of maximum utilization of the transportation system in San Francisco" and because travel demand for the Project would be higher during the PM period. DEIR at IV.D.5. Upon a closer look, it is clear that this single day evaluation was hardly representative of peak traffic then, much less now.

The parking analysis similarly took an extremely narrow approach to gathering data. The DEIR purports to establish existing parking conditions using *surveys conducted in 2006 and 2007 for the midday (1:00 p.m. to 3:00 p.m.) and evening (6:30 p.m. to 8:00 p.m.) periods*. See 8 Washington St./SWL 351 Transportation Study Final Report (May 25, 2011) at 33, 36. Despite the popularity of the weekend Farmers Market and its parking challenges, no surveys were conducted for the morning or weekend periods.

Further, the proposed Project trip generation and trip distribution are based on data from the 2000 U.S. Census, rather than current information from the 2010 U.S. Census. See DEIR at IV.D.20, IV.D.21. The DEIR does not explain why 10 year old data was used instead of the most current information.

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<sup>2</sup> The DEIR indicates that data was collected on either May 30, 2007 or September 19, 2007. DEIR at IV.D.5. The discrepancy is not explained; however, both dates are Wednesdays.

Bill Wycko, Environmental Review Officer

August 15, 2011

Page Six

Despite being based on data from 2007 and earlier, the DEIR claims that these data reflect "current conditions." These outdated data, at best, provide a snapshot of the parking and traffic situation of over four years ago and thus cannot accurately represent the baseline for judging the Project's impacts. More specifically, the data are flawed for the reasons set forth below.

a. First, the parking and traffic analysis in the DEIR is fatally flawed for utilizing such a limited evaluation window based on generalizations about citywide transportation patterns. Rather, the DEIR must evaluate data that accurately represent transportation usage for the specific site. Only then can the public evaluate the incremental effects of the Project.

b. Second, the DEIR provides no evidence to support its claim that "given the proposed uses of the Project, its travel demand would be higher during the PM peak period than during the AM peak commute period." See DEIR at IV.D.5. The DEIR appears to treat the Project as a simple residential development, failing to recognize its diverse uses including recreational, restaurant, and retail that will draw visitors during various hours.

c. Third, there have been significant changes in the area since 2006-2007 that have resulted in changes to the transportation and parking. At the time the data were collected, the Ferry Building Farmers Market had just begun to gain popularity. Since 2007, its popularity as an attraction has continued to grow, as evidenced by an overall growth in vendor and restaurant surcharges collected since 2007 for both the Saturday and Tuesday markets. The Farmers Market now draws nearly 25,000 visitors to the area, many via automobile. In addition, numerous notable new businesses have opened in the area since 2007, including: Hotel Vitale, One Market, Water Bar, Epic Roasthouse, La Mar, La Fitte and Plant Café. In summer of 2013, the Exploratorium will be completed, further transforming the area. The additional employee and customer trips and parking needs for the Farmers Market and these nearby businesses must be accounted for in the "current conditions." Failing to include them renders the DEIR's analysis flawed and misleading.

d. Fourth, the DEIR only evaluates a single Wednesday evening for traffic and it only evaluates weekday afternoons and evenings for parking, failing to account for other times of peak utilization of the transportation system in this uniquely situated area near the Ferry Building Marketplace. The Farmers Market is held on Tuesdays and Thursdays from 10:00 a.m. to 2:00 p.m. and on Saturdays from 8:00 a.m. to 2:00 p.m. As the Arup Report confirms, as well as confirmed by various tenants, Saturdays are significantly busier than other days, and parking is highly constrained. Wednesday evening traffic data and weekday afternoon/evening parking data do not account for the tens of thousands of Ferry Building visitors who come to this area during other days of the week and particularly during earlier hours which are the true "peak periods" for this area. Indeed, a lack of adequate convenient parking is a common complaint visitors have about the Farmers Market. According to a

Bill Wycko, Environmental Review Officer  
August 15, 2011  
Page Seven

survey conducted of Farmers Market patrons, 53% indicated there is not enough parking near the Farmers Market. During that survey, patrons voiced a host of concerns relating to parking and transportation, as can be seen in Exhibit B, which contains a sampling of parking related complaints. Exhibit C contains a few sample emails complaining about a lack of parking. Despite the unique and well known parking demand associated with the Farmers Market, the DEIR's traffic and parking analysis failed to conduct surveys during this congested and parking constrained time. Failing to do so underestimates parking impacts.

The exclusion in the DEIR of current traffic and parking data for weekday mornings and weekends is simply unjustifiable, as these are well known peak periods for the area surrounding the Ferry Building. Because this area is uniquely situated, the DEIR should evaluate weekday AM data on a Farmers Market day as well as weekend AM data.

e. Buried in a footnote, the DEIR makes the vague statement that "traffic counts conducted on The Embarcadero within the past year for a transportation study at Piers 27/29 (James R. Herman Cruise Terminal project) indicate that recent traffic volumes are lower than those observed in 2007." See DEIR at IV.D.5 n. 2. The Transportation Study underlying the DEIR (see Comment No. B.13 below) states that these traffic counts were conducted "within the past couple of years." These statements – one in a footnote and one in a separate study – are not supported by any data whatsoever. The DEIR does not include the traffic counts themselves nor any of the details, such as the dates, times, and locations of the counts. Without such data, traffic counts for a completely separate project that is not located within the vicinity of this Project are irrelevant and these statements are misleading.

2. In some situations, it may be appropriate to establish the environmental baseline at the time the Notice of Preparation (NOP) is issued, which in this case would be 2007. This is entirely appropriate where, as is typical, the environmental analysis contained in an EIR commences immediately after the NOP is issued. But here, the NOP was published in 2007, an application for a revised Project was submitted on July 27, 2010, and the DEIR was issued on June 15, 2011. In order to serve CEQA's goals of informed decision making and public participation, the DEIR must include updated data, which is particularly important here where well known changes have occurred in the area since 2007. As described above, the extraordinary increase in popularity of the Farmers Market, the addition of new nearby businesses, and the loss of other parking areas such as Pier ½ all contribute to a very different set of "current conditions" than those that existed in 2007. The analysis in the DEIR must be updated to account for current conditions and impacts must be measured by this new baseline.

3. Because the DEIR does not use accurate data for the current conditions, Impact TR-1 underestimates the incremental impacts of the Project on the baseline. The "Existing Plus Project Conditions" scenario must be reevaluated to account for current congestion at the

Bill Wycko, Environmental Review Officer  
August 15, 2011  
Page Eight

study intersections. Further, Impact TR-1 must evaluate additional scenarios beyond the Wednesday PM peak hour, including weekday AM and weekend AM scenarios.

4. For similar reasons, the DEIR's reliance on pedestrian and bicycle counts from the PM peak period of a single Wednesday in 2007 is insufficient. *See* DEIR at IV.D.12. Pedestrian and bicycle traffic has increased significantly on a citywide basis since 2007, and likely even more so in the Project area with the success of the Farmers Market and other businesses in the area. According to the most recent data collected by the San Francisco Municipal Transportation Agency, between 2006 and 2010, the City saw a 58% increase in the number of bicyclists. In that same time period, the SFMTA measured a 233% increase in bicyclists along The Embarcadero by the Ferry Building. San Francisco Municipal Transportation Agency, *City of San Francisco 2010 Bicycle Count Report*, Nov. 2010, at 3, 8. As a result of using this outdated information, the discussion in TR-3 and TR-4 grossly underestimates the incremental impacts of the Project on bicycle and pedestrian safety.

5. The DEIR's evaluation of pedestrian, bicycle, and vehicular conflicts is inadequate. Impact TR-3 concludes that pedestrian conflicts would be minimal because "The numbers of vehicles and pedestrians per minute are relatively small (about one vehicle and three pedestrians every 30 seconds on average) . . . ." DEIR at IV.D.25. Similarly, Impact TR-4 concludes that vehicular and bicycle traffic at the garage entrance "would be relatively small . . . ." DEIR at IV.D.27. No basis is provided for the judgment that these numbers are "relatively small." Thus, there are insufficient facts to support a determination of less-than-significant for these impacts.

6. The DEIR fails to evaluate pedestrian, bicycle, and vehicular conflicts in other areas that will be exacerbated by the proposed Project. The DEIR only evaluates conflicts at the entrance to the garage. However, such conflicts are common along The Embarcadero, where many modes of transportation intersect. Residents and patrons of the Project who will undoubtedly cross or travel along The Embarcadero will increase these conflicts. The DEIR must evaluate these safety impacts based on real, current conditions and at meaningful locations, not just at the proposed garage entry.

7. As is explained more fully in the attached Arup Report, the demand analysis of the sufficiency of the parking for the proposed Project itself is inadequate. Most significantly, the parking occupancy data is significantly out of date. In particular, the DEIR relies on the 2008 *Ferry Building Area Parking Evaluation Study* for which data was collected in 2006 and 2007. That study also relies on previous surveys from 2005 and earlier. Based on this data, existing parking conditions in the waterfront area cannot be ascertained and the data cannot be used in any scientifically valid way to make findings regarding Project impacts on parking supply or demand.

Bill Wycko, Environmental Review Officer  
August 15, 2011  
Page Nine

8. Not only is this approach inadequate, more recent data was available. As part of the City's *SFpark* project, for which the City received a \$19.8 million grant from the U.S. Department of Transportation's Urban Partnership Program, the San Francisco Municipal Transportation Agency undertook an extensive census of city-wide parking supply and availability, a study it has referred to as "the first of its kind in the country."<sup>3</sup> Further, many of the meters in the vicinity of the Project are currently installed with sensors as part of the *SFpark* project, so accurate and recent data is readily available for the demand for those spaces. In addition, a key purpose of the *SFpark* project is to influence parking behavior by both giving drivers more information about available spaces and using demand-responsive pricing to redistribute parking demand. As a result of the *SFpark* project, parking behavior has and will continue to change, yet the DEIR fails to mention the program and assess how it will impact parking and traffic patterns.

9. The DEIR does not provide adequate information about the management, control, and long-term dedication of the new parking to allow reasonable analysis.

10. The analysis for Impact TR-5 finds that parking impacts will be less-than-significant based in part on the incorrect statement that the existing spaces at Seawall Lot 351 "would be relocated within the parking garage as part of the proposed project." As discussed above, the parking garage would have different access, visibility, walking time, and validation service, making the garage an unequal substitute for the Seawall Lot 351 parking spaces. Because the parking garage does not provide equal replacement spaces for the loss of Seawall Lot 351 under the terms of the Parking Agreement, the DEIR cannot assume that parking impacts from said "relocation" will be less-than-significant.

11. Impact TR-5 incorrectly concludes that because there is no parking shortfall, there will be no impacts to traffic congestion, air quality, safety, and noise caused by increased circling for parking. A parking shortfall is not the only cause of such impacts. The proposed parking garage would be accessible from Drumm Street, a change from Seawall Lot 351's current access off The Embarcadero. The change in access and visibility of the garage entrance could have impacts to traffic congestion, air quality, and noise from increased circling by Ferry Building visitors as well as safety impacts to visitors who have to walk a farther distance and more complicated route from the parking garage entrance to the Ferry Building. The DEIR must evaluate these impacts.

12. All of these impacts are compounded by the recent loss of other parking areas in the Ferry Building vicinity, including Pier ½ and the Muni turnaround area, as well as proposed projects such as the Downtown Ferry Terminal Expansion and the eventual closure of Pier 3 which threaten to displace more parking. The temporary Zip Line also further constrains parking. There have also been changes to parking provided for farmers' trucks on Farmers

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<sup>3</sup> For more information about the parking census, see <http://sfpark.org/2010/04/05/parkingcensus/>.

Bill Wycko, Environmental Review Officer  
August 15, 2011  
Page Ten

Market days, including shifting farmer parking from Washington Street to Steuart Street in 2009. The effects caused by cumulative loss of parking in the area are not evaluated in the DEIR.

13. We also note that the transportation and parking analysis in the DEIR is merely a summary of the "8 Washington St./SWL 351 Transportation Study Final Report" prepared by Adavant Consulting on May 25, 2011, but the study itself is not included in the DEIR. See DEIR at IV.D.1 n. 1. The Adavant study is not a general background document; it "contribute[s] directly to the analysis of the problem at hand" and thus is not appropriate for incorporation by reference. See CEQA Guidelines § 15150(f). Because an EIR is an informational document, the Adavant study must be included in the DEIR as an appendix so the public can have a meaningful opportunity to review the analysis underlying the DEIR's conclusions.<sup>4</sup> Since it was not so included, the DEIR as circulated was incomplete under CEQA.

14. The DEIR ignores potential conflicts with the America's Cup, scheduled for 2012-2013, because "These sport activities are generally considered temporary" and thus they will not have a long-term impact on traffic and land use. See DEIR at IV.A.7. The DEIR fails to adequately analyze the traffic impacts that will occur during the two years of races. Changes to traffic flow and parking along the waterfront area could conflict with construction of the Project. These impacts must be evaluated.

15. Because the DEIR's parking and access analysis is so flawed, in order to better understand the current situation and trends with respect to parking and access, EOP engaged Arup which prepared a parking and access study, *San Francisco Ferry Building Comprehensive Access and Parking Study*, which is attached to this letter as Exhibit A. Key findings from the Arup Report include:

- Parking supply is constrained and declining due to redevelopment in the area.
- Parking demand peaks on Saturday, nearly 70% more than peak weekday demand.
- Ferry Building visitors and Farmers Market patrons account for the largest portion of parking demand for both weekday and weekend use.

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<sup>4</sup> Throughout the Transportation section, the DEIR also cites to a May 2011 Wilbur Smith Associates source, a December 2010 Adavant Consulting source, an April 2010 Adavant Consulting source, an April 2010 Wilbur Smith Associates source, an August 2008 Adavant Consulting source, and an October 2007 Wilbur Smith Associates source. These sources also must be provided in an appendix or at least described in sufficient detail so that the reader may undertake a meaningful review and understand how they are related to the analysis and conclusions in the DEIR.

Bill Wycko, Environmental Review Officer  
August 15, 2011  
Page Eleven

- Parking demand is concentrated in AM hours and tapers off considerably in PM hours.
- Parking data in the 2008 *Ferry Building Area Parking Evaluation Study* is outdated and inadequate to determine current parking supply and demand.

As the Arup Study further confirms, the DEIR's analysis is flawed, relies on inaccurate data and underestimates the Project's impacts on parking and circulation. Accordingly, the DEIR must be significantly revised to account for this accurate and up to date information and recirculated for further public review and comment.

**C. The DEIR Fails to Analyze Potential Hydro-Geologic Impacts From the Underground Parking Garage.**

1. The proposed parking garage would be constructed beneath the residential buildings to a depth of 31 feet below grade on land entirely composed of Bay fill. The DEIR is completely silent on the potentially significant impacts from this unprecedented waterfront land use. Potential impacts could include the following:

a. There is no description of the quantity of water that inevitably will seep in around the garage that will need to be pumped out and disposed of properly. The DEIR does not discuss the energy requirements for this type of operation or the related air quality impacts associated with the energy necessary to operate such pumps.

b. Nor does the DEIR identify the recipient waters for the pumped water. If the pumped water, which will likely be contaminated with pollutants from the parking garage and sediment, will be discharged into the Bay, the DEIR must analyze the potential water quality impacts. If the pumped water and sediment will be discharged into the City's already overloaded wastewater system, the DEIR must analyze these impacts as well, particularly during winter storm and high tide conditions. Such discharges may require issuance of a Waste Discharge Requirement from the San Francisco Regional Water Quality Control Board, yet no such permit is listed under the Required Approvals.

c. Sea level rise will exacerbate these impacts by raising the water level around the parking garage and adding more water pressure against the structure and the pumping system. These impacts must be evaluated.

**D. The DEIR Fails to Incorporate All Feasible Mitigation for the Significant and Unavoidable Impacts.**

1. If a project has a significant and unavoidable effect on the environment, the agency may approve the project only upon finding that it has "[e]liminated or substantially lessened



Bill Wycko, Environmental Review Officer  
August 15, 2011  
Page Twelve

all significant effects on the environment where feasible." CEQA Guideline § 15092(b)(2)(A). Thus, a project with significant and unavoidable impacts can only be approved if all feasible mitigation is required of those significant impacts. The DEIR identifies significant and unavoidable impacts relating to air quality and sea level rise, yet it fails to incorporate all feasible mitigation.

a. Impact AQ-7 finds that the Project would expose new (on-site) sensitive receptors to significant levels of PM2.5 and other toxic air contaminants. To reduce this impact, Mitigation M-AQ-7 requires the installation of a ventilation system that will remove 80% of the PM2.5 pollutants, although the impact remains significant and unavoidable. The filtration system required by Mitigation M-AQ-7 is inadequate. The DEIR notes that the system would only be operated when the building's heat is on. Given San Francisco's mild climate, this would likely mean that the ventilation system provides no benefit during a substantial portion of the year. Scientific literature analyzing the filtration for cleaning indoor air suggests that to be effective, a system should include one air exchange per hour of outside air and four air exchanges per hour of recirculated air. See, Fisk, W.J., D. Faulkner, J. Palonen, and O. Seppanen, *Performance and costs of particle air filtration technologies*, INDOOR AIR, 12:223-234 (2002) (attached as Exhibit D). Thus, to be effective, the Project should be required to operate the ventilation system continually, regardless of whether the heat or air conditioning is operating. That same study also noted that high efficiency particulate air (HEPA) filters increase the removal efficiency to 95%, yet Mitigation M-AQ-7 only requires a minimum of 80%. Finally, the Bay Area Air Quality Management District recommends that filtration systems be designed such that air intakes are located away from emission sources, such as major roadways. In addition to filtration, other mitigation options include:

- phasing the residential portion of the project to allow time for the California Air Resources Board diesel regulations to take effect in reducing diesel emissions,
- including tiered plantings between the Project and The Embarcadero to screen emissions,
- requiring that all windows be inoperable, and
- eliminating outdoor decks or patios off individual residences.

To further reduce risks to the residents, Mitigation M-AQ-7 must be revised to require these additional mitigation measures.

b. For the significant and unavoidable impact of sea level rise, the DEIR identifies a single mitigation measure that the project sponsor prepare an emergency plan that consists of the building manager monitoring forecasts of flooding, methods for notifying

Bill Wycko, Environmental Review Officer  
August 15, 2011  
Page Thirteen

residents and businesses of such risks, and preparing evacuation plans. This mitigation measure does virtually nothing to address sea level rise. Sea level rise will occur gradually over many years and will unlikely be a sudden emergency inundation. The 2009 California Climate Adaption Strategy identified strategies agencies should consider for addressing sea level rise when approving new development, including designing coastal structures to be resilient to the impacts of climate change, or so that they can be easily relocated or removed to allow for progressive adaptation to sea level rise. *2009 California Climate Adaption Strategy*, at 74. The Bay Conservation and Development Commission is currently considering amending the Bay Plan to include policies to address sea level rise, including policies that encourage new development to be resilient or adaptable. As discussed further below in Comment No. C.1, the DEIR actually identifies an alternative that would incorporate these concepts of resiliency, yet it is rejected because that alternative would not meet some of the design goals set forth in the Port's RFP for Seawall Lot 351. The DEIR does not state that the alternative is infeasible. The DEIR must include as mitigation requirements to make the Project more resilient to sea level rise, such as those design modifications described in the DEIR at page VI.34.

**E. The DEIR Fails to Analyze SFPUC's New Force Main Project.**

Because the December 2007 Initial Study found that impacts on the City's wastewater system would be less than significant, the DEIR contains no analysis of such impacts. However, as discussed in the RFP for Seawall Lot 351, in June 2008, the San Francisco Public Utility Commission discovered a leak in the North Point force main sewer line that runs along The Embarcadero directly adjacent to the Project. During the leak repairs, SFPUC identified significant deterioration in the force main line and determined that the area needed a new force main. That line bisects Seawall Lot 351 and the Project. Although the Port identified this as an issue that potential developers would be interested in, the DEIR failed to address this new information. This is a particular concern as the underground garage will abut the SFPUC Right-of-Way, resulting in potential construction conflicts. It must also be confirmed that the proximity of the underground garage to the force main line does not pose any seismic safety risks. The DEIR needs to be revised to address this SFPUC force main replacement project and the on-going risks associated with that location of the force main.

**F. The Alternatives Analysis is Inadequate Because the Alternatives Do Not Substantially Lessen Significant Environmental Impacts.**

1. The purpose of the alternatives discussion in an EIR is to identify ways to reduce or avoid significant environmental effects. For this reason, an EIR must focus on alternatives that avoid or substantially lessen a project's significant environmental effects and the alternatives discussed should be ones that offer substantial environmental advantages over the proposed project. Pub. Res. Code § 21002; CEQA Guidelines § 15126.6(a)-(b). The

FILE NO: 120267

MOTION NO.

M12-61

1 [Affirming Certification of Final Environmental Impact Report - 8 Washington Street/Seawall  
2 Lot 351 Project]

3  
4 **Motion affirming the certification by the Planning Commission of the Final**  
5 **Environmental Impact Report for the 8 Washington Street/Seawall Lot 351 Project.**  
6

7 WHEREAS, The proposed project approved by the Planning Commission at 8  
8 Washington Street, located on Assessor's Block 168/Lot 58, Block 171/69, Block 201/Lot 12  
9 and Seawall Lot 351 (which includes Lot 13), would demolish the Golden Gateway Tennis and  
10 Swim Club and an existing surface parking lot on Seawall Lot 351, and construct a new health  
11 club and two residential buildings, ranging from four to twelve stories in height, containing 145  
12 dwelling units, ground-floor retail uses totaling approximately 20,000 square feet, and 400 off-  
13 street parking spaces within the RC-4 zoning district and 84-E height and bulk district (the  
14 "Project"); and

15 WHEREAS, The Planning Department for the City and County of San Francisco (the  
16 "Department") determined that an Environmental Impact Report ("EIR") was required under  
17 the California Environmental Quality Act ("CEQA") for the Project and provided public notice  
18 of that determination by publication in a newspaper of general circulation on December 8,  
19 2007; and

20 WHEREAS, On June 15, 2011, the Department published the Draft Environmental  
21 Impact Report ("DEIR") for the Project (Planning Department Case No. 2007.0030E), filed a  
22 Notice of Completion with the State Secretary of Resources via the State Clearinghouse, and  
23 provided public notice in a newspaper of general circulation of the availability of the DEIR for  
24 public review and comment and of the date and time of the Planning Commission public  
25 hearing on the DEIR; this notice was mailed or otherwise delivered to the Department's list of



1 persons requesting such notice, to adjacent property owners, government agencies and  
2 through the State Clearinghouse, and the date and time of the public hearing were posted  
3 near the Project site; and

4 WHEREAS, The Planning Commission held a duly noticed public hearing on the DEIR  
5 on July 21, 2011, at which time opportunity for public comment was provided on the DEIR,  
6 and written comments were received through August 15, 2011; and

7 WHEREAS, The Department prepared responses to comments received at the public  
8 hearing on the DEIR and submitted in writing to the Department, prepared revisions to the text  
9 of the DEIR and published a Draft Summary of Comments and Responses on December 22,  
10 2011; and

11 WHEREAS, A Final Environmental Impact Report ("FEIR") for the Project was  
12 prepared by the Department, consisting of the DEIR, any consultations and comments  
13 received during the review process, any additional information that became available and the  
14 Draft Summary of Comments and Responses, all as required by law; and

15 WHEREAS, On March 22, 2012, the Planning Commission reviewed and considered  
16 the FEIR and, by Motion No. 18560, found that the contents of said report and the procedures  
17 through which the FEIR was prepared, publicized and reviewed complied with the provisions  
18 of CEQA, the State CEQA Guidelines and Chapter 31 of the San Francisco Administrative  
19 Code; and

20 WHEREAS, By Motion No. 18560, the Commission found the FEIR to be adequate,  
21 accurate and objective, reflected the independent judgment and analysis of the Department  
22 and the Commission and that the Summary of Comments and Responses contained no  
23 significant revisions to the DEIR, adopted findings relating to significant impacts associated  
24 with the Project and certified the completion of the FEIR in compliance with CEQA and the  
25 State CEQA Guidelines; and



1 WHEREAS, On March 22, 2012, by Motion No. 18561, the Planning Commission  
2 adopted findings under CEQA ("CEQA Approval Findings") and took various actions to  
3 approve the Project; and

4 WHEREAS, By letter to the Clerk of the Board of Supervisors dated March 26, 2012,  
5 Zane O. Gresham, on behalf of Equity Office Properties, filed an appeal of the FEIR to the  
6 Board of Supervisors, which the Clerk of the Board of Supervisors received on or around  
7 March 26, 2012; and

8 WHEREAS, By letter to the Clerk of the Board of Supervisors dated April 4, 2012, Sue  
9 C. Hestor, on behalf of Friends of Golden Gateway, filed an appeal of the FEIR to the Board  
10 of Supervisors, which the Clerk of the Board of Supervisors received on or around April 4,  
11 2012; and

12 WHEREAS, On May 1, 2012, this Board held a duly noticed public hearing to consider  
13 the appeal of the FEIR certification filed by Appellant; and

14 WHEREAS, This Board has reviewed and considered the FEIR, the appeal letter, the  
15 responses to concerns document that the Planning Department prepared, the other written  
16 records before the Board of Supervisors, and heard testimony and received public comment  
17 regarding the adequacy of the FEIR; and

18 WHEREAS, the FEIR files and all correspondence and other documents have been  
19 made available for review by this Board and the public. These files are available for public  
20 review by appointment at the Planning Department offices at 1650 Mission Street, and are  
21 part of the record before this Board by reference in this motion; now, therefore, be it

22 MOVED, That this Board of Supervisors hereby affirms the decision of the Planning  
23 Commission in its Motion No. 18560 to certify the FEIR and finds the FEIR to be complete,  
24 adequate and objective and reflecting the independent judgment of the City and in compliance  
25 with CEQA and the State CEQA Guidelines.







**City and County of San Francisco**

**Tails**

**Motion: M12-061**

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

**File Number:** 120267

**Date Passed:** May 15, 2012

Motion affirming the certification by the Planning Commission of the Final Environmental Impact Report for the 8 Washington Street/Seawall Lot 351 Project.

May 01, 2012 Board of Supervisors - CONTINUED

Ayes: 11 - Avalos, Campos, Chiu, Chu, Cohen, Elsbernd, Farrell, Kim, Mar, Olague and Wiener

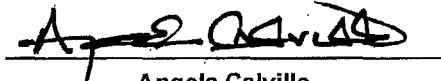
May 15, 2012 Board of Supervisors - APPROVED

Ayes: 8 - Chu, Cohen, Elsbernd, Farrell, Kim, Mar, Olague and Wiener

Noes: 3 - Avalos, Campos and Chiu

File No. 120267

I hereby certify that the foregoing Motion was APPROVED on 5/15/2012 by the Board of Supervisors of the City and County of San Francisco.

  
Angela Calvillo  
Clerk of the Board



1 [Approving Planning Commission Decision Related to Conditional Use Authorization - 8  
2 Washington Street/Seawall Lot 351]

3  
4 **Motion approving decision of the Planning Commission by its Motion No. 18567,**  
5 **approving Conditional Use Authorization identified as Planning Case No.**  
6 **2007.0030ECKMRZ on property located at 8 Washington Street/Seawall Lot 351, and**  
7 **adopting findings pursuant to Planning Code Section 101.1.**  
8

9 MOVED, That the decision of the Planning Commission's March 22, 2012, approving  
10 Conditional Use Authorization identified as Planning Case No. 2007.0030ECKMRZ, by its  
11 Motion No. 18567 for a Planned Unit Development, including specific modifications of  
12 Planning Code requirements regarding bulk limitations, rear yard, off-street loading, and off-  
13 street parking, and to allow development exceeding 50 feet in height within an RC District, to  
14 allow a non-accessory off-street parking garage to allow commercial uses above the ground  
15 floor, and to allow non-residential uses exceeding 6,000 square feet pursuant to Planning  
16 Code Sections 209.7(d), 209.8(c), 209.8(f), 253, 303, and 304, with respect to a proposal to  
17 demolish an existing surface parking lot and health club, and to construct a new health club,  
18 residential buildings ranging from four to twelve stories in height containing 134 dwelling units,  
19 ground floor retail uses totaling approximately 20,000 square feet, and 382 off-street parking  
20 spaces within the RC-4 (Residential-Commercial, High Density) District, and the 84-E Height  
21 and Bulk District, and adopting findings under the California Environmental Quality Act, on  
22 property located at:

23 8 Washington Street/Seawall Lot 351, Assessor's Block No. 0168/Lot No. 058,  
24 Block No. 0171/Lot No. 069, and Block No. 0201/Lot Nos. 012-013  
25 be and the same is approved.





**City and County of San Francisco**  
**Tails**

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

**Motion: M12-062**

**File Number:** 120398

**Date Passed:** May 15, 2012

Motion approving decision of the Planning Commission by its Motion No. 18567, approving Conditional Use Authorization identified as Planning Case No. 2007.0030ECKMRZ on property located at 8 Washington Street/Seawall Lot 351, and adopting findings pursuant to Planning Code Section 101.1.

May 15, 2012 Board of Supervisors - APPROVED

Ayes: 8 - Chu, Cohen, Elsbernd, Farrell, Kim, Mar, Olague and Wiener

Noes: 3 - Avalos, Campos and Chiu

File No. 120398

I hereby certify that the foregoing Motion  
was APPROVED on 5/15/2012 by the Board  
of Supervisors of the City and County of  
San Francisco.

Angela Calvillo  
Clerk of the Board



BOARD of SUPERVISORS



City Hall  
Dr. Carlton B. Goodlett Place, Room 244  
San Francisco 94102-4689  
Tel. No. 554-5184  
Fax No. 554-5163  
TDD/TTY No. 554-5227

## MEMORANDUM

TO: John Rahaim, Director, Planning Department  
Todd Rufo, Director, Office of Economic and Workforce Development  
Tiffany Bohee, Executive Director, Office of Community Investment and Infrastructure  
Phil Ginsberg, Director, Recreation and Parks  
Monique Moyer, Executive Director, Port

FROM: Andrea Ausberry, Assistant Clerk, Land Use and Transportation Committee,  
Board of Supervisors

DATE: July 2, 2015

SUBJECT: LEGISLATION INTRODUCED

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The Board of Supervisors' Land Use and Transportation Committee has received the following legislation, introduced by Supervisor Christensen on June 23, 2015:

**File No. 150693**

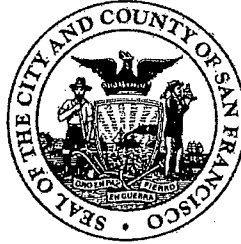
**Motion rescinding the certification of the Final Environmental Impact Report for the 8 Washington Street/Seawall Lot No. 351 Project to comply with orders of the San Francisco Superior Court in Ferry Building Investors, LLC, et al. v. San Francisco Port Commission, et al., Case No. CPF-12-512355, and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

If you have any additional comments or reports to be included with the file, please forward them to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

c:

Scott Sanchez, Zoning Administrator  
Sarah Jones, Acting Environmental Review Officer,  
AnMarie Rodgers, Senior Policy Advisor  
Aaron Starr, Acting Manager of Legislative Affairs  
Joy Navarrete, Environmental Planning  
Jeanie Poling, Environmental Planning  
Ken Rich, Director of Development  
Natasha Jones, Commission Secretary  
Claudia Guerra, Executive Assistant, Commission Secretary  
Amy Quesada, Commission Secretary

BOARD of SUPERVISORS



City Hall  
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San Francisco 94102-4689  
Tel. No. 554-5184  
Fax No. 554-5163  
TDD/TTY No. 554-5227

## MEMORANDUM

TO: Regina Dick-Endrizzi, Director  
Small Business Commission, City Hall, Room 448

FROM: Andrea Ausberry, Assistant Clerk, Land Use and Economic Development  
Committee, Board of Supervisors

DATE: July 2, 2015

SUBJECT: REFERRAL FROM BOARD OF SUPERVISORS  
Land Use and Economic Development Committee

The Board of Supervisors' Land Use and Economic Development Committee has received the following legislation, which is being referred to the Small Business Commission for comment and recommendation. The Commission may provide any response it deems appropriate within 12 days from the date of this referral.

File No. 150693

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

Please return this cover sheet with the Commission's response to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

\*\*\*\*\*

RESPONSE FROM SMALL BUSINESS COMMISSION - Date: \_\_\_\_\_

\_\_\_\_\_ No Comment

\_\_\_\_\_ Recommendation Attached

\_\_\_\_\_  
Chairperson, Small Business Commission



# Introduction Form

By a Member of the Board of Supervisors or the Mayor

Time stamp  
or meeting date

I hereby submit the following item for introduction (select only one):

- ☒ 1. For reference to Committee. (An Ordinance, Resolution, Motion, or Charter Amendment)
- ☐ 2. Request for next printed agenda Without Reference to Committee.
- ☐ 3. Request for hearing on a subject matter at Committee.
- ☐ 4. Request for letter beginning "Supervisor [ ] inquires"
- ☐ 5. City Attorney request.
- ☐ 6. Call File No. [ ] from Committee.
- ☐ 7. Budget Analyst request (attach written motion).
- ☐ 8. Substitute Legislation File No. [ ]
- ☐ 9. Reactivate File No. [ ]
- ☐ 10. Question(s) submitted for Mayoral Appearance before the BOS on [ ]

Please check the appropriate boxes. The proposed legislation should be forwarded to the following:

- ☐ Small Business Commission    ☐ Youth Commission    ☐ Ethics Commission
- ☐ Planning Commission    ☐ Building Inspection Commission

**Note: For the Imperative Agenda (a resolution not on the printed agenda), use a Imperative Form.**

**Sponsor(s):**

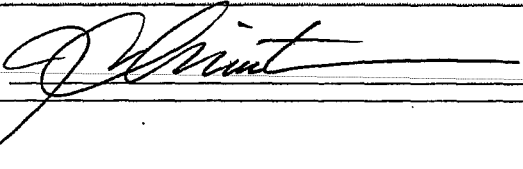
Supervisor Christensen

**Subject:**

Rescission of Final Environmental Impact Report Certification - 8 Washington Street/Seawall Lot 351 Project

**The text is listed below or attached:**

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

Signature of Sponsoring Supervisor: 

For Clerk's Use Only:

