

**PORT COMMISSION
CITY AND COUNTY OF SAN FRANCISCO**

RESOLUTION NO. 17-44

- WHEREAS, The Port owns approximately 72 acres along San Francisco’s Central Waterfront, roughly bounded by Mariposa Street, Illinois Street, and 22nd Streets and the San Francisco Bay, known as Pier 70. Pier 70 includes approximately 61.29 acres of land and approximately 10.42 acres of submerged lands; and
- WHEREAS, Under the Burton Act and the City Charter, certain State lands granted to the City and County of San Francisco subject to the public trust for commerce, navigation and fisheries (“Public Trust”) were placed within the administration and control of the City acting by and through the Port Commission; and
- WHEREAS, Pier 70 consists of lands granted under the Burton Act and adjacent lands later acquired by the Port. Under the agreement between the City and the State of California transferring the granted lands to the City (“Transfer Agreement”), the City agreed that lands later acquired by the Port would be held as assets of the Public Trust subject to the Burton Act; and
- WHEREAS, The Port along with its development partners and interested stakeholders have been working for more than two decades to develop a land use plan to facilitate the beneficial development of Pier 70 and generate substantial revenue for the Port as part of a proposed mixed-use project (the “Pier 70 Mixed-Use Project”); and
- WHEREAS, The Pier 70 area consist of five sub-areas including: 1) the ship repair yard, 2) the 20th Street Historic Core, 3) Crane Cove Park, 4) the 28-acre Waterfront Mixed-Use Special Use District area, and 5) other development opportunities; and
- WHEREAS, The extent to which the Public Trust covers lands at Pier 70 is subject to dispute, and the State and the Port disagree as to the existence of the Public Trust on certain of those lands; and
- WHEREAS, The existing configuration of trust and non-trust lands at Pier 70 is such that the purposes of the Public Trust cannot by fully realized, and the Pier 70 Mixed-Use Project cannot be developed due to the current trust configuration; and
- WHEREAS, The California legislature, through Chapter 477 of the Statutes of 2011 (Assembly Bill 418) (“AB 418”) authorized the Port, subject to applicable laws, to enter into an exchange agreement with the

California State Lands Commission (“State Lands”) to effectuate a Public Trust exchange in accordance with the terms of the statute, and to transfer, convey or otherwise grant interests in or rights to use or occupy all or any portion of the Pier 70 areas removed from the Public Trust pursuant to the exchange; and

WHEREAS, The exchange authorized under AB 418 would resolve the Public Trust title uncertainties and reconfigure the Public Trust at Pier 70 in a manner that furthers the purposes of the Public Trust and provides a more useful configuration of Public Trust lands by placing the Public Trust along the entire shoreline of Pier 70 and on other lands of high value to the Public Trust, while removing the Public Trust from lands in the interior of Pier 70 that are cut off from the water, thereby removing impediments to their productive reuse and development; and

WHEREAS, To implement development of Pier 70, the Port and its development partners have negotiated, among other agreements, a Compromise Title Settlement and Land Exchange Agreement for Pier 70 (the “Exchange Agreement”) between the Port and State Lands, as more particularly described in the staff memorandum to which this resolution is attached; and

WHEREAS, The Exchange Agreement implements the exchange through conveyances by which State Lands will take title to the lands from the Port and convey them back to the Port either subject to or free of the Public Trust; and

WHEREAS, Following these conveyances, the Port would hold the Public Trust lands as trustee, subject to the terms and conditions of the Burton Act and AB 418, and would hold the Trust termination lands as assets of the Public Trust, but free of the use and alienability restrictions of the Public Trust, the Burton Act and the Transfer Agreement; and

WHEREAS, The Exchange Agreement makes conforming amendments to the Transfer Agreement to effectuate the exchange authorized by AB 418; and

WHEREAS, The Exchange Agreement contains provisions to ensure that public access is provided to Public Trust lands; and

WHEREAS, On August 24, 2017, the Planning Commission (1) reviewed and considered the Final Environmental Impact Report for the Pier 70 Mixed-Use Project (“FEIR”) (Case No. 2014-001272ENV); (2) found the FEIR to be adequate, accurate and objective, thus reflecting the independent analysis and judgment of the Planning Department and the Planning Commission; and (3) by Motion No. 19976, certified the FEIR as accurate, complete and in compliance with the California

Environmental Quality Act (“CEQA”), the CEQA Guidelines, and Chapter 31 of the San Francisco Administrative Code; and

WHEREAS, At the same hearing, the Planning Commission approved the Pier 70 Mixed-Use Project and in so doing, adopted approval findings under CEQA by Motion No. 19977, including a Statement of Overriding Considerations (the “Pier 70 CEQA Findings”), and adopted a Mitigation Monitoring and Reporting Program (“MMRP”). A copy of the Planning Commission Motions, the Pier 70 CEQA Findings, and the MMRP are on file with the Port Commission Secretary and may be found in the records of the Planning Department at 1650 Mission Street, San Francisco, CA, and are incorporated in this resolution by reference as if fully set forth herein; and

WHEREAS, The Port Commission has reviewed the FEIR, the MMRP and the CEQA Findings, and finds that the approvals before the Port Commission are within the scope of the FEIR and that no substantial changes in the Pier 70 Mixed-Use Project or the circumstances surrounding the Pier 70 Mixed-Use Project have occurred and no new information that could not have been known previously showing new significant impacts or an increase in severity in impacts has been discovered since the FEIR was certified; now, therefore be it

RESOLVED, That the Port Commission adopts the Pier 70 CEQA Findings as its own and adopts the MMRP and imposes its requirements as a condition to this approval action; and be it further

RESOLVED, That in order to effectuate the beneficial development of Pier 70, the Port Commission approves the Exchange Agreement and authorizes the Executive Director or her designee to execute, deliver and perform the Exchange Agreement in substantially the form on file with the Port Commission Secretary, subject to obtaining Board of Supervisors approval of the Exchange Agreement; and, be it further

RESOLVED, That the Port Commission finds that the lands or interests in lands that will be impressed with the Public Trust will provide a significant benefit to the Public Trust and are useful for the Public Trust purposes authorized by AB 418; and, be it further

RESOLVED, That the Port Commission authorizes and urges the Executive Director, prior to execution of the Exchange Agreement, to make changes and take any and all steps, including but not limited to, the attachment of exhibits and the making of corrections, as the Executive Director determines in consultation with the City Attorney, are necessary or appropriate to consummate the Exchange Agreement in accordance with this resolution; provided, however, that such changes and steps do not materially decrease the benefits to or materially

increase the obligations or liabilities of the Port, and are in compliance with all applicable laws; and, be it further

RESOLVED, That all actions heretofore taken by the officers and employees of the Port with respect to the Exchange Agreement are approved, confirmed and ratified; and, be it further

RESOLVED, That the Port Commission authorizes and urges all officers, employees, and agents of the Port and the City to take any and all steps as they deem necessary or appropriate, to the extent permitted by applicable law, in order to consummate the Exchange Agreement in accordance with this resolution and to implement the Exchange Agreement, including execution of subsequent documents and conveyance of real property to, and the acceptance of real property from, State Lands, or to otherwise effectuate the purpose and intent of this resolution and the Port's performance under the Exchange Agreement; and, be it further

RESOLVED, That the Port Commission authorizes the Executive Director or her designee to enter into any amendments or modifications to the Exchange Agreement that the Executive Director or her designee determines, in consultation with the City Attorney, are in the best interest of the Port, do not materially decrease the benefits to or materially increase the obligations or liabilities of the Port, and are in compliance with all applicable laws.

I hereby certify that the foregoing resolution was adopted by the San Francisco Port Commission at its meeting of September 26, 2017.

Secretary