

**CALENDAR ITEM
103**

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CONSIDER A LAND EXCHANGE AGREEMENT BETWEEN THE STATE OF CALIFORNIA, ACTING BY AND THROUGH THE STATE LANDS COMMISSION, AND THE CITY AND COUNTY OF SAN FRANCISCO, ACTING BY AND THROUGH THE SAN FRANCISCO PORT COMMISSION, INVOLVING CERTAIN PARCELS OF LAND LOCATED WITHIN SEAWALL LOT 351 AND THE 8 WASHINGTON STREET PROPERTY, CITY AND COUNTY OF SAN FRANCISCO

PARTIES:

City of San Francisco, acting by and through the Port of San Francisco

State Lands Commission

PROPOSED LAND EXCHANGE AGREEMENT:

The parties to the proposed Land Exchange Agreement ("Agreement") are the State of California ("State"), acting by and through the California State Lands Commission ("Commission"), and the City and County of San Francisco ("City"), acting by and through the San Francisco Port Commission ("Port") (City and Port hereinafter are referred to collectively as "City"). The Agreement will effectuate a land exchange, terminating the State's sovereign public trust interests in certain filled lands involving portions of Seawall Lot 351 ("Trust Termination Parcels") and conveying the Trust Termination Parcels to the City in exchange for acquiring adjacent non-trust lands located at 8 Washington Street and impressing those lands with the Public Trust ("Trust Parcels"). The location of the proposed Trust Parcels and proposed Trust Termination Parcels is depicted on Exhibit A.

As part of the Agreement, the State will receive the Trust Parcels, which will take on the legal character of sovereign tide and submerged lands and be impressed with the common law public trust for commerce, navigation, fisheries and other recognized public trust purposes ("Public Trust") as well as the Burton Act Trust (collectively "Trust").

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Specifically, the terms of the proposed Agreement provide that:

1. Upon receipt of the Trust Parcels from the Developer, the City will convey the Trust Parcels to the Commission, which will impress the parcels with the Trust before conveying the Trust Parcels back to the City, subject to the Trust.
2. The City will convey the Trust Termination Parcels to the Commission.
3. The Commission will convey the Trust Termination Parcels back to the City free of the Public Trust.

BACKGROUND:

The subject property includes four parcels of land located near San Francisco Bay, across the Embarcadero from the historic San Francisco Ferry Building. The proposed Trust Termination Parcels include portions of Seawall Lot 351 and are approximately 23,000 square feet in size. The proposed Trust Parcels consist of a 28,000 square foot section of Assessors Blocks 168 and 171 within the property commonly referred to as the 8 Washington Property.

The proposed Trust Termination Parcels were once tide and submerged lands within San Francisco Bay. On entry to the Union in 1850, California acquired title to these tide and submerged lands by virtue of its sovereignty. Pursuant to Chapter 219, Statutes of 1878, the location of the line for the waterfront of the City of San Francisco as adopted September 12, 1877, was ratified and a seawall was authorized to be constructed. Subsequently, the area waterward of the seawall was filled and a new seawall was constructed at its current location. The lands between the original and the current seawalls, although filled, retained the base title of tide and submerged lands owned by the State in its sovereign capacity.

In 1969, pursuant to the Burton Act (Chapter 1333, Statutes of 1968), the State granted in trust to the City the sovereign lands within the City and County of San Francisco ("granted lands"). Approximately 725 acres of these granted lands were already filled at the time of this grant. The proposed Trust Termination Parcels are among these filled lands. The granted lands are subject to the Public Trust, as well as a statutory trust comprised of the terms and conditions imposed on the grants by the Burton Act ("Burton Act Trust").

The Port has adopted the Port of San Francisco Waterfront Land Use Plan (the "WLUP") to identify development opportunities that allow the Port to promote Trust uses while maximizing revenues from property no longer useful for Trust purposes through other compatible development. Today, the proposed Trust Termination Parcels are used as surface parking for the Ferry Building and surrounding commercial/recreational areas. The WLUP seeks to develop the Mixed-use Opportunity area, including and surrounding the proposed Trust Termination Parcels, to maximize the economic potential of the seawall lots and better connect the City to its waterfront.

The 8 Washington Property is immediately adjacent to Seawall Lot 351. Although zoned residential, the site is operated as the privately-owned Golden Gateway Swim and Tennis Club ("GGTSC"), located on Assessor's Blocks 168, 171 and 201. The GGTSC

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was a part of the high density apartment and condominium development constructed as part of the Golden Gateway Redevelopment Plan ("Redevelopment Plan") adopted in 1959. The Redevelopment Plan expired in January 2011, and any use restrictions that it may have contained have expired. Portions of the 8 Washington Property make up the Trust Parcels.

San Francisco Waterfront Partners, II, LLC ("Developer") holds an option to purchase the 8 Washington Property, and is entering into a Lease Disposition and Development Agreement and Purchase and Sale Agreement with the Port, pursuant to which Developer will convey the Trust Parcels to the City, and subsequently acquire the Trust Termination Parcels and develop and manage the development. The Developer proposes to develop the Trust Termination Parcels with predominantly non-Trust uses by constructing up to 134 condominiums, 389 sub-surface parking spaces, restaurants, retail, and a rebuilt and reconfigured tennis and swim club. In addition, the Developer proposes to improve the proposed Public Trust Parcels with entirely Trust-consistent improvements, including an 11,840 square foot public park with approximately 4,000 square feet of accessory café/restaurant and visitor serving retail use. The Developer also proposes approximately 29,040 square feet of public access improvements to promote and improve visual and physical access to the San Francisco waterfront area. Of the 389 sub-surface parking spaces, no less than 175 and up to 255 will be available to the public. These proposals are collectively referred to as the "Project."

Seawall Lot 351 is currently under lease from the Port to the San Francisco Ferry Building's management company. While presently used as a surface parking lot serving the Ferry Building and other commercial/recreational facilities on adjacent lands, the proposed Trust Termination Parcels' small size and unusual shape does not allow for development in furtherance of the WLUP Trust goals. The proposed Trust Termination Parcels' existing footprint is unsuitable for commercial use, such as a hotel, maritime related commercial or visitor-serving retail. Although currently used as a 90-spot parking lot with maximum capacity at 105 spaces, the parcel's size and shape make even this use inefficient and prohibits any further developments such as a vertical parking structure.

The Project furthers the Port's Trust goals and objectives. As a result of the small size and irregular configuration, the current use of the proposed Trust Termination Parcel as a surface parking lot appears to be its highest and best use. However, the Project will consolidate the proposed Trust Termination Parcels with the adjacent privately-held parcels to create a single lot with a sufficient footprint to allow meaningful development. The Project improves visual aesthetics by moving the public parking underground, while roughly doubling the number of public parking spaces. The Project is also designed to create visual and pedestrian public access by linking Jackson Street to the Embarcadero. The adjacent proposed Trust Parcels will be developed into a public park and walkway providing open space and direct visual and public access to Pier 7, a public pier, and San Francisco Bay.

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The Project will result in a temporary reduction of public parking capacity in the area. Both the proposed Trust Termination Parcels and the proposed Trust Parcels will be unavailable for public parking during the majority of the construction process, which is anticipated to take approximately 30 months. According to the Port, interim parking plans during Project construction include the use of six off-street parking facilities, including Pier 3, Golden Gateway Garage, Embarcadero Center 1, Embarcadero Center 2, Embarcadero Center 3 and Embarcadero Center 4. According to the Port, the available spaces at these six locations are estimated to be approximately 742 at weekday midday periods, which is the peak time for utilization and additional capacity is available during the weekday evenings and weekends, when Ferry Building use is at its highest. The loss of parking capacity at Seawall Lot 351 during construction is not expected to have a significant effect on parking availability because of the available capacity at nearby facilities that more than cover the temporary loss.

As part of the Project, the City, through the Port, will convey the Trust Termination Parcels in fee to the Developer in exchange for the Trust Parcels, \$3 million and a transfer fee of 1% to be imposed on all condominium unit sales after the initial sale. The Port will grant the Developer a 66 year lease for the Trust Parcels, where, during the construction period for the improvements on the Trust Parcels, the Port will receive \$60,000 per year. Upon completion of the improvements, the annual lease amount for the Trust Parcels will be \$120,000 (adjusted every five years). Additionally, the Port will receive 15% of gross revenues the Developer receives from the operations on the Trust Parcels. The Developer has also agreed to be responsible for all operation and maintenance costs related to the public areas and to include the project site within a new Infrastructure Financing District.

LEGAL REQUIREMENTS:

Pursuant to Section 5 of Chapter 310, Statutes of 1987, the Commission is authorized, to terminate the State's Public Trust interests and enter into a land exchange agreement. Because the City does not have the legal authority to terminate the State's Trust interests in trust property, the Commission must take title to the State's interests in the proposed Trust Termination Parcels, which are to be subsequently exchanged for the Trust Parcels and, as part of the exchange, terminate the Trust interests on the Trust Termination Parcels. The Commission, in order to comply with Section 5 of Chapter 310, Statutes of 1987 and the California Constitution, Article X, in approving the proposed Agreement, must make the following requisite findings:

- A. The proposed Trust Termination Parcels have been filled and reclaimed as part of harbor development;
- B. The proposed Trust Termination Parcels are cut off from access to the waters of the San Francisco Bay;
- C. The proposed Trust Termination Parcels constitute a relatively small portion of the lands granted to City and County;

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- D. The proposed Trust Termination Parcels are no longer needed or required for the promotion of the Public Trust for commerce, navigation, and fisheries or the Burton Act Trust;
- E. No substantial interference with the Trust uses and purposes will ensue by virtue of the exchange; and
- F. The proposed Trust Parcels have a value equal to or greater than the value of the proposed Trust Termination Parcels.

STAFF ANALYSIS:

Commission staff has reviewed information submitted about the proposed Project, as well as appraisals, surveys, title reports, and other studies conducted for the proposed Agreement. Approval of this Agreement would facilitate the development of an area that has been unbuildable for many years in a manner consistent with the goals of the WLUP and the Trust, while increasing available parking for the public, creating open space and enhancing both visual and pedestrian public access to the waterfront.

The required findings under Section 5 of Chapter 310, Statutes of 1987 and the California Constitution, Article X, may all be made regarding this Agreement. First, the Trust Termination Parcel was filled and reclaimed as part of the development of the San Francisco waterfront. Second, the proposed Trust Termination Parcel is more than 200 feet from the waterfront and is cut off from access to the waters of San Francisco Bay by the Embarcadero, a major six-lane road. Third, the proposed Trust Termination Parcels represent approximately less than 0.07% of lands granted to the City and County. Fourth, due to the small size and irregular configuration of the proposed Trust Termination Parcels, they are not needed or required for the promotion of the Trust. The Trust Termination Parcels have been used for decades as a small surface parking lot that while primarily serving the Ferry Building, is not restricted to just serving the waterfront. However, as detailed previously, there are other off-street parking facilities that have the capacity to provide parking for the Ferry Building making the Trust Termination Parcels neither necessary nor required for the promotion of the Trust. For these same reasons and as a result of the small size and odd shape of the Trust Termination Parcels, the proposed Agreement will not cause any substantial interference with Trust uses and purposes. In fact, the Trust Parcels are proposed to be developed as a public park with a café and trust consistent retail, providing enhanced views and access to the waterfront, thus furthering Trust purposes while facilitating the increase of off street public parking spaces on the Trust Termination Parcels. Finally, based on staff's review of the appraisal conducted, the value of the proposed Trust Parcels is greater than the value of the proposed Trust Termination Parcels.

Having addressed all of the required factors, the Commission is within its authority to approve this Agreement. Commission staff and the Office of the Attorney General have reviewed the proposed Agreement and believe all necessary legal elements have been met.

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OTHER PERTINENT INFORMATION:

1. The State, acting by and through the Commission, is authorized under Section 5 of Chapter 310, Statutes of 1987, to enter into the proposed land exchange agreement.
2. The City of San Francisco is the State's trustee of the legislatively granted sovereign tide and submerged lands pursuant to, *inter alia*, Chapter 1333, Statutes of 1968, and as amended.
3. The City of San Francisco, by its Planning Commission, certified the Environmental Impact Report and approved the Project at its March 22, 2012 meeting.
4. The City of San Francisco, by the Port of San Francisco, approved the Project, including the exchange, at its May 29, 2012 meeting.
5. The City of San Francisco, by its Board of Supervisors, approved the Project and rejected the appeal to the Environmental Impact Report at its June 12, 2012 meeting. Legal challenges to the EIR have been filed, but at this time no stay has been issued by the court.
6. Pursuant to the Commission's delegation of authority and the State CEQA Guidelines (Cal. Code Regs., tit. 14, § 15061), the staff has determined that this activity is exempt from the requirements of CEQA as a statutorily exempt project. The project is exempt because it involves settlement of title and boundary problems.

Authority: Public Resources Code section 21080.11 and California Code of Regulations, Title 14, section 15282, subdivision (f).

7. A referendum to overturn the Board of Supervisors decision to increase the height limit as it relates to the condominium portion of the Project (located on the Trust Termination Parcel) has qualified for the San Francisco citywide ballot. By law, the height limit determination must go back to the Board of Supervisors for reconsideration. If the vote doesn't change, the referendum goes on the next citywide ballot.

EXHIBITS:

- A. Location and Site Map of the Trust and Trust Termination Parcels

IT IS RECOMMENDED THAT THE COMMISSION:

CEQA FINDINGS:

Find that the activity is exempt from the requirements of CEQA pursuant to Title 14, California Code of Regulations, section 15061 as a statutorily exempt project pursuant to Public Resources Code Section 21080.11,

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settlement of title and boundary problems and to exchanges or leases in connection with those settlements.

AUTHORIZATION:

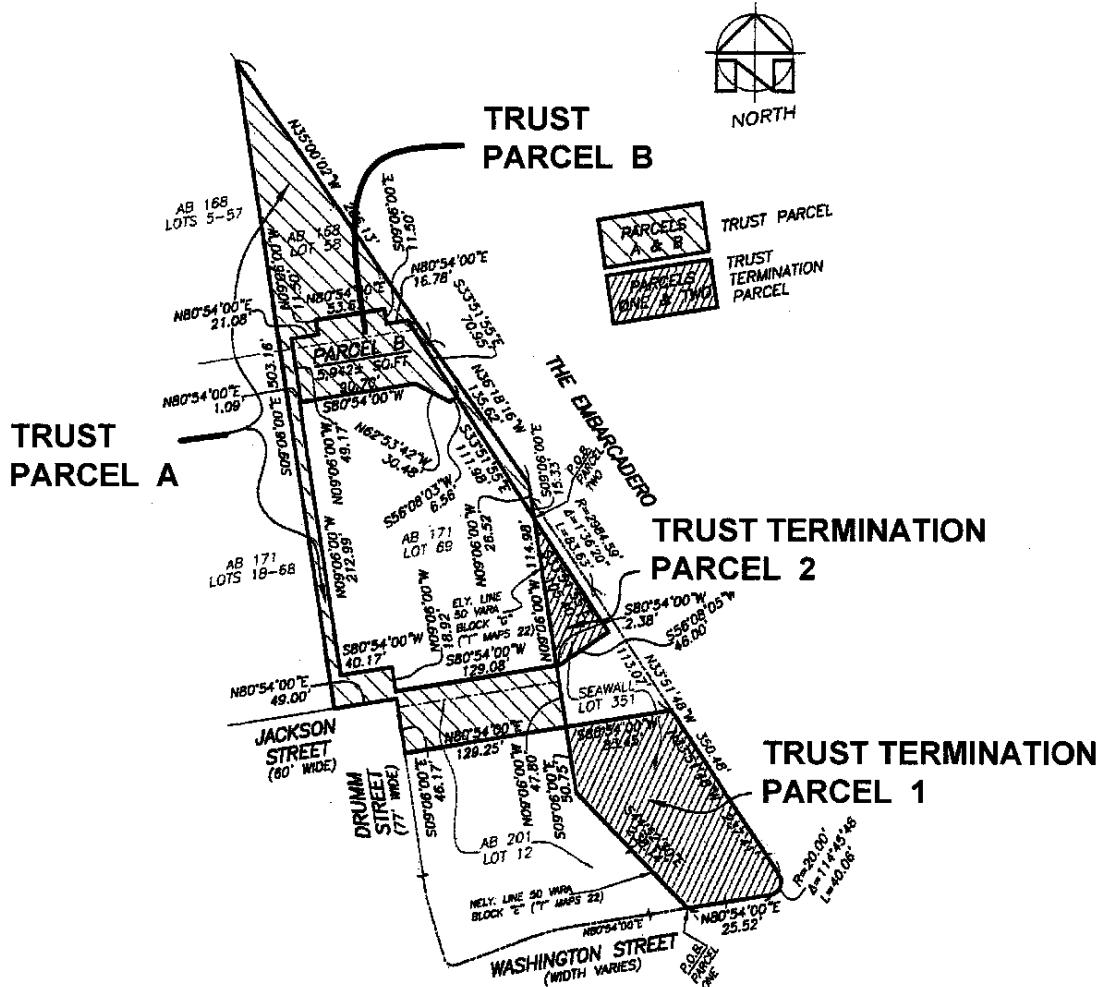
1. Find that, with respect to the Agreement, which findings shall be effective upon recordation as provided in the Agreement:
 - A. The Trust Termination Parcels have been filled and reclaimed as part of harbor development.
 - B. The Trust Termination Parcels have been cut off from access to the waters of San Francisco Bay.
 - C. The Trust Termination Parcels constitute a relatively small portion of the lands granted to the City and County of San Francisco.
 - D. The Trust Termination Parcels are no longer needed or required for the promotion of the Public Trust for commerce, navigation, and fisheries, or for the purposes of the Burton Act Trust.
 - E. The Agreement will not create a substantial interference with Trust uses and purposes.
 - F. The Trust Parcels have a value equal to or greater than the value of the Trust Termination Parcels.
2. Find that this Agreement shall terminate any and all Trust claims from the Trust Termination Parcels that are being conveyed by the State to the City and shall impress the common law Public Trust and Burton Act Trust onto the Trust Parcels.
3. Find that the lands to be conveyed to the State of California, acting by and through the Commission, are to be accepted as Trust lands for the benefit of the people of the State of California, to be held by the City for Trust purposes.
4. Approve and authorize the execution, acknowledgment, and recordation of the Agreement and associated deeds and acceptances on behalf of the Commission, in substantially the form of the copy of such agreement on file with the Commission.
5. Authorize and direct the staff of the Commission and/or the California Attorney General to take all necessary or appropriate action on behalf of the California State Lands Commission, including the execution, acknowledgment, acceptance, and recordation of all documents as may be necessary or convenient to carry out the Agreement; and to

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appear on behalf of the Commission in any legal proceedings relating to the subject matter of the Agreement or Chapter 310, Statutes of 1987.

NO SCALE

SITE



8 WASHINGTON LAND EXCHANGE

NO SCALE

LOCATION



MAP SOURCE: USGS QUAD

Exhibit A

W 26607
 8 WASHINGTON
 LAND EXCHANGE
 CITY AND COUNTY OF
 SAN FRANCISCO



This Exhibit is solely for purposes of generally defining the lease premises, is based on unverified information provided by the Lessee or other parties and is not intended to be, nor shall it be construed as, a waiver or limitation of any State interest in the subject or any other property.