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July 31, 2013

Members, Ballot Simplification Committee  
Department of Elections  
City and County of San Francisco  
1 Dr. Carlton B. Goodlett Place, Room 48  
San Francisco, CA 94102

Re: Request for Reconsideration of Approved Digest for "8 Washington Initiative"

Dear Members of the Ballot Simplification Committee:

On behalf of San Franciscans for Parks, Jobs, and Housing and the proponents of the "8 Washington Parks, Public Access, and Housing Initiative," we would like to thank each of you for your thoughtful consideration of the ballot digest at yesterday's meetings. We think that the Ballot Simplification Committee ("BSC") did an incredible job of grappling with some highly technical issues and balancing the issues involved. This notwithstanding, we respectfully submit this request for reconsideration in hopes that our comments and suggestions will assist the BSC in finalizing the digest.

1. "A "YES" Vote Means ... A "NO" Vote Means"

As many people suggested at yesterday's hearing, the most important thing for the voters to understand is the project which they will be approving by passing the Initiative. While the digest as a whole does a good job of outlining the project, the "A "YES" Vote Means" and "A "NO" Vote Means" sections provide absolutely no details regarding the project. It is imperative that the BSC include details regarding the project in these sections so the voters know what their vote actually means. As members of the BSC and the public mentioned at yesterday's meeting, some voters do not read the entire digest but rather skip to these sections. By merely stating that a YES vote would approve the project and a NO vote would not approve the project, the digest would be depriving these voters of important information regarding the Initiative and the impact of their vote. In addition, the BSC should include the details in these sections in order to ensure consistency with the digest for the Referendum which has very detailed information regarding the changes to the height limit. Put another way, it would be extremely unfair to include a high level of detail in these sections for the Referendum and not do the same for the Initiative. As a result, we strongly urge the BSC to include the following language, which includes the reference to the special use district as requested by the Initiative opponents, which will clearly inform voters of the import of their vote:

A "YES" Vote Means: If you vote "yes," you want to approve the 8 Washington Street Site project: Parks, Public Access and Housing District that includes two mixed-use buildings containing 134 residential units, ground floor restaurants and retail, a private fitness and swim facility, a public park and open spaces, and underground public and private parking.

A "NO" Vote Means: If you vote "no," you do not want to approve the 8 Washington Street Site project: Parks, Public Access and Housing District that includes two mixed-use buildings containing 134 residential units, ground floor restaurants and retail, a private

fitness and swim facility, a public park and open spaces, and underground public and private parking.

2. Use of Square Feet instead of Acres

We believe that a typical San Francisco voter will have difficulty determining the size of various aspects of the project if the sizes are discussed in acres. As one of the BSC members noted yesterday, "City people" do not think in terms of acres which is more frequently used in rural areas. We would recommend that the sizes in the digest should be discussed in square feet because most San Franciscans use square feet as a measure of size because this is how apartments and homes in the City are marketed. We hope that the BSC would take this suggestion and offer the following language:

The site proposed for development as 8 Washington Street is a 138,000 square foot site 3.2 acres bounded by the Embarcadero, Washington Street and Drumm Street (the Site). Approximately 110,000 square feet (80% of the Site) is owned by Golden Gateway Center....

The remaining 28,000 square feet (20% of the Site) is a public parking lot under the jurisdiction of the City and County of San Francisco's Port Commission...

...an increase in the legal building heights on an approximately 22,000 square feet half-acre portion (16% of the Site) along Drumm Street from 84 feet to 92 feet in one section and from 84 feet to 136 feet in another...

3. Additional Detail Regarding Current Site

We believe that the digest should include additional detail regarding the current state of the Site.

First, we request that the BSC add the word "fenced" as a descriptor for the "private tennis and swim club." At one point in yesterday's meeting, a BSC member suggested including the word "fenced" as a descriptor for the parking lot. After being informed that the fence was around the tennis and swim club, the member indicated it was not necessary without explaining why it should have been included if the parking lot was fenced but not if it was the club that was fenced. We urge the BSC to add the "fenced" to let people know that the club is surrounded by a 1,735 long foot fence. (The fence is described on the first page of the initiative in Section 2(A)(2).)

Second, we request that the BSC inform the voters that the tennis and swim club currently blocks pedestrian access to the waterfront from Jackson Street and Pacific Avenues. One of the most important benefits of the project is that it will increase access to the waterfront. Several people at yesterday's hearing specifically mentioned the current lack of access which shows that it is important for the voters to know that access is currently blocked by the tennis and swim club.

Third, we request that the BSC specify that the parking lot currently at the site is an above-ground asphalt parking lot. While describing the project, the digest currently specifies that the new parking will be underground. We believe that a similar descriptor should be included so that the voters understand the project will result in the parking being moved from above-ground to underground. In addition, we think it is important for the voters to know that the parking lot is asphalt because asphalt is non-porous and results in environmentally-damaging runoff into the San Francisco Bay.

Fourth, we request that the BSC specify that the current parking lot is on The Embarcadero. In other aspects of the digest, most notably the sections dealing with heights, the digest informs voters of the specific location of the issue being discussed. We believe that the voters likewise should be informed that the parking lot is located on The Embarcadero.

The changes described above are incorporated into the following language:

Approximately 80% of the Site is owned by Golden Gateway Center and used as walkways and a fenced private tennis and swim club that blocks pedestrian access to the waterfront from Jackson Street and Pacific Avenue. The remaining 20% is an above-ground asphalt public parking lot on The Embarcadero under the jurisdiction of the City and County of San Francisco's Port Commission.

#### 4. Project Approvals

We believe that the last sentence of the second paragraph of the digest regarding the approvals of the project is misleading. In short, the project was in fact approved by the San Francisco Planning Commission, the Port Commission, and the California State Lands Commission. As currently drafted, the sentence seems to suggest only certain "aspects" of the project were approved. We feel that this language is extremely prejudicial in that it suggests that the project was not fully vetted by the listed agencies. As a result, we suggest the following language:

~~The Aspects of this project received approvals were also approved~~ by the San Francisco Planning Commission, the Port Commission and the California State Lands Commission.

#### 5. Description of Height Changes

We urge the BSC to indicate that the height limits for the residential building along The Embarcadero are actually 5 to 6 stories and, more importantly, are being lowered. Under current law, any buildings on the Site along The Embarcadero could have a height of up to 84 feet. Under the terms of the Initiative, the height of the residential building along The Embarcadero will be limited to 5 to 6 stories. Because the bullet point regarding the heights along Drumm Street indicates that the height is increasing, we believe it is only fair to indicate that the heights of the residential building along The Embarcadero are in fact being lowered. To this end, we suggest the following language:

~~lowering the a height limit of 5 to 6 stories~~ for the residential building along the Embarcadero;

#### 6. Affordable Housing Payment

As suggested by some BSC members yesterday, we recommend that the digest indicate that the payment to the City's affordable housing fund is significant. At yesterday's hearing there was much discussion regarding whether the digest should include the \$11 million payment and whether it was accurate. Attached please find a copy of the Budget Analyst's report which clearly indicated on page 7 & 8-5 that the payment is in fact over \$11 million (\$8,844,175 in mandated affordable housing fees and \$2,242,190 in additional affordable housing fees). We understand the BSC's preference to not include specific numbers and, therefore, urge the BSC to include the descriptor "significant" in the bullet point regarding the payment. To this end, we suggest the following language:

| a significant payment by the developer to the affordable housing fund of the City and County of San Francisco;

In addition, we suggest the BSC place this bullet point further down in the list as the BSC seemed to indicate that the tangible aspects of the project are more important.

7. Addition of Green Roof

We urge the BSC to indicate that the fitness and swim center will have a green roof. (The green roof is shown on the map on page 3 of the Initiative and described on page 4 of the Initiative in section 2(A)(8).) Our suggested language reads:

| a private fitness and swim center with a green roof, with a two-story height limit

We look forward to discussing these issues with you at Monday's meeting.

Very truly yours,



Kevin R. Heneghan

## PROPOSED DIGEST – INITIATIVE MARKED-UP VERSION

### 8 Washington Initiative (*working title only, subject to change*)

#### **The Way It Is Now:**

The site proposed for development as 8 Washington Street is 3.2 acres bounded by the Embarcadero, Washington Street and Drumm Street (the Site). Approximately \_\_\_\_\_ square feet (80%) of the Site is owned by Golden Gateway Center and used as walkways and a fenced private tennis and swim club that blocks pedestrian access to the waterfront from Jackson Street and Pacific Avenue. The remaining 28,000 square feet (20%) is an above-ground asphalt public parking lot on the Embarcadero under the jurisdiction of the City and County of San Francisco's Port Commission.

In 2012 the Board of Supervisors (the Board) approved a development project for the Site involving construction of two mixed-use buildings containing 134 residential units, ground floor restaurants and retail, a private fitness and swim facility, a public park and open spaces, and underground public and private parking. ~~Aspects of t~~This project received approvals from ~~were also approved by~~ the San Francisco Planning Commission, the Port Commission and the California State Lands Commission.

In approving the development project, the Board also adopted an Ordinance to increase the legal building heights on a portion of the project. A referendum (Proposition \_\_) was filed requiring that the Ordinance be submitted to the voters.

This initiative (Proposition \_\_) dealing with the same Site then qualified for the ballot.

#### **The Proposal:**

Proposition \_\_ would create a special use district known as the 8 Washington Parks, Public Access and Housing District. The district would require the 8 Washington Street Site project to include:

- two buildings housing a total of between 121 and 141 residential units;
- an increase in the legal building heights on an approximately half-acre portion (16% of the Site) along Drumm Street from 84 feet to 92 feet in one section and from 84 feet to 136 feet in another;
- a private fitness and swim center with a green roof, with a two-story height limit;
- lowering the a-height limit to 5 to ~~of 6~~ stories for the residential building along the Embarcadero;
- ~~payment by the developer to the affordable housing fund of the City and County of San Francisco;~~

- public parks, open space, walkways and sidewalks on at least 20% of the Site;
- new and expanded pedestrian access to the waterfront and enhanced bicycle and pedestrian safety;
- ground floor retail and cafés; and
- underground private and public automobile and bicycle parking; and
- significant payment by the developer to the affordable housing fund of the City and County of San Francisco.

The project will create new construction and permanent jobs and increase revenue for the Port and the City.

Proposition \_\_\_ also would require limit the City Planning Director to 's time to review a proposed plan for the Site for consistency with the voter-approved Initiative within forty days.

**A "YES" Vote Means:** If you vote "yes," you want to approve the 8 Washington Parks, Public Access and Housing District that includes two mixed-use buildings containing 134 residential units, ground floor restaurants and retail, a private fitness and swim facility, a public park and open spaces, and underground public and private parking. Street Site project.

**A "NO" Vote Means:** If you vote "no," you do not want to approve the 8 Washington Parks, Public Access and Housing District that includes two mixed-use buildings containing 134 residential units, ground floor restaurants and retail, a private fitness and swim facility, a public park and open spaces, and underground public and private parking. Street Site project.

## PROPOSED DIGEST – INITIATIVE CLEAN VERSION

### 8 Washington Initiative *(working title only, subject to change)*

#### **The Way It Is Now:**

The site proposed for development as 8 Washington Street is 3.2 acres bounded by the Embarcadero, Washington Street and Drumm Street (the Site). Approximately \_\_\_\_\_ square feet (80%) of the Site is owned by Golden Gateway Center and used as walkways and a fenced private tennis and swim club that blocks pedestrian access to the waterfront from Jackson Street and Pacific Avenue. The remaining 28,000 square feet (20%) is an above-ground asphalt public parking lot on the Embarcadero under the jurisdiction of the City and County of San Francisco's Port Commission.

In 2012 the Board of Supervisors (the Board) approved a development project for the Site involving construction of two mixed-use buildings containing 134 residential units, ground floor restaurants and retail, a private fitness and swim facility, a public park and open spaces, and underground public and private parking. The project received approvals from the San Francisco Planning Commission, the Port Commission and the California State Lands Commission.

In approving the development project, the Board also adopted an Ordinance to increase the legal building heights on a portion of the project. A referendum (Proposition \_\_) was filed requiring that the Ordinance be submitted to the voters.

This initiative (Proposition \_\_) dealing with the same Site then qualified for the ballot.

#### **The Proposal:**

Proposition \_\_\_\_ would create a special use district known as the 8 Washington Parks, Public Access and Housing District. The district would require the 8 Washington Street Site project to include:

- two buildings housing a total of between 121 and 141 residential units;
- an increase in the legal building heights on an approximately half-acre portion (16% of the Site) along Drumm Street from 84 feet to 92 feet in one section and from 84 feet to 136 feet in another;
- a private fitness and swim center with a green roof, with a two-story height limit;
- lowering the height limit to 5 to 6 stories for the residential building along the Embarcadero;
- public parks, open space, walkways and sidewalks on at least 20% of the Site;

- new and expanded pedestrian access to the waterfront and enhanced bicycle and pedestrian safety;
- ground floor retail and cafés;
- underground private and public automobile and bicycle parking; and
- significant payment by the developer to the affordable housing fund of the City and County of San Francisco.

The project will create new construction and permanent jobs and increase revenue for the Port and the City.

Proposition \_\_\_ also would require the City Planning Director to review a proposed plan for the Site for consistency with the voter-approved Initiative within forty days.

**A "YES" Vote Means:** If you vote "yes," you want to approve the 8 Washington Parks, Public Access and Housing District that includes two mixed-use buildings containing 134 residential units, ground floor restaurants and retail, a private fitness and swim facility, a public park and open spaces, and underground public and private parking.

**A "NO" Vote Means:** If you vote "no," you do not want to approve the 8 Washington Parks, Public Access and Housing District that includes two mixed-use buildings containing 134 residential units, ground floor restaurants and retail, a private fitness and swim facility, a public park and open spaces, and underground public and private parking.

|  |   |
|--|---|
| <b>Items 7 and 8</b><br><b>Files 12-0270 and 12-0278</b> | <b>Department:</b><br>Port of San Francisco |
|--|---|

## EXECUTIVE SUMMARY

### Legislative Objective

The proposed resolutions request Board of Supervisors approval of various transactions required for the development of combined properties at 8 Washington Street and Seawall Lot (SWL) 351.

File 12-0270 would approve a:

- (1) Purchase and Sale Agreement (PSA) between the Port and San Francisco Waterfront Partners II, LLC (SFWP) by which the Port would sell a portion of Seawall Lot (SWL) 351 to the SFWP and SFWP, a private developer, would sell to the Port a portion of 8 Washington Street comparable to SWL 351 in size and appraised value;
- (2) Trust Exchange Agreement between the City and the State Lands Commission governing the conditions under which the portion of SWL 351 sold by the Port to SFWP would be removed from the public trust and the portion of 8 Washington sold by SFWP to the Port would be placed into the public trust;
- (3) 66-year ground lease between the Port and SFWP for Port-owned property, in which SFWP would construct an approximately 4,000 square foot café/restaurant/ancillary retail building; and
- (4) Maintenance Agreement between the Port and SFWP in which SFWP would be responsible for maintaining the public open space.

File 12-0278 would amend a prior resolution (File 12-0128) which declared the Board of Supervisors intent to establish an infrastructure financing district (IFD) on Port property and established seven project areas, by adding SWL 351 as an eighth project area in the IFD. This resolution is a statement of intent and would not obligate the Board of Supervisors to establish the IFD and does not constitute approval of any specific land uses on such property.

### Key Points

Approval of the proposed resolutions would allow development of the combined properties of 8 Washington Street and SWL 351. The resulting project would consist of a residential and commercial condominium development on the SFWP privately-owned property, and public and commercial improvements on Port-owned property. The private improvements, owned by SFWP, would include:

- Two mixed-use buildings with approximately 134 residential condominiums, and ground floor restaurant and retail (commercial) condominiums;

- A 388 underground parking garage for residents of the building and the public; and
- A 27,150 square foot health and fitness club that would replace an existing health club at the same location.

Public improvements to be owned by the Port include:

- 25,180 square feet of public open space in three parcels,
- A 4,000 square foot café/restaurant/retail building, and
- Improved and widened sidewalks along the west side of The Embarcadero, immediately south of Pacific Park, and fronting a portion of the east side of the newly built health and fitness club.

SWL 351, which is located at the corner of Washington Street and The Embarcadero, is currently used as surface parking for the Ferry Building Waterfront Area.

In 2009, based on a competitive Request for Proposals (RFP) process, the Port Commission authorized Port staff to enter into exclusive negotiations with SFWP in order to develop SWL 351.

#### **Proposed Purchase and Sale Agreement (PSA)**

Under the proposed PSA between the Port and SFWP:

- (1) The Port would sell to SFWP a portion of SWL 351, totaling 23,020 square feet, with an appraised value of \$7,560,000.
- (2) In return SFWP would sell to the Port portion of 8 Washington Street, totaling 28,241 square feet, with an appraised value of \$8,630,000.

Although the Port would be receiving property having an assessed value of \$1,070,000 in excess of the appraised value that SFWP will receive, SFWP would not be directly compensated for the difference in assessed value.

#### **Proposed Trust Exchange Agreement**

Under the proposed Trust Exchange Agreement (PSA) between the City and the State Lands Commission, the portion of SWL 351 being sold by the Port to SFWP would be removed from the public trust and become private property, while the portion of 8 Washington Street being purchased by the Port from SFWP would become part of the public trust.

**Proposed Ground Lease and Maintenance Agreement**

The Port will enter into a 66-year ground lease with SFWP for Port property bound by The Embarcadero, Washington Street, and Drumm Street. The Port property is open space, in which SFWP will construct a café/restaurant/ancillary retail building and public improvements.

Under the proposed Maintenance Agreement between the Port and SFWP, SFWP will be responsible for maintaining the Port-owned property, including the open space and public improvements.

**Development and Disposition Agreement and Infrastructure Financing District (IFD)**

The Port Commission and SFWP propose to enter into a Development and Disposition Agreement (DDA) governing the transfer of the café/restaurant/ancillary retail building to SFWP, the obligation of and conditions under which SFWP is to construct public improvements on the open space parcels, and the terms and conditions of public financing for the open space parcels. The proposed DDA is not subject to Board of Supervisors approval. However, Board of Supervisors approval of the Purchase and Sale Agreement, the Trust Exchange and the Ground Lease and Maintenance Agreement are required before the DDA can be implemented.

The Board of Supervisors previously approved a resolution declaring their intent to establish an IFD on Port property, consisting of seven project areas. Board of Supervisors approval of the intent to include SWL 351 as an eighth IFD project area (an area from which IFD revenues may be generated) in the previously approved Port IFD is required before the Port Commission and SFWP can implement the DDA.

**Fiscal Impact**

Under the Purchase and Sale Agreement, SFWP will pay the Port:

- (1) \$3,000,000 in a one-time lump sum payment;
- (2) Transfer fees to be paid to the Port by the condominium owners of 1.0% of the price of any subsequent, but not initial, sale of commercial and residential condominiums in perpetuity. The transfer fees are estimated to have a net present value of \$9.0 million over 66 years; these calculations are discussed in detail below. Ms. Joanne Sakai of the City Attorney's Office reports that the proposed transfer fee is not considered to be a tax requiring a 2/3 vote, but rather is considered to be a private, contractual agreement to provide the Port with revenue participation in the condominium sales.
- (3) \$120,000 per year as an open space fee, adjusted every 5 years by the Consumer Price Index (CPI) with a minimum increase of 10% and a maximum of 20% every five years.

Under the 66-year ground lease, SFWP will pay annual rent to the Port of 15% of gross income generated by the approximately 4,000 square foot café/restaurant/ancillary retail building to be

constructed by SFWP on Port property. There is no MAG (Minimum Annual Guarantee) in rent, as is generally included in other Port leases.

SFWP would also pay the Port \$60,000 per year during the construction of the residential and commercial condominiums as partial compensation for lost parking revenues for SWL 351, or \$180,000 during the three-year construction period, which is \$73,659 less than the \$253,659 in parking revenue that the Port would have received for the three-year period under the existing parking agreement. The net present value of the estimated future parking revenues that the Port would permanently forego is \$1,897,867, once the residential and commercial condominiums are completed (see table below).

The net present value of the estimated revenues to be paid by SFWP to the Port, offset by foregone future parking revenues would be \$12,408,945, as shown in the table below.

**Net Present Value of Estimated Future Revenues Generated by the Proposed Purchase and Sale Agreement and 66-Year Ground Lease between the Port and SFWP**

| Revenue   | NPV                 | Time Period  |
|---|---------------------|--------------|
| One Time Payment of \$3,000,000   | \$2,448,894         | Year 3 to 4  |
| 1.0% Transfer Fee Paid to the Port by Condominium Owners on the Future Sale of the Residential and Commercial Condominiums <sup>1</sup> | 9,010,086           | Year 4 to 66 |
| 66-Year Ground Lease  | 2,277,641           | Year 4 to 66 |
| Parking Revenues During Construction  | 157,459             | Year 1 to 3  |
| Foregone Future Parking Revenues on Completion of Construction  | (1,897,867)         | Year 4 to 66 |
| 15% of Park Café and Other Retail Revenues  | 412,732             | Year 4 to 66 |
| <b>Total</b>  | <b>\$12,408,945</b> |              |

Source: Port

<sup>1</sup> Assumes approximately 14% of residential units and 10% of condominium units are sold each year.

Under the DDA between the Port and SFWP, project-related City costs for legal services provided by the City Attorney, and for the administrative costs of the Port and other City departments, and for various outside consulting costs, will be paid by SFWP. The Port is being reimbursed quarterly by SFWP for these costs, which in calendar year 2011 totaled \$311,189 and since entering into exclusive negotiations with SFWP in February, 2009 have totaled \$465,222.

**Proposed IFD and \$5 Million in Tax Increment Revenues to be Paid by the Port to SFWP**

According to the Port, the proposed residential and commercial condominium are expected to generate tax increment revenues over 30 years with an estimated net present value of \$44 million. Under the DDA between the Port and SFWP, the Port is required to reimburse SFWP up

to \$5 million in IFD project area tax increment revenues for SFWP's cost to construct improvements to the public open space.

### Development Impact Fees

The proposed residential and commercial condominium development and the commercial café restaurant and retail building to be constructed by SFWP would generate an estimated \$12,106,366 in one-time development impact fees to the City, as follows:

#### Development Impact Fees

|  |                     |
|--|---------------------|
| <u>Mandated Fees</u>   |                     |
| Affordable Housing   | \$8,844,176         |
| Jobs-Housing Linkage   | 643,125             |
| Transit Impact Development   | 376,875             |
| <b>Subtotal, Mandated Fees</b>   | <b>\$9,864,176</b>  |
| Additional Affordable Housing Fees under the Purchase and Sale Agreement | 2,242,190           |
| <b>Total Fees</b>  | <b>\$12,106,366</b> |

- Mandated Affordable Housing Fees (\$8,844,176). This represents payment of the inclusionary housing fee for the equivalent of 20% of the condominium development's 134 units, or 27 units.
- Additional Affordable Housing Fees under the Purchase and Sale Agreement (\$2,242,190). SFWP has agreed to pay additional inclusionary housing fees for the equivalent of another 5% of the condominium development's 134 units, or 7 units.
- Mandated Jobs-Housing Linkage Program Fees (\$643,125) calculated at \$20.58 per each of 31,250 square feet of retail and health club development facilities at the site.
- Mandated Transit Impact Development Fees (\$376,875), calculated at \$12.06 per each of 31,250 square feet of retail and health club development facilities at the site.

Under the City's fee deferral program, SFWP would be required to pay 15% of \$9,864,176 in mandated development impact fees, or \$1,479,626, to the City on receipt of a building permit, with the remaining 85%, or \$8,384,550 due on certificate of occupancy. For the additional development impact fees for affordable housing of \$2,242,190, the Purchase and Sale Agreement requires 20%, or \$448,438, to be paid at project initiation, with the remaining 80% (\$1,793,752) paid on certificate of occupancy. Thus, \$1,928,064 in development impact fees (\$1,479,626 in mandatory fees and \$448,438 in additional fees) will be made available to the City on project initiation.

### General Tax Revenues

According to the Port, the City will receive an estimated \$1.26 million annually in Sales, Transfer, and Utility and Taxes from development of the project. According to the Port, these

estimates will be further refined before the Board of Supervisors considers approval of the infrastructure financing plan.

### Summary

The proposed resolutions provide for development of private property owned by SFWP and public property owned by the Port, bound by The Embarcadero, Washington Street, and Drumm Street, including:

- (1) Construction by SFWP of residential and commercial condominiums, underground parking for residential and public use, and a health and fitness club on the private property owned by SFWP ; and
- (2) Open space and public improvements on property owned by the Port, including a café/restaurant and ancillary retail building to be constructed by SFWP.

SFWP benefits from the proposed transactions by gaining the right to develop the residential and commercial condominiums on SWL 351, which is currently Port-owned property. The estimated value to SFWP of the residential and commercial condominium development, based on the initial sales value of the commercial and residential condominiums, is \$469.7 million (\$391 million for the initial sale of the residential condominiums and \$78.7 million for the initial sale of the commercial condominiums). In addition, SFWP will receive rental income from the café/restaurant/ancillary retail uses, estimated at a net present value of \$2,751,547 over 66 years.

The net present value of financial benefits to the City from the proposed transaction are estimated to be up to \$63.5 million, including (1) \$12.4 million to the Port under the Purchase and Sale Agreement and 66-year ground lease, (2) \$12.1 million in development impact fees to the City, and (3) \$39.0 million in tax increment revenues (net present value of \$44 million in tax increment revenues, less \$5 million allocated to SFWP for the costs to develop public improvements).

The City could also realize additional Sales, Transfer, and Utility Tax revenues to be generated by the proposed residential and commercial condominium and other development, estimated to be \$1.26 million annually.

### Policy Considerations

#### **The DDA between the Port and SFWP obligates the City to reimburse \$5,000,000 in open space improvement costs through tax increment revenues generated by the proposed development**

Although the Board of Supervisors has not yet approved the proposed IFD or financing plan, the DDA between the Port and SFWP obligates the City to spend \$5,000,000 of IFD tax increment revenues on public open space improvements bound by The Embarcadero, Washington Street, and Drumm Street. The DDA contains a license between the Port and SFWP that requires the Port to create the IFD and reimburse \$5 million to SFWP for SFWP's costs for public improvements.

Mr. Jonathan Stern, Port Assistant Deputy Director for Development, states that the Port will request at a future date Board of Supervisors' approval for appropriation of approximately \$20,900,000 million, or 47.5% of future IFD tax increment revenues with an estimated net present value of \$44,000,000, for Port capital projects outside of this IFD project area as contained in its capital plan. The future appropriation request of \$20,900,000 is in addition to the \$5,000,000 that the Port is required to reimburse SFWP for public open space improvements, noted above.

The Board of Supervisors has the final authority to determine the allocation of the proposed IFD tax increment revenues to the Port or the City's General Fund. Issuance of tax increment bonds and appropriation of tax increment bond proceeds are subject to Board of Supervisors approval.

#### **The City will receive limited financial benefits beyond that required by statute for payment of development impact fees and taxes**

Of the one-time development impact fees of \$12,106,366 to be paid by SFWP to the City, \$9,864,176, or 81.5% represent affordable housing fees, job-housing linkage fees, and transit impact development fees mandated by the Planning Code. \$2,242,190, or 18.5%, in affordable housing fees to be paid by SFWP under the terms of the Purchase and Sale Agreement are in addition to the fees mandated by the Planning Code.

The City could require SFWP to provide other public benefits to the City in exchange for entering into a development agreement, as allowed for under California Government Code section 65864 (the Development Agreement Statute).

The Board of Supervisors should consider amending the proposed resolution by requesting that the Port negotiate further public benefits to be provided by SFWP under the DDA between the Port and SFWP. For example, the proposed DDA requires that the Port reimburse \$5 million in IFD proceeds to SFWP for construction of public improvements. The total cost of the public improvements is estimated by the Port to be approximately \$8 million. Thus, IFD revenues of \$5 million will fund 62.5% of the estimated cost of public improvements while SFWP will fund \$3

million or 37.5%. These improvements will also enhance the financial value of the private improvements. The Port could negotiate to have these improvements of \$8 million entirely funded by SFWP instead of the Port contributing \$5 million in tax increment revenues towards SFWP's cost of constructing the public improvements.

### **Recommendations of the Budget and Legislative Analyst**

Amend the proposed resolution to request the Port to negotiate:

- A minimum annual guarantee (MAG) rent for the café/restaurant and ancillary retail building, which is not currently required by the proposed 66-year ground lease between the Port and SFWP, and is consistent with other agreements between the Port and private developers.
- Additional payment of \$73,659 from SFWP to offset lost parking revenue, which the Port would have received for the three-year period under the existing parking agreement.

Approval of the proposed resolutions (File 12-0270 and File 12-0278), as amended, is a policy matter for the Board of Supervisors.

The Board of Supervisors should also consider amending the resolution by requesting that the Port negotiate further public benefits to be provided by SFWP under the DDA between the Port and SFWP, including SFWP paying the total costs of \$8 million for the public improvements rather than the City allocating \$5 million in IFD proceeds and SFWP paying only \$3 million.

## MANDATE STATEMENT

Charter Section 9.118(c) requires Board of Supervisors approval of leases having a term of ten or more years or anticipated revenues of one million dollars or more, and of sales or transfers of City-owned real property. Transfer of the property under the proposed Purchase and Sale Agreement (PSA) depends on the trust exchange being approved between the City and County of San Francisco and the State Lands Commission. The State Lands Commission may approve an exchange pursuant to the provisions of Section 5 of Chapter 310, Statutes of 1987, which details the conditions under which and the purposes for which a trust exchange may be made. Charter Section 9.118(b) requires Board of Supervisors approval of contracts having a term of ten or more years.

California Government Code Section 53395 et seq., which became law in 1990, authorizes cities to establish infrastructure financing districts (IFD) to finance purchasing, constructing, expanding, improving, seismically retrofitting or rehabilitating real or other tangible property with an estimated life of 15 years or longer. Infrastructure financing districts "shall finance only public capital facilities of communitywide significance", including parks, other open space and street improvements. Section 53395.8 allows an infrastructure financing district to be divided into project areas.

## BACKGROUND

Seawall Lot (SWL) 351, which is located at the corner of Washington Street and The Embarcadero, is currently used as surface parking for the Ferry Building Waterfront Area. SWL 351 is located in the Ferry Building Waterfront Area in the Port's Waterfront Land Use Plan (Waterfront Plan), which identifies several objectives, including:

- Providing a mix of public and private uses for properties in the Ferry Building Waterfront Area;
- Restoring the Ferry Building Waterfront as a major transit center;
- Maximizing new and existing parking to serve existing businesses in the Ferry Building and Agriculture Building; and
- Obtaining economic value from SWL 351 by combining it with the adjacent Golden Gateway residential site (8 Washington Street) for residential and commercial development.

The Waterfront Plan identifies several acceptable uses for SWL 351, including residential, entertainment, general office, parking, retail, recreation, visitor services, community facilities, and open space.

In 2006, San Francisco Waterfront Partners II, LLC (SFWP) made an unsolicited proposal to the Port to develop SWL 351 in conjunction with the privately-owned 8 Washington Street. In 2008, Port staff provided information to the Port Commission on the options for SWL 351, which included (1) offering SWL 351 for development by competitive bid, (2) responding to SFWP's proposal by initiating a sole source negotiation, or (3) taking no action.

The Port Commission authorized offering development opportunities for SWL 351 through a request for proposal (RFP). The Port received two proposals: SFWP's proposed condominium and commercial development (discussed further below); and a 200-room hotel development proposed by a development group led by Dhaval Panchal. Subsequently, Mr. Panchal withdrew his proposal. In February 2009, the Port Commission authorized Port staff to award the development opportunity for SWL 351 to SFWP and enter exclusive negotiations with SFWP.

## DETAILS OF LEGISLATION

### Proposed Project

The proposed project consists of a residential and commercial condominium development on privately-owned property, and public and commercial improvements on Port-owned property. The private improvements, owned by SFWP, include:

- Two mixed-use buildings with approximately 134 residential condominiums, and ground floor restaurant and retail (commercial) condominiums;
- An underground parking garage for residents of the buildings and the public; and
- A new health and fitness club.

Public improvements to be owned by the Port include:

- 25,180 square feet of public open space in three parcels;
- An approximately 4,000 square foot café/restaurant/retail building; and
- Improved and widened sidewalks along the west side of The Embarcadero, immediately south of Pacific Park and fronting a portion of the east side of the newly built health and fitness club.

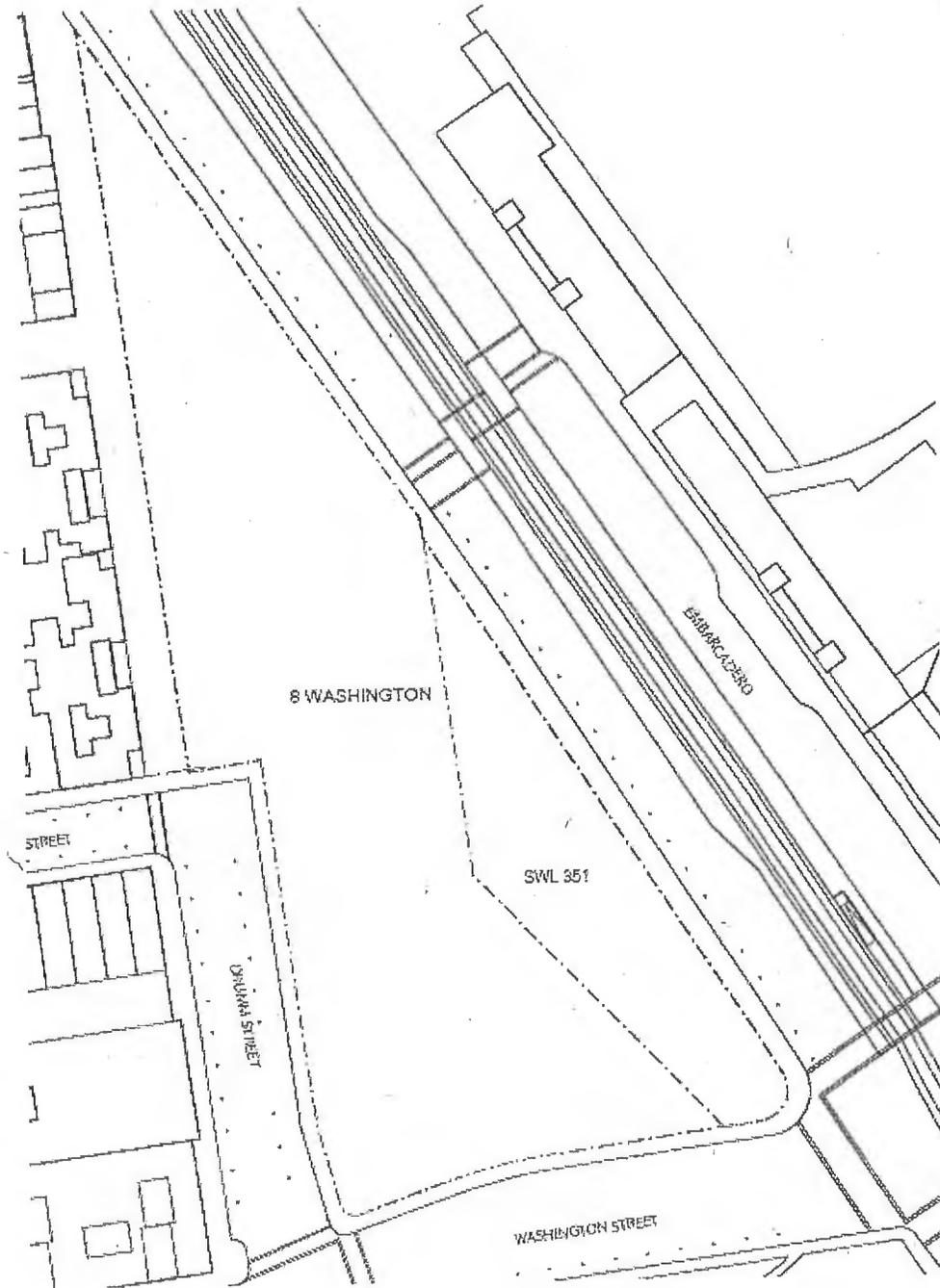
### File 12-0270

In order to develop the proposed project, the Board of Supervisors must approve (1) a Purchase and Sale Agreement ("PSA") by which the Port would sell a portion of SWL 351 to and purchase a portion of 8 Washington from San Francisco Waterfront Partners II, LLC (SFWP); (2) a Trust

Exchange Agreement for the same properties governing the conditions of the exchange and in keeping with State law governing exchanges of land in State trust, (3) 66-year ground lease governing the construction of public improvements, provision of some public financing for public improvements, and operation of the a retail parcel on Port property, and (4) a Maintenance Agreement for the maintenance by SFWP of the open space, bound by The Embarcadero, Washington Street and Drumm Street.

1) Purchase and Sale Agreement (PSA)

Adoption of the resolution would authorize the simultaneous sale of a portion of SWL 351, currently owned by the Port, comprising 23,020 square feet, and purchase of a portion 8 Washington, comprising 28,241 square feet. The Port currently owns 27,926 of the square footage in the combined properties, or roughly 20%. Private property owners own 109,224 square feet, or approximately 80% of the land. After the transfer, the Port will own 32,937 square feet, approximately 24% of the total land, and private owners will own 104,213 square feet, or 76% of the land. The map below shows the current configuration of SWL 351 and 8 Washington Street.



Attachment I shows the portion of SWL 351 that would be sold by the Port to SFWP, and Attachment II shows the portion of 8 Washington that would be purchased by the Port from SFWP.

The City's Director of Real Estate has determined, based on an appraisal conducted by Carnegie-Blum & Partners, Inc. on behalf of SFWP, that the portion of SWL 351 to be sold by the Port to SFWP has a current appraised value of \$7,560,000, while the portion of 8 Washington to be purchased by the Port from SFWP has an appraised value of \$8,630,000. The appraisal did not consider increased land value from provision of a conditional use permit to increase the height, bulk and parking at the site.

The sale of a portion of SWL 351 and purchase of a portion of 8 Washington Street would result in an exchange of properties in the public trust. The appraised value of the land to be exchanged into the public trust thus equals or exceeds the value of the land to be exchanged out of the public trust.

In addition to receiving a portion of 8 Washington, the PSA calls for the Port to receive from SFWP the following payments from the sale of a portion of SWL 351:

- A one-time lump sum payment of \$3 million,
- Transfer fees, equaling 1.0% of the purchase price, in perpetuity from the subsequent but not initial sale (or lease with a term of thirty-five (35) years or longer) of each residential and commercial condominium, and
- An ongoing revenue stream of \$120,000 per year for 66 years, commencing upon completion of public improvements, adjusted every 5 years by the Consumer Price Index (CPI) with a minimum increase of 10% and a maximum of 20% every five years.

## 2) Trust Exchange Agreement

Because SWL 351 is part of the public trust for the waterfront as established under the Burton Act, the City must approve and authorize a trust exchange agreement with the California State Lands Commission that would remove the public trust from Seawall Lot 351 and impress it upon 8 Washington. Whereas State legislation (SB 815) declared a number of Port properties along the waterfront surplus to the trust (e.g., not needed for trust purposes), thus requiring no State Lands Commission approval, no properties north of Market Street were included in that legislation in its final form. These properties, including SWL 351, therefore must be considered on a case by case basis by the State Lands Commission.

Port staff has asked the Port Commission to make findings that (a) SWL 351 is no longer needed for trust purposes; and (b) the property to be placed in trust is useful for trust purposes, will not substantially interfere with other public trust purposes, and has a monetary value equal to or greater than that being transferred from the trust. The findings are required under State law.

In particular, Port staff report that:

- As currently configured, SWL 351 would not allow for useable or desirable open space or park use.

- The unusual size and shape of SWL 351 makes development of a public trust-consistent commercial use, such as hotel or retail, economically infeasible.
- The parcel's current parking serving the Ferry Building could be better served through sub-surface parking, which would improve the appearance of the site and allow for development of better public-serving public trust uses.<sup>1</sup>

The Port Commission approved the trust exchange on May 29, 2012.

The trust exchange has been negotiated between staff of the California State Lands Commission and the Port staff. The State Lands Commission must also make the above findings. According to State Lands Commission staff, State Land Commission approval, originally sought for May 24, 2012, has been delayed until July, 2012 to allow time for the Board of Supervisors to approve the trust exchange.

### 3) Lease Agreement

The Port will enter into a 66-year ground lease with SFWP for Port property, in which SFWP will construct a café/restaurant/ancillary retail building. The café/restaurant/ancillary retail building is an approximately 4,000 square foot, one-story, 18-foot-tall building.

After construction by SFWP, the building will be owned by the Port, which in turn will lease it back to the developer under the 66-year ground lease. SFWP will pay the Port 15% of gross income received by SFWP. There is no MAG (Minimum Annual Guarantee) in rent, as is customary for Port rental agreements.

### 4) Maintenance Agreement

SFWP will provide management, landscape, janitorial, general maintenance, and security services at no cost to the Port for the open spaces in the project. The open space parcel includes Pacific Park, Jackson Commons, a portion of the length of the Drumm Street Garden Walk, a portion of The Embarcadero sidewalk, and other areas of open space. SFWP will also maintain the public restrooms in the café/restaurant/retail building. Under the Maintenance Agreement, SFWP may administer permits, events and concessions within the open space and retain the associated revenue.

A standard of maintenance and a specific scope of services is included in the maintenance agreement. If the Port terminates the maintenance agreement for non-performance by the developer, the DDA provides that a maintenance special tax could be levied against each taxable parcel in an amount needed to finance open space maintenance and administrative expenses.

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<sup>1</sup> See page 26, *Waterfront Plan*.

Neither the Port nor the City are obliged to pay for open space maintenance from property taxes or any other source of available City or Port funds.

### **Infrastructure Financing District (File 12-0278)**

File 12-0278 would amend an earlier Board of Supervisors' resolution (File 12-0128), which declared the Board's intent to establish an infrastructure financing district (IFD) for the waterfront and established seven project areas, by adding SWL 351 as an eighth project area under the district. The project area to be added to the IFD contains only the portion of SWL 351 currently owned by the Port.

According to Port staff, the Port will later seek Board of Supervisors approval under California Government Code 53395.8 to include the remaining portion of the 8 Washington project in the IFD. This statute allows private property contiguous to an IFD in San Francisco to petition the Board of Supervisors to join the IFD after it has been established, in exchange for committing to maintain public access to any land within 100 feet of the shoreline. The current resolution is a statement of intent and would not obligate the Board of Supervisors to establish the IFD, and does not constitute approval of any specific land uses on such property. Board of Supervisors approval to include SWL 351 and 8 Washington in the Port IFD must be obtained before the Port Commission and SFWP can implement the proposed Development and Disposition Agreement (DDA), discussed below.

### **Development and Disposition Agreement**

The Port Commission and SFWP propose to enter into a DDA governing the transfer of the café/restaurant/ancillary retail building to SFWP, the obligation of and conditions under which SFWP is to construct public improvements on the open space parcels, and the terms and conditions of public financing for the open space parcels. The DDA is not subject to Board of Supervisors approval. However, Board of Supervisors approval of the PSA, the Trust Exchange and the Ground Lease and Maintenance Agreement are required before the DDA can be implemented.

### **Public Improvements under the DDA**

The proposed DDA requires SFWP to construct public improvements on Port-owned property. The public improvements consist of 25,180 square feet of public open space in three parcels and improved and widened sidewalks to be constructed by SFWP. The Port will reimburse SFWP up to \$5 million, using IFD tax increment revenues generated by the proposed project, for the costs of constructing the public improvements.

The DDA requires that SFWP obtain a letter of credit guaranteeing that it or any successor will construct the public improvements without IFD funds if it fails to proceed with the development.

### **Community Facilities District**

The Port will also assist SFWP by forming a Mello-Roos Community Facilities District (CFD), with SFWP as the sole property owner, which will provide revenues to SFWP for development of the open space parcels, if necessary. Formation of the proposed CFD is subject to future Board of Supervisors approval. The proceeds to the CFD cannot be used for purposes outside of the project site. CFD assessments could be applied to property within the project site, except for a proposed recreational facility, and used for capital costs for public improvements included in the project.

### **Parking**

Development of the private improvements on SWL 351 will entail removing a surface parking lot of 90 to 110 parking spaces currently operated by ACE Parking under an agreement with Ferry Building Associates, LLC<sup>2</sup>. The current parking on SWL 351 represents approximately 2/3 of the 150 parking spaces the Port is required to provide the master tenant of the Ferry Building under its agreement with the Port. The new underground parking garage to be constructed by SFWP will contain up to a total of 388 parking spaces of which 255 will be for the public, comprised of 175 spaces guaranteed under covenant to serve the Ferry Building Waterfront Area and 80 additional public parking spaces. The remaining automobile parking spaces will be reserved for residents (127 spaces) and car sharing (6 spaces). Of the 175 public parking spaces, no fewer than 90 spaces must be permanently dedicated to serving the Ferry Building Waterfront Area. The DDA between the Port and SFWP specifies that SFWP or any successor is obliged to provide the 90 replacement parking spaces in the vicinity if it fails to proceed with the development. During construction, the Port indicates it plans to provide a minimum of 90 temporary parking spaces through use of other nearby parking facilities.

### **Related Board of Supervisor Actions**

Prior Board actions related to these items include:

- Resolution in support of State legislation allowing establishment of infrastructure financing districts (SB 1085).
- 2011 adoption of guidelines recommended by the Capital Planning Committee for the establishment and use of infrastructure financing districts. Under these guidelines, the Port retains all proceeds from the IFD formed on Port property. If the IFD project area includes Port and non-Port property, only the proceeds from the Port property are retained exclusively to fund Port capital projects.

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<sup>2</sup> Ferry Building Associates, LLC is the master tenant of the Ferry Building Market Place under a ground lease with the Port, and consists of CA-Ferry Building Investor Limited Partnership, EOM GP LLC, and Equity Office Management LLC.

- 2012 approval of the Resolution of Intent to establish an infrastructure financing district comprised of the Port's waterfront properties (Resolution #110-12). That resolution established seven infrastructure financing project areas. The Board of Supervisors had excluded SWL 351, the subject of this resolution, from inclusion in the initial list of project areas.
- 2012 rejection of appeals to the EIR and Conditional Use Permit adopted by the Planning Commission.

Other actions related to this item to be introduced to the Board of Supervisors in the future include:

- Approval to expand the IFD project area boundaries to include 8 Washington Street.
- A waiver of 2011 guidelines for establishing IFDs in San Francisco, adopted by the Board of Supervisors with regard to 8 Washington if added to the IFD.
- A future ordinance adopting an infrastructure financing plan for the project, establishing an appropriations limit and giving the City the authority to issue bonds against projected infrastructure financing district. Port management reports that the request for approval of the financing plan is expected to be submitted to the Board of Supervisors in approximately two months.

## FISCAL IMPACT

Under the proposed purchase and sale agreement between SFWP and the Port, the Port would transfer to SFWP land with an appraised value of \$7,560,000 and receive from SFWP land with an appraised value of \$8,630,000. In addition the Port would receive from SFWP:

- (1) A one-time payment of \$3,000,000;
- (2) Transfer fees to be paid by the condominium owner of 1.0% of any subsequent sales of commercial and residential condominiums in perpetuity with an estimated net present value of \$9.0 million, based on the 66-year period used by the Port; and
- (3) \$120,000 per year under the proposed purchase and sale agreement between the Port and SFWP for use of the open space, adjusted every 5 years by the CPI, for not less than 10% and not more than 20%; and
- (4) 15% of income to SFWP generated by the proposed park café or other retail under the proposed ground lease between the Port and SFWP. According to Port staff, the Port receives 15% of income generated by projects on Pier 1 ½, Pier 3, Pier 5, and Pier 39; however, at these locations there is a MAG (Minimum Annual Guarantee) in rent.

SFWP would also pay the Port \$60,000 per year during the construction of the residential and commercial condominiums as partial compensation for lost parking revenues from the current parking on SWL 351. Construction is expected to last three years. The Port is currently receiving \$82,066 annually in these parking revenues, which would be foregone during the first year of construction. Under the agreement with EOP, these payments would have increased to \$84,528 in what will now be the second year of construction and \$87,064 in the third year, for a total of \$253,659 in foregone parking revenues during the construction period. The Port will permanently forego future parking revenues from SWL 351, beginning in year four, when construction of the residential and commercial condominiums is completed, with an estimated net present cost of \$1.9 million.<sup>3</sup>

The net present value (NPV) to the Port of these estimated revenues, offset by the net present cost of foregone parking revenues, is approximately \$12.4 million, as shown in Table 1 below.

**Table 1**  
**Net Present Value of Future Estimated Revenues Generated by the Proposed Purchase and Sale Agreement and 66-Year Ground Lease between the Port and SFWP<sup>4</sup>**

| Revenue   | NPV                 | Time Period  |
|---|---------------------|--------------|
| One Time Payment of \$3,000,000   | \$2,448,894         | Year 3 to 4  |
| 1.0% Transfer Fee Paid to the Port by Condominium Owners on the Future Sale of the Residential and Commercial Condominiums <sup>5</sup> | 9,010,086           | Year 4 to 66 |
| 66-Year Ground Lease  | 2,277,641           | Year 4 to 66 |
| Parking Revenues During Construction  | 157,459             | Year 1 to 3  |
| Foregone Parking Revenues on Completion of Construction   | (1,897,867)         | Year 4 to 66 |
| 15% of Park Café or Other Retail Revenues   | 412,732             | Year 4 to 66 |
| <b>Total</b>  | <b>\$12,408,945</b> |              |

Source: Port

Under the DDA between the Port and SFWP, project-related City costs for City Attorney, Port and other City staff, and for consulting will be paid by SFWP. The Port is being reimbursed quarterly by SFWP for these costs, which in calendar year 2011 totaled \$311,189 and since entering into exclusive negotiations with SFWP in February, 2009 have totaled \$465,222.

<sup>3</sup> The estimated net present value of the foregone revenues is based on an annual increase of 3% per year. This may be conservative as the existing contract between the Port and EOP for the SWL 351 parking is to be renewed every 10 years at "prevailing parking fees" to be negotiated between the Port and EOP.

<sup>4</sup> The Port has calculated the NPV based on a 7% discount rate, the current rate for corporate bonds, except for the café lease revenues, in which the Port has calculated a 7.5% discount rate.

<sup>5</sup> Based on resale of residential and commercial condominiums every 7 years.

**Infrastructure Financing District Tax Increment Revenues**

The DDA between the Port and SFWP commits the Port to making payments of \$5 million from future IFD revenues to reimburse SFWP for the cost of constructing open space improvements. According to Mr. Jonathan Stern, Port Assistant Deputy Director for Development, the Port estimates that the proposed IFD will generate total estimated tax increment revenues of \$3.1 million per year over 30 years, for a net present value of \$44 million. The first \$5 million in infrastructure financing district tax increment revenue would be provided by the Port to SFWP for construction of open space improvements as revenues became available.

**Development Impact Fees**

The proposed residential and commercial condominium development and the commercial café restaurant and retail building to be constructed by SFWP would generate an estimated \$12,106,366 in one-time development impact fees to the City, as follows:

**Table 2  
Development Impact Fees**

|  |                     |
|--|---------------------|
| <u>Mandated Fees</u>   |                     |
| Affordable Housing   | 8,844,176           |
| Jobs-Housing Linkage   | 643,125             |
| Transit Impact Development   | 376,875             |
| <b>Subtotal, Mandated Fees</b>   | <b>\$9,864,176</b>  |
| Additional Affordable Housing Fees under the Purchase and Sale Agreement | 2,242,190           |
| <b>Total Fees</b>  | <b>\$12,106,366</b> |

- Mandated Affordable Housing Fees (\$8,844,176). This represents payment of the inclusionary housing fee for the equivalent of 20% of the condominium development’s 134 units, or 27 units.
- Additional Affordable Housing Fees under the Purchase and Sale Agreement (\$2,242,190). SFWP has agreed to pay additional inclusionary housing fees for the equivalent of another 5% of the condominium development’s 134 units, or 7 units.
- Mandated Jobs-Housing Linkage Program Fees (\$643,125) calculated at \$20.58 per each of 31,250 square feet of retail and health club development facilities at the site.
- Mandated Transit Impact Development Fees (\$376,875), calculated at \$12.06 per each of 31,250 square feet of retail and health club development facilities at the site.

Under the City’s fee deferral program, SFWP would be required to pay 15% of the mandated development impact fees of \$9,864,176 (\$1,479,626) to the City on receipt of a building permit, with the remaining 85% (\$8,384,550) due on certificate of occupancy. The PSA requires 20%,

or \$448,438, of additional affordable housing fees of \$2,242,190 to be paid at project initiation, with the remaining 80%, or \$1,793,752, paid on certificate of occupancy. Thus, \$1,928,064 in impact fees of \$12,106,366 will be made available to the City on project initiation.

To the extent that more street trees are required than will be provided on the parcel, the developer will also be required to pay \$1,744 in Street Tree In-Lieu Fees for each tree deemed required.

### **Tax Revenues**

The Port's financial consultant has preliminarily estimated that \$1.26 million annually in sales, transfer and utility taxes will be made available to the City from development of the project. According to Mr. Stern, the Port will further analyze these revenue projections when the Port submits the proposed infrastructure financing plan to the Board of Supervisors.

### **Summary**

The proposed resolutions provide for development of private property owned by SFWP and public property owned by the Port, bound by The Embarcadero, Washington Street, and Drumm Street, including:

- Construction of residential and commercial condominiums, underground parking for residential and public use, and a health and fitness club on the private property owned by SFWP ; and
- Open space and public improvements on property owned by the Port, including a café/restaurant and ancillary retail building to be constructed by SFWP.

SFWP benefits from the proposed transactions by gaining the right to develop the residential and commercial condominiums on SWL 351, which is currently Port-owned property and part of the public trust and would be transferred to SFWP in exchange for property currently owned by SFWP. The estimated value to SFWP of the residential and commercial condominium development, based on the initial sales value of the commercial and residential condominiums, is \$469.7 million (\$391 million for the initial sale of the residential condominiums and \$78.7 million for the initial sale of the commercial condominiums). In addition, SFWP will receive rental income from the café/restaurant/ancillary retail uses, estimated at a net present value of \$2,751,547 over 66 years. Finally, SFWP would be reimbursed up to \$5 million in costs for development of public improvements on the site.

Public financial benefits from the proposed transaction are estimated to be \$24.5 million in net present value, which includes (1) \$12.4 million to the Port under the Purchase and Sale Agreement and 66-year ground lease, and (2) \$12.1 million in development impact fees to the City.

The City would also realize additional tax revenues to be generated by the proposed residential and commercial condominium and other development, including an estimated \$44 million net present value in Tax Increment revenues (of which \$5 million would be used to reimburse SFWP for the cost of public improvements), and an estimated \$1.26 annually in sales and other taxes.

## **POLICY CONSIDERATIONS**

### **The DDA between the Port and SFWP obligates the City to reimburse \$5 million in tax increment revenues generated by the proposed development to SFWP for the costs of constructing open space improvements**

Although the Board of Supervisors has not yet approved the proposed IFD or financing plan, including the apportionment of IFD tax increment revenues between the Port, other taxing authorities (e.g., SFUSD, BART) and the City's General Fund, the DDA between the Port and SFWP obligates the City to spend \$5 million of tax increment revenues generated by the proposed residential and commercial condominiums on public open space improvements at the project site.

Total estimated tax increment revenues to be generated by the proposed residential and commercial condominiums are \$3.1 million per year over 30 years, for a net present value of \$44 million. These revenues result directly from the development of the residential and commercial condominiums on SWL 351.

Under State law, the Board is authorized to (1) approve the formation of the IFD, and (2) determine the allocation of the tax increment revenues, resulting from the IFD. The Board of Supervisors previously approved guidelines for forming IFDs that supplement existing State law (Resolution 0066-11). Under State law, IFD proceeds can finance the purchase, construction, expansion, improvement, seismic retrofit or rehabilitation of public property. The public property does not need to be located within the boundaries of the IFD. The Board of Supervisors approved additional criteria that set (1) minimum threshold criteria for when an IFD can be formed; and (2) strategic criteria for forming an IFD.

The Board of Supervisors' guidelines exempt an IFD formed on Port property. As noted in the guidelines, "The Port has over \$1 billion in deferred maintenance and plans to apply different IFD policies to assist in its capital repair and maintenance efforts, and IFD law contains provisions unique to land under Port jurisdiction. The Port plans to independently utilize State IFD law to finance capital improvements that address this need." While the guidelines exempt an IFD formed on Port property, resolution 0066-11 states specifically that, if the IFD includes non-Port property as well as Port property, only the Port-owned property is excluded. Therefore, any IFD project area formed from non-Port property would be subject to the criteria previously established by the Board of Supervisors.

Mr. Stern states that the Port will request at a future date Board of Supervisors' approval for appropriation of approximately \$20,900,000 in addition to the \$5,000,000 noted above. The future request of \$20,900,000, which is 47.5% of future IFD tax increment revenues with an estimated net present value of \$44,000,000, would be used for Port capital projects outside of this IFD project area as contained in its capital plan. These projects include Phase II of the Pier 27 Cruise Terminal, remediation of waste water violations for which it has been cited by the California Regional Water Quality Control Board, and pier substructure repairs.

The Board of Supervisors has the final authority to determine the allocation of the proposed IFD tax increment revenues to the Port or the City's General Fund, consistent with the Board's adopted guidelines. The Board of Supervisors must also approve issuance of tax increment bonds and appropriation of tax increment bond proceeds

**The City will receive limited financial benefits beyond that required by statute for payment of development impact fees and taxes**

The majority of development impact fees to be paid by SFWP to the City, which include the affordable housing fee, job-housing linkage fee, and transit impact development fees, are those required by statute. Of the one-time development impact fees of \$12,106,366 to be paid by SFWP to the City, \$9,864,176, or 81.4% represent affordable housing fees, job-housing linkage fees, and transit impact development fees mandated under Planning Code Sections 411, 413 and 415. An additional \$2,242,190 in affordable housing fees are to be paid by SFWP voluntarily.

The City could require SFWP to provide greater public benefits in exchange for entering into a development agreement, as allowed under California Government Code section 65864 (the Development Agreement Statute). The Board of Supervisors should consider amending the resolution by requesting that the Port negotiate further public benefits to be provided by SFWP under the DDA between the Port and SFWP. For example, the proposed DDA requires the Port to pay \$5 million in IFD proceeds for construction of public improvements, which are estimated by the Port to cost approximately \$8 million in total. Thus, IFD revenues will fund 62% of the estimated cost of public improvements while SFWP will fund 38%. These improvements will also enhance the financial value of the private improvements. The Port could negotiate to have these improvements funded by SFWP instead of contributing \$5 million in increment finance revenues towards SFWP's cost of doing so.

**Questions have been raised about whether the transfer fee mechanism is considered a tax**

Ms. Joanne Sakai of the City Attorney's Office reports that the proposed transfer fee is not a tax requiring a 2/3 vote, but a private, contractual agreement to provide the Port with a participation in the condominium sales. Ms Sakai further reports that the proposed fee funds a public benefit, as required under Federal Housing Finance Agency regulations, and that the proceeds from a transfer fee do not have to be used at the site from which they were generated. Port staff offer as an example a 0.5% transfer fee on all new residential property sales and re-sales at the Northstar

Resort at Lake Tahoe, which are deposited into the Northstar Open Space Fund for use by the Truckee Donner Land Trust to purchase and preserve open space in other parts of North Lake Tahoe.

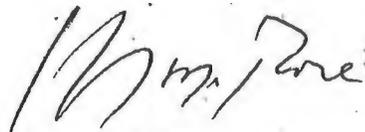
## RECOMMENDATIONS

Amend the proposed resolution to request the Port to negotiate:

- A minimum annual guarantee (MAG) rent for the café/restaurant and ancillary retail building, which is not currently required by the proposed 66-year ground lease between the Port and SFWP, and is consistent with other agreements between the Port and private developers.
- Additional payment of \$73,659 from SFWP to offset lost parking revenue, which the Port would have received for the three-year period under the existing parking agreement.

Approval of the proposed resolutions (File 12-0270 and File 12-0278) is a policy matter for the Board of Supervisors.

The Board of Supervisors should also consider amending the resolution by requesting that the Port negotiate further public benefits to be provided by SFWP under the DDA between the Port and SFWP, including SFWP paying the total costs of \$8 million for the public improvements rather than the City allocating \$5 million in IFD proceeds and SFWP paying only \$3 million.



Harvey M. Rose

cc: Supervisor Chu  
 Supervisor Avalos  
 Supervisor Kim  
 President Chiu  
 Supervisor Campos  
 Supervisor Cohen  
 Supervisor Elsbernd  
 Supervisor Farrell  
 Supervisor Mar  
 Supervisor Olague  
 Supervisor Wiener  
 Clerk of the Board  
 Cheryl Adams  
 Mayor Lee  
 Controller  
 Kate Howard