



Mark Farrell, Mayor
Mohammed Nuru, Director

Public Works Order No: 187455

Re: Approval of Exceptions Associated with Final Map No. 9228 Dated March 29, 2018 Concerning Temporary Sanitary Sewer Force Main and Sidewalk Requirements.

WHEREAS, The Final Environmental Impact Report for Treasure Island and Yerba Buena Island ("FEIR"), prepared pursuant to the California Environmental Quality Act (Cal. Pub. Resources Code §§ 21000 et seq.) was certified by the Planning Commission and the Treasure Island Development Authority ("TIDA") by Motion No. 18325 and Resolution No. 11-34-04/21, respectively; and

WHEREAS, On June 14, 2011, the Board of Supervisors adopted Ordinance No. 95-11 approving a Development Agreement between the City and County of San Francisco ("City") and Treasure Island Community Development, LLC ("TICD" or "Subdivider"), concerning the Treasure Island and Yerba Buena Island Development Project ("Project") and adopted the environmental findings set forth in Resolution No. 246-11 incorporated herein by reference; and

WHEREAS, The Board of Supervisors adopted by Ordinance No. 99-11 the Subdivision Code for Treasure Island and Yerba Buena Island ("Subdivision Code"); and

WHEREAS, The Public Works Director ("Director") adopted the Subdivision Regulations for Treasure Island and Yerba Buena Island subsequent to a noticed public hearing and pursuant to Public Works Order No. 185562 on December 21, 2016 ("Subdivision Regulations"); and

WHEREAS, Appendix D Section II(C)(2) of the Subdivision Regulations generally requires sidewalk improvements on both sides of the roadway for a public street; and

WHEREAS, Subdivision Regulations Appendix A Section VII.D.1 precludes a subdivider from offering and the City from accepting, permanent public improvements that rely on temporary improvements; and

WHEREAS, TICD submitted a request for exceptions to sidewalk requirements and from the prohibition against City acceptance of permanent infrastructure that relies on temporary improvements with respect to those improvements that rely on a temporary sanitary sewer force main on Treasure Island ("TFM"), which request is appended hereto as Attachment 1; and



WHEREAS, Tentative Subdivision Map No. 9228 (“Tentative Map”) included cross-sections of Macalla Road and Yerba Buena Road reflecting the requested sidewalk exceptions, and which map was circulated for review and comment by all effected City agencies, including, but not limited to, the San Francisco Municipal Transportation Agency (“SFMTA”), the San Francisco Public Utilities Commission (“SFPUC”), the Planning Department, the San Francisco Fire Department (“SFFD”), and Public Works, and was ultimately approved after a noticed public hearing held on September 27, 2017, pursuant to Public Works Order No. 186,703; and

WHEREAS, Public Works Order No. 186,703 approved the Tentative Map subject to certain conditions of approval (“Conditions of Approval”); and

WHEREAS, Section 1712 of the Subdivision Code authorizes the Director, subject to the Subdivision Map Act (Cal. Govt. Code §§ 66410 et. seq., “Map Act”) to approve exceptions, waivers or deferrals to any of the requirements set forth in the Subdivision Code or the Subdivision Regulations subject to the required findings under Subsection 1712(a)(1)-(3), and further provides that the standards and requirements of the Subdivision Regulations shall be modified by the Director where the Director provides that such modifications are necessary to assure conformity to and achievement of the standards and goals of the applicable Project Documents (as defined by Subdivision Code § 1707(z)); and

WHEREAS, The Subdivision Regulations, which were adopted pursuant to Public Works Order No. 185,562, include an exception authorizing the TFM and further authorize the City to approve acceptance of permanent improvements that rely on the TFM with the consent of SFPUC under Appendix A Section VII.D.2; and

WHEREAS, Public Works Order No. 186,703 provides that the City shall not accept new permanent infrastructure that relies on existing or temporary infrastructure unless the City approves a Design Modification (as defined in the Subdivision Regulations) or an exception to the Subdivision Regulations; and

WHEREAS, Pursuant to Subdivision Code § 1712(b)(1)-(3), and with respect to the exceptions hereinafter described, the Director has determined that application of the Subdivision Code or the Subdivision Regulations, as applicable, would result in practical difficulties or unnecessary hardships affecting the property inconsistent with general purpose and intent of the Project Documents and the City Regulations (as defined in Subdivision Code § 1707(e)), the granting of the exceptions will not be materially detrimental to the public welfare or injurious to other property in the area, and the grant of the exceptions will not be contrary to the Project Documents or City Regulations, subject to the findings and conditions herein; and

WHEREAS, No additional environmental review is required because there are no substantial changes to the project analyzed in the FEIR, no change in circumstances under which the project is being undertaken, and no new information of substantial importance indicating that new significant impacts would occur, that the impacts identified in the FEIR as significant impacts would be substantially more severe, or that mitigation or alternatives previously found infeasible are now feasible;

NOW THEREFORE BE IT ORDERED THAT



The Director approves the exceptions described below, based on the findings and subject to the conditions stated herein:

Exception No. 1

Exception to Subdivision Regulations Appendix D Section II.c.2 waiving the requirement for sidewalk improvements on those portions of Macalla Road as indicated by Exhibit 1 to Attachment 1 hereto.

The future public street identified as Macalla Road on Final Map No. 9228 (“Final Map”) is located on an area of Yerba Buena Island that is subject to unusually steep topography. As noted in the Project’s Infrastructure Plan (Exhibit FF to the Disposition and Development Agreement By and Between TIDA and TICD, “DDA”), the “[s]ite topography is moderately steep to steep, with elevations ranging from 350 feet to sea level . . . the island is bounded by steep (1.5:1 to 1:1) natural slopes extending up from the wave-cut shoreline as high as 240 feet.” The Infrastructure Plan specifically identifies “slope stability issues associated with steep perimeter slopes, especially along the existing alignments of Macalla Road,” as a “geotechnical consideration” effecting the Project’s engineering design. These slopes are described as the “highest and most continuous area of steep perimeter slopes” on the island.

The proposed street design is consistent with the Treasure Island / Yerba Buena Streetscape Master Plan (“Master Plan”), which was developed in close consultation with City agencies and ultimately approved by the TIDA Board. Taking into account the topographic and special challenges inherent to Macalla Road, the Master Plan does not call for sidewalk improvements on the north side of Macalla Road nearest to Clipper Cove.

This exception will allow for the construction of Macalla Road and its ultimate offer and acceptance as a public street, assuming all other requirements for dedication and acceptance are met.

- Application of Subdivision Regulations Appendix D Section II.c.2 would result in practical difficulties or unnecessary hardships affecting the property inconsistent with the general purpose and intent of the Project Documents and City Regulations.

The location of Macalla Road is such that topography and spatial constraints preclude construction of a sidewalk on both sides of the roadway. Application of Subdivision Regulations Appendix D Section II.c.2 so as to require a sidewalk on both sides of the roadway would render Macalla Road impracticable from a design standpoint, such that the entire circulatory network for Yerba Buena Island would need to be re-engineered. These changes would conflict with fundamental Project Documents that define the Project, including, but not limited to, the Infrastructure Plan and Land Use Plan approved as part of the DDA. Such hardship is unnecessary, as Macalla Road will include a sidewalk on the opposite side of the street that will provide for adequate pedestrian access.



- Granting an exception to Subdivision Regulations Appendix D Section II.c.2 will not be materially detrimental to the public welfare or injurious to other property in the area in which said property is located.

Granting the requested exception will not be materially detrimental to the public welfare or injurious to other property on Yerba Buena Island. As stated above, the island's topography and spatial constraints dictate the design of Macalla Road, and this design is part of a coherent circulation program that is fundamental to the Project Documents. The design has been the subject of review by relevant City agencies. Adequate and safe pedestrian access will be provided via the sidewalk improvements on the south side of Macalla Road. Given the steep slope to the immediate north of Macalla Road, there is no need for a sidewalk or other access points on the north of the roadway. Indeed, avoiding a sidewalk on this area will likely improve safety by avoiding a potential hazard. The exception will not impact any other properties.

- Granting the exception will not be contrary to the Project Documents or City Regulations.

The exception is not contrary to the Project Documents or the City Regulations. As stated above, the Infrastructure Plan specifically takes the island's steep topography into account as a "geotechnical consideration" that must be factored into engineering design. The exception is necessitated by this same consideration in order to construct Macalla Road in the location and configuration depicted in the Infrastructure Plan, and in a manner that will allow for installation of underground utilities that conforms as nearly as practicable to the Subdivision Regulations. In addition, the exception is consistent with Macalla Road as depicted in the Master Plan and on Sheet 9 of the Tentative Map.

- The exception is not in violation of the Map Act.

The Map Act does not impose a requirement for sidewalks on both sides of a public street. Therefore, the proposed exception does not implicate, and is not in violation of, the Map Act.

Exception No. 2

Exception to Subdivision Regulations Appendix D Section II.c.2 waiving the requirement for sidewalk improvements on those portions of proposed Yerba Buena Road as indicated by Exhibit 1 to Attachment 1 hereto.

The future public street identified as Yerba Buena Road on the Final Map is located on Yerba Buena Island. As noted in the Project's Infrastructure Plan, the "[s]ite topography is moderately steep to steep, with elevations ranging from 350 feet to sea level . . . the island is bounded by steep (1.5:1 to 1:1) natural slopes extending up from the wave-cut shoreline as high as 240 feet." The proposed location for Yerba Buena Road is consistent with the Infrastructure Plan, the Master Plan, and the approved Tentative Map and Final Map.



This exception will allow for the construction of Yerba Buena Road and its ultimate offer and acceptance as a public street, assuming all other requirements for dedication and acceptance are met.

- Application of Subdivision Regulations Appendix D, Section II.c.2 would result in practical difficulties or unnecessary hardships affecting the property inconsistent with the general purpose and intent of the Project Documents and City Regulations.

The location of Yerba Buena Road is such that topography and spatial constraints preclude construction of a sidewalk on both sides of the roadway. Application of Subdivision Regulations Appendix D Section II.c.2, so as to require a sidewalk on both sides of the roadway would render Yerba Buena Road impracticable from a design standpoint, such that the circulatory network for Yerba Buena Island would need to be re-engineered. These changes would conflict with fundamental Project Documents that define the Project, including, but not limited to, the Infrastructure Plan and Land Use Plan included in the Project's DDA. Such hardship is unnecessary, as Yerba Buena Road will include a sidewalk on the opposite side of the street that will provide for adequate pedestrian access, along with sidewalk improvements near the bus shelter and proposed development.

- Granting an exception to Subdivision Regulations Appendix D Section II.c.2 will not be materially detrimental to the public welfare or injurious to other property in the area in which said property is located.

Granting the requested exception will not be materially detrimental to the public welfare or injurious to other property on Yerba Buena Island. As stated above, the island's topography and spatial constraints dictate the design of Yerba Buena Road, and this design is part of a coherent circulation program that is fundamental to the Project Documents. The design has been the subject of review by relevant City agencies including as part of the Tentative Map and improvement plan processes. Adequate and safe pedestrian access will be provided via the sidewalk improvements on the opposite side of Yerba Buena Road. Moreover, the Project's Parks and Open Space Plan (Exhibit GG to the DDA), calls for pedestrian pathways and trails near the perimeter of portions of the future public park to be constructed on Lot E of the Final Map. These pathways and trails will provide additional pedestrian access opportunities once the park is completed. The exception will not impact any other properties.

- Granting the exception will not be contrary to the Project Documents or City Regulations.

The exception is not contrary to the Project Documents or the City Regulations. As stated above, the Infrastructure Plan specifically takes the island's steep topography into account that must be factored into engineering design. The exception is necessitated by this same consideration in order to construct Yerba Buena Road in the location and configuration depicted in the Infrastructure Plan, and in a manner that will allow for installation of underground utilities that conforms as nearly as practicable to the Subdivision Regulations. In addition,



the exception is consistent with Yerba Buena Road as depicted on Sheet 9 of the Tentative Map.

- The exception is not in violation of the Map Act.

The Map Act does not impose a requirement for sidewalks on both sides of a public street. Therefore, the proposed exception does not implicate, and is not in violation of, the Map Act.

Exception No. 3

Exception to waive application of Subdivision Regulations Appendix A Section VII.D.1 in order to authorize acceptance of permanent improvements that rely on the TFM.

Subdivision Regulations Appendix A Section VII.D.1 provides that “[w]here proposed public streets or other public improvements connect to or rely upon private, temporary, or non-functional streets or street improvements, the Subdivider shall not offer such public improvements to the City and the City shall not accept such public streets or street improvements for City maintenance and liability purposes unless the Director, after consultation with other affected City departments, approves or conditionally approves the proposed connections and further subject to Board of Supervisors approval.” Relatedly, SFPUC Wastewater Enterprise Condition No. 3 of Public Works Order No. 186,703 provides that the City shall not accept permanent improvements that rely on existing or temporary infrastructure unless the Director authorizes an exception to the Subdivision Regulations.

The improvement plans provide for the use of the TFM, which is necessary in order to provide initial sanitary sewer service to the proposed subdivision. Public Works consulted with SFPUC in response to Subdivider’s request for this exception to authorize acceptance of permanent improvements that will rely on the TFM. In response, the SFPUC General Manager provided a letter endorsing the exception, subject to certain conditions. (See the letter from Harlan L. Kelly, Jr. to Mohammed Nuru, dated March 26, 2018, and attached hereto as Attachment 2.) As requested by SFPUC, these conditions have been incorporated into the Public Improvement Agreement (“PIA”) for the Final Map and memorialized in this Order.

This exception waives the application of Subdivision Regulations Appendix A Section VII.D.1, such that the City may accept permanent improvements that rely on the TFM subject to standard provisions of City law relating to the acceptance of public improvements and the terms of the PIA and the conditions stated herein.

- Application of Subdivision Regulations Appendix A Section VII.D.1 would result in practical difficulties or unnecessary hardships affecting the property inconsistent with the general purpose and intent of the Project Documents and City Regulations.



Application of Subdivision Regulations Appendix A Section VII.D.1 to permanent improvements that rely on the TFM would unnecessarily delay acceptance of fully functional, permanent improvements. This would, in turn, delay Subdivider's ability to bring up to 300 units of housing online. While the TFM is "temporary," it will be built to the same specifications as a permanent force main. Moreover, the Subdivider is required to provide bonding in a manner sufficient to ensure both the construction of the TFM and that funds are in place to address removal of the TFM or repairs. Subdivider is required to provide, at the time of approval of the next public improvement agreement and final map, adequate bonding to cover SFPUC costs for the replacement of the TFM with a permanent force main, including adequate geotechnical improvements, should the Project fail to construct future phases. Prior to acceptance of any permanent improvements, the subdivider must obtain a Notice of Completion ("NOC"), which requires, among other things (pursuant to the PIA), final City punch-list approval, test reports, and completion letters from civil and geotechnical engineers. No improvements will be accepted unless and until the Board of Supervisors approves such acceptance. Moreover, all permanent improvements will be subject to the warranty requirements established by the Subdivision Code, such that the Subdivider will be responsible for remedying defects. As such, delaying acceptance of permanent improvements relying on the TFM would pose practical difficulties and hardships for completing public improvements and developing the Project, and such difficulties and hardships are unnecessary given the substantial inspection, bonding and warranty requirements.

- Granting an exception to Subdivision Regulations Appendix A Section VII.D.1 will not be materially detrimental to the public welfare or injurious to other property in the area in which said property is located.

There are significant protections in place that will avoid detriment to the public welfare or other properties. As indicated above, the TFM will be built to the same specifications as a permanent force main. Subdivider is required to bond for the TFM, including in an amount sufficient to pay for repairs. The PIA includes terms pertaining to maintenance and operation of the TFM requested by SFPUC. Permanent improvements relying on the TFM can only be accepted after the inspection procedures outlined above are satisfied, and the Board of Supervisors exercises its discretion to accept the improvements, and even after such acceptance, these improvements will be subject to a warranty by the Subdivider. Given the foregoing, the exception will not be materially detrimental to the public welfare or injurious to other properties in the area.

- Granting the exception will not be contrary to the Project Documents or City Regulations.

Granting the exception will allow for the development of the Project, and will therefore further the Project Documents. Moreover, the exception is not contrary to City Regulations. The Subdivision Regulations expressly contemplate use of the TFM and acceptance of permanent improvements that rely on the TFM subject to approval of the SFPUC. Public Works Order No. 185562 authorized use of the TFM. Subdivision Regulations Appendix A Section VII.D.1 allows the



Director to approve acceptance of permanent improvements that rely on temporary improvements.

- The exception is not in violation of the Map Act.

The Map Act does not prohibit acceptance of permanent improvements that rely on temporary improvements. Therefore, the proposed exception does not implicate, and is not in violation of, the Map Act.

- This exception is subject to conditions of approval.
 1. The TFM shall not be offered to nor accepted by City.
 2. The TFM shall be replaced by the permanent forcemain by subdivider at no cost to City.
 3. Subdivider shall provide adequate security for construction of the TFM. Upon completion of the TFM, the City shall reduce the security to an amount equal to the greater of thirty percent (30%) of the original amount of the security pertaining to the TFM or the amount necessary to pay for removal of the TFM.
 4. Subdivider shall provide adequate bonding to cover SFPUC costs for the replacement of the TFM with a permanent forcemain, including adequate geotechnical improvements, should the development project fail to construct future phases. Subdivider shall provide such bonding at the time of approval of the next public improvement agreement and final map.
 5. The SFPUC shall operate and maintain the TFM at no cost to SFPUC, under the terms of a future agreement.
 6. The future agreement will ensure:
 - a. SFPUC has full access to TFM.
 - b. SFPUC to maintain gravity (feeder) sewers at TIDA's expense.
 - c. SFPUC shall perform routine maintenance on the TFM.
 - d. All operations and maintenance work on the TFM will be done at no cost to SFPUC.
 - e. In accordance with the Subdivision Regulations, TICD shall indemnify TIDA and the City against any and all claims, losses and damages directly or indirectly caused by or resulting from the use, operation, or failure of the temporary sanitary sewer forcemain.

Exception No. 4

Exception approving waiver of additional provisions of the Subdivision Code or Subdivision Regulations pertaining to the requirement to provide sidewalks on both sides of roadways, or acceptance of improvements relying on the TFM.

The Director has reviewed the Subdivision Code and the Subdivision Regulations, and finds that the conditions of Subdivision Code Section 1712(b)(1)-(3) are satisfied as to any provision of the Subdivision Code or the Subdivision Regulations that may be deemed to require an exception, waiver, or deferral from the Code as such provision may relate to the requirement to provide a sidewalk on both sides of a roadway, use of the TFM, or acceptance of improvements that rely on the TFM.

- Strict application of all provisions of the Subdivision Code and Subdivision Regulations would result in practical difficulties and unnecessary hardships



affecting the property inconsistent with the general purpose and intent of the Project Documents and City Regulations.

Treasure Island and Yerba Buena Island present a unique landscape unlike any other development area in San Francisco. As such, City agencies and technical consultants spent nearly two years developing a set of technical standards (the Subdivision Regulations) that will allow for orderly development of the islands in a manner consistent with the Project Documents, as required by Code Section 1711. While the Code provides high-level standards for subdivision mapping and implementation, certain Code standards, if interpreted narrowly, would preclude successful implementation of the Project. The Subdivision Regulations were modeled on the City-wide 2015 Subdivision Regulations, which are a generalized set of subdivision standards that were not developed with particular development challenges presented by Treasure Island and Yerba Buena. Accordingly, strict adherence to the Subdivision Code and the Subdivision Regulations would create practical difficulties and hardships in developing the islands in a manner inconsistent with the Project Documents and the City Regulations.

- The granting of the exception, waiver, or deferral will not be materially detrimental to the public welfare or injurious to other property in the area in which said property is situated.

The Subdivision Regulations include a comprehensive set of standards that allow for orderly development of the islands while ensuring maximum protection of the public interest. The Director has considered potential detriments to the public welfare or injuries to neighboring properties posed by the improvement plans generally, in consultation with effected City agencies, notwithstanding the specific exceptions requested by subdivider. Such review resulted in various plan revisions and conditions of approval on the Tentative Map which are addressed in the PIA, and which protect the public welfare and other properties in the area. As such, granting of any required exception, waiver or deferral will not be materially detrimental to the public welfare or injurious to other property in the area in which said property is situated.

- That the granting of such exception, waiver, or deferral will not be contrary to the Project Documents or City Regulations.

The Project Documents include, among other things, the Development Agreement (as defined in Subdivision Code Section 1707(n)) and the DDA. These agreements contemplate the development of the Project and the delivery of public benefits associated therewith, including, but not limited to, new public infrastructure, parks and open space. Granting the required exceptions, waivers or deferrals will implement the Project Documents. Any such exceptions, waivers or deferrals will not be contrary to City Regulations, as appropriate conditions to ensure consistency with City Regulations have either been addressed by the subdivider as of the time of Final Map approval, or, are addressed by the PIA.

- The exception is not in violation of the Map Act.



As further described above under Exceptions 1, 2 and 3, the Map Act neither requires sidewalks on both sides of roadways nor prevents the City from accepting permanent improvements that rely on the TFM. As such, the Map Act is not implicated.



Attachment 1

(TICD Design Modifications Request)

3/30/2018

X Mohammed Nuru

Nuru, Mohammed

Approver 2

Signed by: Nuru, Mohammed

