



San Francisco Public Works
General – Director’s Office
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San Francisco, CA 94103
(628) 271-3160 www.SFPublicWorks.org

Public Works Order No: 205670

Director’s Finding for Mission Rock Phase 1 Project:

Approval of Additional Exception to Subdivision Code and Subdivision Regulations Associated with Offer of Dedication of 12 Kilovolt Line Servicing the Mission Rock Project

WHEREAS, On October 5, 2017, the Planning Commission certified the Final Environmental Impact Report for Seawall Lot 337 and Pier 48 Mixed-Use Project (“EIR”), prepared pursuant to the California Environmental Quality Act (Cal. Pub. Resources Code §§ 21000 et seq., “CEQA”) by Motion No. 20017 for the Seawall Lot 337 and Pier 48 Mixed-Use Project (“Project”), and approved CEQA findings and a Mitigation Monitoring Reporting Program pursuant to Motion No. 20018.

WHEREAS, On January 30, 2018, the Port Commission, through Resolution No. 18-03, approved the Disposition and Development Agreement by and between the Port of San Francisco (“Port”) and SWL 337 Associates, LLC, (“DDA”) concerning the development of the “Project Site” as defined in the DDA.

WHEREAS, On February 27, 2018, the Board of Supervisors adopted Ordinance No. 33-18 approving a Development Agreement for the Project between the City and County of San Francisco and SWL 337 Associates, LLC (“DA”) and adopted the environmental findings set forth in Motion No. 20019, on file with the Clerk of the Board of Supervisors No. 171313.

WHEREAS, On February 27, 2018, the Board adopted Resolution No. 42-18 authorizing the approval of the DDA.

WHEREAS, On February 27, 2018, the Board adopted Ordinance No. 31-18, approving the Mission Rock Special Use District, Planning Code Section 249.80, which establishes zoning designations for the Property.

WHEREAS, On December 13, 2019, the Director issued Public Works Order No. 202,368 approving a tentative map covering the Project site (“Tentative Map”) subject to conditions of approval.

WHEREAS, The Board of Supervisors approved the Project’s first phased final map on June 2, 2020, pursuant Motion No. M20-060 (“Final Map”).

WHEREAS, Exceptions from provisions of the Subdivision Code, the Subdivision Regulations, and Tentative Map conditions of approval are authorized pursuant to Section III.A of the Subdivision Regulations, defining “Exceptions” and the procedure for approval of such Exceptions by reference to Subdivision Code Section 1712.

WHEREAS, The Director previously approved Exceptions relating to streetscape and utilities pursuant to Public Works Order No. 203,638.

WHEREAS, Public Works conditionally approved Instructional Bulletin (IB) #3 (dated March 10, 2021) and IB#3 Revision 1 (dated March 19, 2021) proposing amendments to the Mission Rock Phase 1 Improvement Plans Street Improvement Permit (hereafter collectively “IB#3”) relating to a proposed 12 kilovolt electrical line as described in IB#3 (“12-kV Line”).

WHEREAS, The conditions of approval for IB#3 direct Mission Rock Horizontal Sub (Phase 1), LLC (“Subdivider”) to seek approval of Exceptions necessary to allow the City to publicly dedicate the 12-kV Line.

WHEREAS, The Subdivider requested seven (7) Exceptions to the Subdivision Code, Subdivision Regulations and Public Works Order No. 202,368 (Tentative Map Conditions of Approval) which were heard at a duly-noticed public hearing on June 9, 2021, received no public comment and were approved by the Director through Public Works Order 205,068.

WHEREAS, Subdivider submitted a request for one additional Exception associated with the 12-kV Line on September 30, 2021, which is appended as Attachment 1.

WHEREAS, The Director held a duly-noticed public hearing to solicit public comment on Subdivider’s proposed Exception on October 13, 2021 and no public comment was received.

NOW THEREFORE BE IT ORDERED THAT

The Director approves the Exception described below, based on the findings stated herein:

Exception No. 1 - Exception from Subdivision Code Section 1312 and Subdivision Regulations Section IV.I.2 authorizing deferral of security to a future development phase for construction of replacement underground permanent power facilities (substructures) and removal of the 12kV overhead line once substructures are completed as further defined in the Second Amendment to the Phase 1A Public Improvement Agreement.

The Director approves an Exception from Subdivision Code Section 1312 and any other provision of the Subdivision Code or Subdivision Regulations pertaining to the submittal of an engineer’s cost estimate and associated security pertaining to: (1) the removal of the 12-kV Line and (2) the installation of substructures in future phases which requires a subdivider, as part of a public improvement agreement, to furnish security to guarantee the completion of improvements required to serve the subdivision.

The Director approves an Exception from the San Francisco Subdivision Regulations Section IV.I.2 which states:

DPW shall require a performance bond or other acceptable security as provided in Section 66499 of the Government Code in the amount of 100 percent of the estimated cost of completion of the

construction of the unfinished public improvements, as determined the City Engineer, or installation of all public improvements, as determined by the City Engineer for all subdivisions to secure satisfactory performance of those obligations. As a guarantee of payment for the labor, materials, equipment and services required, a payment bond or other acceptable security shall be required for 50 percent of the estimated cost of completion of unfinished public improvements as the City Engineer determines. For purposes of the preceding sentences, the "estimated cost of completion" shall include all costs of remediating any hazardous materials as necessary to permit completion of the required public improvements.

Support for the Requested Exception

Approval of the requested exceptions is supported based on the following:

- Subdivision Code § 1712(b)(1): Application of the referenced provisions of the [Subdivision Code / Regulations] would result in practical difficulties and unnecessary hardships inconsistent with the City Regulations.

Developer built the 12-kV Line to facilitate the use of SFPUC power to the Project, which is consistent with the terms of the Project Approvals and the City's decision to promote public power. The 12-kV Line is built to permanent standards subject to all required and City-granted exceptions relating to the construction and dedication of the 12-kV Line, including exceptions to provisions that otherwise limit the use of overhead lines or temporary improvements. Moreover, Developer has already provided security to guarantee the completion of certain permanent electrical facilities in the Project's initial phase, and the master developer is obligated to complete permanent facilities in future phases under the Project's Disposition and Development Agreement. To require Developer to provide security to guarantee removal of the 12kV Line or the completion of future permanent facilities in later phases under these circumstances would impose significant costs, practical difficulties and unnecessary hardship on the Project.

- Subdivision Code § 1712(b)(2): Granting of the exceptions will not be materially detrimental to the public welfare or injurious to other property in the area in which said property is situated.

The 12-kV Line is built to permanent standards subject to the granted exceptions. By accepting the 12-kV Line, the City will be assured that the 12-kV Line will be operated and maintained by the City's municipal electric utility rather than a private entity. The terms of the PIA require the Developer to remove the 12-kV Line expeditiously upon the establishment of permanent power facilities, and the City has remedies against the Developer in the PIA even if the City would not hold surety bonds for the cost of removal. Developer is required under the project approvals, including the Disposition and Development Agreement, to build permanent substructures in future phases, and would face substantial adverse consequences if it fails to satisfy that

obligation. As such, approval of the exceptions will not be materially detrimental to the public welfare or injurious to other property in the area.

- Subdivision Code § 1712(c): Granting of the exceptions is not contrary to the Project approvals or City regulations.

Granting the exceptions is consistent with the Project approvals and is not contrary to City regulations. As stated above, the Project approvals require the use of SFPUC power if feasible. SFPUC desires to serve to power to the Project. The 12kV-Line is necessary for SFPUC to timely provide power, and the exceptions facilitate transfer of the 12kV-Line to the City for operation and maintenance by SFPUC.

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

Government Code Section 66462 requires a subdivider to provide security in conjunction with a public improvement agreement approved concurrently with a final map. The public improvement agreement and associated security obligate the subdivider to complete “any public improvements required by the local agency pursuant to [the Subdivision Map Act] or local ordinance” which have not been completed by the time of final map and which were applicable to the project at the time of conditional approval of the tentative map.

Developer was not required to build the 12-kV line as a condition of approval of the Tentative Map or to comply with any City regulation. Rather, Developer constructed the 12-kV Line with the express intention of delivering that line to SFPUC so that SFPUC can provide power to the Project. Developer has already secured its obligation to complete certain permanent power facilities within the Project’s initial phase, and it will be required to provide security to guarantee completion of permanent substructures in future phases, i.e., the public improvements required by local ordinance at the time of conditional approval of the tentative map, prior to the approval of future phased final maps. As such, approval of the requested exceptions does not violate the Subdivision Map Act.

DocuSigned by:
Robert Ko
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DocuSigned by:
Julia Shoy
073CF73A4EA6486...

Attachments

1. Subdivider’s Request for Exceptions

X

DocuSigned by:

Albert Ko

Ko, Albert | 281DC30E04CF41A...

City Engineer & Deputy Director

X

DocuSigned by:

Carla Short

Short, Carla | 073CF73A4EA6486...

Interim Director

DocuSigned by:
Albert Ko
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Attachment 1
DocuSigned by:
Carla Smith
(Subdivider's Letter Requesting Exceptions)
878C773A4E7A6486



September 30, 2021

Carla Short
Interim Director
San Francisco Public Works
49 South Van Ness Avenue
San Francisco, CA 94103

Re: Mission Rock Project - 12 Kilovolt Line: Request for Exceptions Relating to Cost Estimates and Security for Removal of Temporary Infrastructure and Completion of Permanent Infrastructure

Dear Interim Director Short:

On March 19, 2021, San Francisco Public Works (“Public Works”) conditionally approved

Instructional Bulletin (IB) #3 (dated March 10, 2021) and IB#3 Revision 1 (dated March 19, 2021) (hereafter collectively “IB#3”) proposing amendments to the Mission Rock Phase 1 Improvement Plans Street Improvement Permit (“Phase 1 SIP”). The Phase 1 SIP and IB#3 authorized Mission Rock Horizontal Sub (Phase 1), L.L.C. (“Developer”) to construct a 12-kilovolt electrical line to provide power to the Project site (“12-kV Line”). Developer installed the 12-kV Line as contemplated by IB#3. In compliance with the conditions of approval for IB#3, Developer negotiated amendments to the Mission Rock Phase 1 Public Improvement Agreement (“PIA”), requested and obtained approval of exceptions from various provisions of the Subdivision Code, the Subdivision Regulations, and the conditions of approval for the Mission Rock Project’s (“Project”) Tentative Map,¹ and requested the initiation of Board of Supervisors acceptance procedures for the 12-kV Line.

As described in IB#3, Public Works Order No. 205068, and the PIA, Developer is obligated to remove the 12-kV Line, at Developer’s cost, after permanent power distribution infrastructure is installed in a future development phase. To complete these permanent improvements, Developer will install “substructures”² and SFPUC, or Developer, if Developer and SFPUC agree, will install electrical equipment such as conductors. At a future date, Developer shall provide security to ensure completion of substructures and other permanent improvements under a future public improvement agreement.

The City requests that Developer seek additional exceptions under Subdivision Code Section 1312³ as a condition of the acceptance of the 12-kV Line for operation, maintenance, and liability by the City. These

¹ See Public Works Order No. 205068.

² San Francisco Public Utilities Commission’s (“SFPUC”) Rules and Regulations Governing Electric Service, dated May 9, 2017,

³ Exceptions from provisions of the Subdivision Code, the Subdivision Regulations, and tentative map conditions of approval are authorized pursuant to Section III.A of the Subdivision Regulations (“Exceptions as that term is used

exceptions pertain to the submittal of an engineer's cost estimate and associated security pertaining to (1) the removal of the 12-kV Line and (2) the installation of substructures in future phases. As such, Developer submits this request for exceptions, as further described below, and respectfully requests approval of an Order authorizing the exceptions as soon as is practicable so as to prevent any delay in the Board of Supervisors' consideration of an Ordinance accepting the 12k-kV Line and dedicating that facility as public infrastructure.⁴

Requested Exceptions

The Subdivision Code requires a subdivider, as part of a public improvement agreement, to furnish security to guarantee the completion of improvements required to serve the subdivision. The amount of security required is determined by an estimate of the cost of completion of the improvements.

Similarly, Section IV.I.2 of the San Francisco Subdivision Regulations provides, in relevant part:

DPW shall require a performance bond or other acceptable security as provided in Section 66499 of the Government Code in the amount of 100 percent of the estimated cost of completion of the construction of the unfinished public improvements, as determined the City Engineer, or installation of all public improvements, as determined by the City Engineer for all subdivisions to secure satisfactory performance of those obligations. As a guarantee of payment for the labor, materials, equipment and services required, a payment bond or other acceptable security shall be required for 50 percent of the estimated cost of completion of unfinished public improvements as the City Engineer determines. For purposes of the preceding sentences, the "estimated cost of completion" shall include all costs of remediating any hazardous materials as necessary to permit completion of the required public improvements.

Developer requests an exception from the above-referenced provisions, and to any other provision of the Subdivision Code or Subdivision Regulations that may be interpreted to require an engineer's cost estimate and corresponding security associated with the removal of the 12-kV Line or the installation of permanent substructures in future phases.

Support for the Exceptions

Approval of the requested exceptions is supported based on the following:

Subdivision Code § 1712(b)(1): Application of the referenced provisions of the [Subdivision Code / Regulations] would result in practical difficulties and unnecessary hardships inconsistent with the City Regulations.

within these Regulations shall refer to Section 1712, inclusive, as defined in the San Francisco Subdivision Code.”). Per Section 1712(b) the Director of Public Works must find the following in order to approve an exception:

- (1) That the application of certain provisions of this Code or the Subdivision Regulations would result in practical difficulties or unnecessary hardships affecting the property inconsistent with the general purpose and intent of the Project Document and City Regulations;
- (2) That 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; and
- (3) That the granting of such exception, waiver, or deferral will not be contrary to the Project Documents or City Regulations.

⁴ The Mayor introduced the referenced Ordinance to the Board on September 28, 2021.

Developer built the 12-kV Line to facilitate the use of SFPUC power to the Project, which is consistent with the terms of the Project Approvals and the City's decision to promote public power. SFPUC cannot deliver timely power to the Project's initial phase without the use of the 12-kV Line. The 12-kV Line is built to permanent standards subject to all required and City-granted exceptions relating to the construction and dedication of the 12-kV Line, including exceptions to provisions that otherwise limit the use of overhead lines or temporary improvements. Moreover, Developer has already provided security to guarantee the completion of certain permanent electrical facilities in the Project's initial phase, and the master developer is obligated to complete permanent facilities in future phases under the Project's Disposition and Development Agreement. To require Developer to provide security to guarantee removal of the 12kV Line or the completion of future permanent facilities in later phases under these circumstances would impose significant costs, practical difficulties and unnecessary hardship on the Project.

Subdivision Code § 1712(b)(2): Granting of the exceptions will not be materially detrimental to the public welfare or injurious to other property in the area in which said property is situated.

The 12-kV Line is built to permanent standards subject to the granted exceptions. By accepting the 12-kV Line, the City will be assured that the 12-kV Line will be operated and maintained by the City's municipal electric utility rather than a private entity. The terms of the PIA require the Developer to remove the 12-kV Line expeditiously upon the establishment of permanent power facilities, and the City has remedies against the Developer in the PIA even if the City would not hold surety bonds for the cost of removal. Developer is required under the project approvals, including the Disposition and Development Agreement, to build permanent substructures in future phases, and would face substantial adverse consequences if it fails to satisfy that obligation. As such, approval of the exceptions will not be materially detrimental to the public welfare or injurious to other property in the area.

Subdivision Code § 1712(c): Granting of the exceptions is not contrary to the Project approvals or City regulations.

Granting the exceptions is consistent with the Project approvals and is not contrary to City regulations. As stated above, the Project approvals require the use of SFPUC power if feasible. SFPUC desires to serve to power to the Project. The 12kV-Line is necessary for SFPUC to timely provide power, and the exceptions facilitate transfer of the 12kV-Line to the City for operation and maintenance by SFPUC.

The granting of the exception is not in violation of the Subdivision Map Act.

Government Code Section 66462 requires a subdivider to provide security in conjunction with a public improvement agreement approved concurrently with a final map. The public improvement agreement and associated security obligate the subdivider to complete "any public improvements required by the local agency pursuant to [the Subdivision Map Act] or local ordinance" which have not been completed by the time of final map and which were applicable to the project at the time of conditional approval of the tentative map.

Developer was not required to build the 12-kV line as a condition of approval of the Tentative Map or to comply with any City regulation. Rather, Developer constructed the 12-kV Line with the express intention of delivering that line to SFPUC so that SFPUC can provide power to the Project. Developer has already secured its obligation to complete certain permanent power facilities within the Project's initial phase, and it will be required to provide security to guarantee completion of permanent substructures in future phases, i.e., the public improvements required by local ordinance at the time of conditional approval of the tentative

map, prior to the approval of future phased final maps. As such, approval of the requested exceptions does not violate the Subdivision Map Act.

Thank you in advance for your consideration of these requests. Please do not hesitate to contact me should you wish to discuss these matters further.

Sincerely,

A handwritten signature in black ink, appearing to read 'Julian Pancoast', with a long horizontal flourish extending to the right.

Julian Pancoast
Senior Director
Mission Rock Horizontal Sub (Phase 1), L.L.C.

cc Barbara Hale, Assistant General Manager, SFPUC Power
Molly Petrick, SFPUC
Derek Adams, SFPUC
Fan Lau, SFPUC
Phil Williamson, Port of San Francisco
Shawna Gates, Public Works - Infrastructure Task Force
Christopher Tom, City Attorney's Office

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 Public Works
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Witness Events	Signature	Timestamp
Notary Events	Signature	Timestamp
Envelope Summary Events	Status	Timestamps
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Envelope Summary Events	Status	Timestamps
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Payment Events	Status	Timestamps
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