

1 [Ordering vacation of a 639.5 Sq. Ft. portion of Berry Street at Sixth Street and approving a  
2 Property Exchange Agreement in Mission Bay North]

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4 **Ordinance ordering the vacation of a 639.5 Sq. Ft. portion of Berry Street at Sixth Street**  
5 **within the Mission Bay Redevelopment Project Area subject to reservations of certain**  
6 **utility easements in the vacated area; authorizing a quitclaim of the City and County of**  
7 **San Francisco's rights and interest in the vacated area to Catellus Development**  
8 **Corporation ("Catellus"); approving the Property Exchange Agreement (Mission Bay**  
9 **North Plan Area) to acquire certain Catellus properties in exchange for certain City**  
10 **properties; adopting findings that such actions are consistent with the City's General**  
11 **Plan, priority policies of City's Planning Code Section 101.1 and the Mission Bay North**  
12 **Redevelopment Plan; accepting Department of Public Works Order No. 174,110; and**  
13 **authorizing official acts in connection with this ordinance.**

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15 Note: Additions are single-underline italics Times New Roman;  
16 deletions are ~~strikethrough italics Times New Roman~~.  
17 Board amendment additions are double underlined.  
18 Board amendment deletions are ~~strikethrough normal~~.

19 Be it ordained by the People of the City and County of San Francisco:

20 Section 1. Findings.

21 (a) On \_\_\_\_\_, 2003, the Board of Supervisors adopted Resolution  
22 No. \_\_\_\_\_, a copy of which is on file with the Clerk of the Board of Supervisors in  
23 File No. \_\_\_\_\_, being a Resolution of Declaration of Intention to Order the Vacation of a  
24 portion of Berry Street at Sixth Street (commonly referred to as the "Bird's Beak"), within the  
25 Mission Bay North Redevelopment Project Area, (the "Resolution of Intention"). The location  
and extent of the Bird's Beak is described as follows:

1 A 639.5 Sq. Ft. portion of Berry Street at Sixth Street as shown on the Department of  
2 Public Works' SUR Map No. 8001, dated May 12, 2003, and is more particularly  
3 described in the legal description attached to such map, copies of such map and legal  
4 description are on file with the Clerk of the Board of Supervisors in File No.

5 \_\_\_\_\_.

6 (b) The Clerk of the Board of Supervisors did transmit to the Director of the  
7 Department of Public Works a certified copy of the Resolution of Intention, and the Director of  
8 the Department of Public Works did cause notice of adoption of such resolution to be posted  
9 and published in the manner required by law.

10 (c) When such matter was considered as scheduled by the Board of Supervisors at  
11 its regular meeting held in the City Hall, San Francisco, on \_\_\_\_\_, 2003,  
12 beginning at approximately 2:00 P.M., the Board heard all persons interested in such  
13 vacation.

14 (d) The vacation of the Bird's Beak is part of an action to effectuate a proposed land  
15 exchange with Catellus Development Corporation ("Catellus") to facilitate the development of  
16 the Mission Bay North Redevelopment Project Area in accordance with the Mission Bay North  
17 Redevelopment Plan and the Plan Documents (as defined in the Redevelopment Plan) and  
18 return a portion of Berry Street between Fourth and Fifth Streets (which was previously  
19 vacated in 1998 and transferred to Catellus in 2001) as a public street. The terms and  
20 conditions of the proposed exchange of land are set forth in the Property Exchange  
21 Agreement, a copy of which is on file with the Clerk of the Board of Supervisors in File No.

22 \_\_\_\_\_.

23 (e) In a three letters dated March 23, 2001, May 9, 2001 and May 13, 2003 (the  
24 "Planning Department's Letters") the City Planning Department determined that the Property  
25 Exchange Agreement and other actions in furtherance thereof, including, without limitation,

1 the vacation of a 639.5 Sq. Ft. portion of Berry Street at Sixth Street, are consistent with the  
2 General Plan consistency findings of Case No. 96.771R and the eight priority policies of  
3 Planning Code Section 101.1. The contemplated actions do not trigger the need for  
4 subsequent environmental review pursuant the California Environmental Quality Act (CEQA)  
5 (California Public Resources Code Sections 21000 et seq.). A copy of the Planning  
6 Department letter is on file with the Clerk of the Board of Supervisors in File No.  
7 \_\_\_\_\_ and is incorporated by reference as though fully set forth herein. The Board  
8 of Supervisors adopts as its own the consistency findings and other findings of the Planning  
9 Department as set forth in the Planning Department's Letter in connection with the vacation of  
10 the Bird's Beak, the approval of the Property Exchange Agreement and other actions in  
11 furtherance thereof.

12 (f) In a letter dated May 21, 2003 (the "Agency Letter"), the Redevelopment Agency  
13 found the vacation of the Bird's Beak, the approval of the Property Exchange Agreement and  
14 other actions in furtherance thereof, are "consistent with the Mission Bay North  
15 Redevelopment Plan and Plan Documents, described therein, and recommends Board of  
16 Supervisors approval". A copy of the Agency Letter is on file with the Clerk of the Board of  
17 Supervisors in File No. \_\_\_\_\_ and is incorporated by reference as though fully set  
18 forth herein. The Board of Supervisors adopts as its own the consistency findings of the San  
19 Francisco Redevelopment Agency as set forth in the Agency Letter in connection with the  
20 vacation of the Bird's Beak, the Property Exchange Agreement and other actions in  
21 furtherance thereof.

22 (g) In DPW Order No. 174,110, dated May 7, 2003 the Director of the Department of  
23 Public Works and the City Engineer determined (i) the Fourth Street right of way should be  
24 widened between King Street and Berry Street and the King Street right of way should be  
25 widened in the area of Lot 5, (ii) the Bird's Beak is no longer necessary for the City's use for

1 public street and sidewalk purposes, (iii) the anticipated transfers in the Tentative Map are  
2 consistent with the Mission Bay Plan Documents and the Major Phase approved by the  
3 Agency for Blocks N3 and N4 in the North Plan Area, (iv) the Berry Street Parcel between  
4 Fourth and Fifth Streets should be re-opened as a public street, (v) the exchange of the  
5 "Excess City Property" for the "Catellus Transfer Parcels" (as such terms are defined in DPW  
6 Order No. 174,110) would facilitate the development of the North Plan Area in accordance  
7 with the Redevelopment Plan and the Plan Documents, (vi) the value of such exchange is an  
8 even exchange or an exchange in favor of the City, and (vii) there are no physical public utility  
9 facilities within the 639.5 Sq. Ft. portion of Berry Street at Sixth Street to be vacated except for  
10 Pacific Bell (SBC) communications and a City water line, and public utility easements will or  
11 should be reserved for such facilities. A copy of the DPW Order is on file with the Clerk of the  
12 Board of Supervisors in File No. \_\_\_\_\_. The Board of Supervisors adopts as its own  
13 and incorporates by reference herein as if fully set forth, the recommendations of the Director  
14 of the Department of Public Works and the City Engineer as set forth in DPW Order No.  
15 174,110 concerning the vacation of the Bird's Beak, the approval of the Property Exchange  
16 Agreement and other actions in furtherance thereof; and

17 (h) The vacation of the Bird's Beak is being taken pursuant to California Streets and  
18 Highways Code sections 8300 et seq. and Public Works Code section 787(a).

19 (i) From all the evidence submitted at the public hearing noticed in the Resolution of  
20 Intention and the materials on file with the Clerk of the Board in File No. \_\_\_\_\_, the  
21 Board of Supervisors finds that the Bird's Beak, as described in such resolution, is no longer  
22 necessary for the City's use for public street, subject to the reservations and conditions  
23 described in this Ordinance.

24 (j) The public interest, convenience and necessity require that the City reserve and  
25 except from the vacation of the Street Area solely the following: (i) a non-exclusive easement

1 for the benefit of Pacific Bell (SBC) and (ii) a non-exclusive easement for the benefit of City  
2 water, in, upon, and over that certain portion of the Street Area in which their respective in-  
3 place and functioning facilities are located as shown on said SUR Map No. 8001, to the extent  
4 necessary to maintain, operate, repair and remove existing lines of pipe, conduits, cables,  
5 wires, poles, and other convenient structures, equipment and fixtures for the operation of  
6 Pacific Bell (SBC) Communications facilities, and facilities for the distribution of City Water,  
7 and reasonable access to the foregoing facilities for the purposes set forth above. A copy of  
8 said City Water Line Easement agreement is on file with the Clerk of the Board of Supervisors  
9 in File No. \_\_\_\_\_ and is incorporated by reference as though fully set forth herein.  
10 The public interest, convenience and necessity require that, except as specifically provided in  
11 this Ordinance above, no other easements or other rights be reserved for any public utility  
12 facilities that are in place in such Street Area and that any rights based upon any such public  
13 utility facilities are extinguished.

14 (k) The public interest and convenience require that the vacation be done as declared  
15 in the Resolution of Intention.

16 Section 2. Except as set forth in Section 3 below, the Bird's Beak is hereby ordered  
17 vacated in the manner described in the Resolution of Intention and pursuant to California  
18 Streets and Highways Code sections 8300 et seq. and Public Works Code section 787(a).

19 Section 3. The vacation of the Bird's Beak is conditioned upon the reservation of (i) a  
20 non-exclusive easement for the benefit of Pacific Bell (SBC) for the purposes described in  
21 Section 1 above, and (ii) the City's receipt of an executed City Water Line Easement  
22 Agreement substantially in the form on file with the Clerk of the Board of Supervisors in File  
23 No. \_\_\_\_\_.

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1 Section 4. The Board of Supervisors hereby authorizes the Director of Property to  
2 execute the Property Exchange Agreement on behalf of the City including the following  
3 documents as provided therein:

4 1) City quitclaim deed(s) to Catellus of the following properties:

- 5 (i) The Bird's Beak; and
- 6 (ii) 35.3 Sq. Ft. portion of land which is not part of a City street by the  
7 corner of King and Fourth Streets as described in the Property  
8 Exchange Agreement; and
- 9 (iii) Two (2) portions of the City pedestrian ingress and egress and public  
10 utility easement, totaling approximately 260 square feet in the N2 mid-  
11 block walkway (Assessor's Block 8706, Lot 2);

12 2) Catellus grant deed to the City of all of Assessor's Block 8705, Lots 3 (Berry  
13 Street), 4 and 5, and the City's acceptance of the same;

14 3) City quitclaim deed to Catellus terminating access and utility easements to  
15 Assessor's Block 8705, Lots 3 (Berry Street);

16 Section 5. The Board of Supervisors hereby directs the Clerk of the Board of  
17 Supervisors to transmit to the Director of Public Works a certified copy of this Ordinance, and  
18 the Board of Supervisors hereby urges the Director of Public Works to proceed in the manner  
19 required by law. The Clerk of the Board is also hereby directed to transmit to the Director of  
20 Public Works a certified copy of this Ordinance so that this Ordinance may be recorded  
21 together with the other Property Exchange Agreement documents through a Joint Escrow.

22 Section 6. All actions heretofore taken by the officers of the City with respect to this  
23 Ordinance are hereby approved, confirmed and ratified, and the Mayor, Clerk of the Board,  
24 Director of Property, and Director of Public Works are hereby authorized and directed to take  
25 any and all actions which they or the City Attorney may deem necessary or advisable in order

1 to effectuate the purpose and intent of this Ordinance (including, without limitation, the  
2 completion of the property exchange transaction contemplated by the Property Exchange  
3 Agreement and the filing of the Ordinance in the Official Records of the City and County of  
4 San Francisco and confirmation of satisfaction of any of the conditions to the effectiveness of  
5 the vacation of the Street Area hereunder and conformation of the termination of any  
6 easements reserved hereunder pursuant to Section 1(j) of this Ordinance and execution and  
7 delivery of any evidence of the same, which shall be conclusive as to the satisfaction of such  
8 conditions upon signature by any such City official or his or her designee).

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RECOMMENDED:  
DEPARTMENT OF PUBLIC WORKS

RECOMMENDED:  
DIRECTOR OF PROPERTY

By: \_\_\_\_\_  
Edwin M. Lee  
Director of Public Works

By: \_\_\_\_\_  
Steve Legnitto  
Acting Director of Property

RECOMMENDED:  
DEPARTMENT OF PUBLIC WORKS

APPROVED AS TO FORM:  
DENNIS J. HERRERA  
City Attorney

By: \_\_\_\_\_  
Harlan L. Kelly, Jr.  
City Engineer

By: \_\_\_\_\_  
John D. Malamut  
Deputy City Attorney