

1 [Mission Bay Public Trust Agreement]

2 APPROVING AND AUTHORIZING THE AMENDMENT AND RESTATEMENT OF THE
3 AGREEMENT CONCERNING THE PUBLIC TRUST FOR MISSION BAY, AMONG THE CITY
4 AND COUNTY, INCLUDING ITS PORT COMMISSION, THE STATE OF CALIFORNIA AND
5 CATELLUS DEVELOPMENT CORPORATION; ADOPTING FINDINGS THAT CERTAIN
6 TRANSFERS OF LAND CONTEMPLATED BY SUCH AGREEMENT ARE AUTHORIZED BY
7 AND CONSISTENT WITH THE PROVISIONS OF STATE LEGISLATION SET FORTH IN
8 CHAPTER 1143 OF THE STATUTES OF 1991, AS AMENDED BY CHAPTER 86 OF THE
9 STATUTES OF 1992 AND CHAPTER 203 OF THE STATUTES OF 1997; ADOPTING
10 FINDINGS PURSUANT TO THE CALIFORNIA ENVIRONMENTAL QUALITY ACT; AND
11 ADOPTING FINDINGS THAT SUCH AGREEMENT IS CONSISTENT WITH THE CITY'S
12 GENERAL PLAN AND EIGHT PRIORITY POLICIES OF CITY PLANNING CODE SECTION
13 101.1.

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

15 Section 1. Whenever used in this Ordinance, the terms "boundary of the Port of
16 San Francisco," "Burton Act trust," "City," "Mission Bay Development Area," "public trust," and
17 "Western Pacific Property" shall have the same definitions as set forth in Chapter 1143 of the
18 Statutes of 1991 of the State of California, as amended by Chapter 86 of the Statutes of 1992
19 and by Chapter 203 of the Statutes of 1997 (the "Act"), a copy of which is on file with Clerk of
20 the Board of Supervisors under File No. 98-1435.

21 Section 2. FINDINGS. The Board of Supervisors of the City and County of
22 San Francisco hereby finds, determines and declares that:

23 A. Pursuant to Board of Supervisors Ordinance Nos. 52-92 and 53-92 and
24 companion Resolution Nos. 116-92 and No. 117-92, the City, including through its Port
25 Commission (the "Port"), entered into that certain Mission Bay Port Land Transfer Agreement

SUPERVISOR YAKI, TENG, BIERMAN, MEDINA, BROWN, AMMIANO, KATZ, LENO, YEE
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1 dated as of September 8, 1993 (the "PLTA") with Catellus Development Corporation
2 ("Catellus") and into that certain Mission Bay City Land Transfer Agreement dated as of
3 September 8, 1993 (the "CLTA") with Catellus, pertaining to the transfer and exchange of
4 land between the City, including its Port Commission, and Catellus.

5 B. Pursuant to Board of Supervisors Ordinance No. 52-92 and companion
6 Resolution No. 119-92, the City, including the Port, entered into that certain Agreement
7 Concerning the Public Trust dated as of September 8, 1993 (the "ACPT") with Catellus and
8 the State of California, pertaining to the exchange of certain public trust and Burton Act trust
9 interests as required in order to effectuate the land transfers contemplated by the CLTA and
10 the PLTA.

11 C. The main purposes of the CLTA, PLTA and ACPT are to settle title disputes
12 among the parties, to convert the existing fragmented system of present and former City
13 street areas into an assemblage of developable parcels and to provide the public with
14 enhanced access to the waterfront.

15 D. In May 1997, The Regents of the University of California ("The Regents")
16 approved Mission Bay as the location for a major new campus of the University of California
17 at San Francisco (the "UCSF Campus"). At the University's request, Catellus, which is the
18 principal landowner in Mission Bay, and the City have offered to donate to The Regents at no
19 transfer price a total of approximately 43 acres of land located in Mission Bay, which will
20 enable The Regents to develop the UCSF Campus.

21 E. Pursuant to companion Board of Supervisors Ordinance Nos. 331-98
22 and 330-98, adopted on October 30, 1998, the City, including its Port, intends to
23 enter into amendments and restatements of the PLTA (the "Amended PLTA") with Catellus
24 and of the CLTA (the "Amended CLTA") with Catellus that will accommodate the donation of
25 land to The Regents necessary for the development of the UCSF Campus, redesignate the

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1 parcels to be transferred under those agreements and make other modifications to the PLTA
2 and the CLTA. Copies of the Amended PLTA and the Amended CLTA are on file with the
3 Clerk of the Board of Supervisors under File Nos. 98-1435 and 98-1435,
4 respectively.

5 F. Pursuant to Board of Supervisors Resolution Nos. 184-98 and 185-98, the City,
6 including its Port, entered into that certain Agreement for the Donation of Real Property dated
7 as of February 2, 1998 with The Regents (the "1.34 Acre Donation Agreement"), which
8 provides for the donation by the City of approximately 1.34 acres within the campus site to
9 facilitate The Regents' development of one or more biomedical laboratory buildings. In
10 connection with 1.34 Acre Donation Agreement, pursuant to Board of Supervisors Resolution
11 No. 186-98, the City made certain public trust findings in accordance with the provisions of
12 Chapter 1143 of the Statutes of 1991, as amended, and authorized the City to enter into that
13 certain Agreement with Catellus and the State of California, providing for the termination of
14 the public trust over the City's donation parcel and certain adjacent property, to be donated
15 by Catellus to The Regents, as well as certain other property owned by Catellus.

16 G. Pursuant to Board of Supervisors Resolution No. 881-98, adopted on
17 October 30, 1998, the City intends to enter into an Agreement for Donation of Real Property
18 with The Regents (the "City Donation Agreement"), whereby the City will donate a total of
19 approximately 11.89 acres of land in the Mission Bay Development Area (in addition to the
20 property which is subject to the 1.34 Acre Donation Agreement), as described therein (the
21 "City Donation Property"), to be developed for university purposes. A copy of the City
22 Donation Agreement is on file with the Clerk of the Board of Supervisors under File
23 No. 98-1435.

24 H. The ACPT needs to be amended to accommodate the donation of the City
25 Donation Property to UCSF pursuant to the City Donation Agreement, redesignate the

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1 property to be transferred, and make other modifications to the ACPT. A copy of the
2 proposed amended and restated ACPT is on file with the Clerk of the Board of Supervisors
3 under File No. 98-1435 (the "Amended ACPT").

4 I. By Port Commission Resolution Nos. 98-92, 98-90, and
5 98-91, adopted on September 22, 1998, the San Francisco Port Commission
6 has approved the Amended ACPT, the Amended CLTA and the Amended PLTA and
7 recommended approval of such agreements by this Board.

8 J. On September 17, 1998, the City Planning Commission, by Motion
9 No. 14696, and the Redevelopment Agency Commission, by Resolution
10 No. 182-98, certified the Final Subsequent Environmental Impact Report for the
11 Mission Bay Project ("Final SEIR") as accurate, adequate and objective and in compliance
12 with the California Environmental Quality Act ("CEQA"), which certification was affirmed by
13 the Board of Supervisors by Motion No. M98-132. This Board of Supervisors has
14 reviewed and considered the information contained in the Final SEIR. For purposes of
15 compliance with CEQA, the Amended ACPT is part of the implementation of the Mission Bay
16 Project examined in the Final SEIR for which the Board of Supervisors, by Resolution
17 No. 854-98, has adopted findings with respect to the Final SEIR as required by
18 CEQA, which findings are on file with the Clerk of the Board of Supervisors under File
19 No. 981427, and which findings are incorporated herein by this reference. The
20 Board of Supervisors hereby adopts and incorporates the findings under CEQA contained in
21 Resolution No. 854-98 by reference as though such findings were fully set forth in
22 this Ordinance.

23 K. By Planning Commission Resolution No. 14699, adopted on
24 September 17, 1998, the Planning Commission found that the Amended ACPT is consistent
25 with the General Plan, as amended, and with the eight Priority Policies of City Planning Code

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1 Section 101.1, and a copy of such resolution is on file with the Clerk of the Board of
2 Supervisors in File No. 981434. The Board of Supervisors hereby finds that the
3 Amended ACPT is consistent with the City's General Plan, as amended, and with the eight
4 Priority Policies of Planning Code Section 101.1 for the same reasons as set forth in the
5 Planning Commission's Resolution No. 14699 and hereby incorporates such
6 findings by reference as though fully set forth in this Ordinance.

7 L. Section 3 of the Act authorizes the State Lands Commission to grant to the City
8 any and all of the right, title and interest held by the State by virtue of its sovereignty, and not
9 previously conveyed, in and to filled tidelands and submerged lands within the Mission Bay
10 Development Area and authorizes the State Lands Commission, pursuant to Article X,
11 Section 3 of the California Constitution, to grant to the City any and all of the right, title and
12 interest held by the State by virtue of its sovereignty, and not previously conveyed, including
13 any Burton Act trust or public trust interest in and to filled tidelands and submerged lands
14 within the City Donation Property and certain other lands in consideration for the conveyance
15 of lands to the University for the UCSF Campus. The Act also authorizes the City, subject to
16 the approval of the State Lands Commission, to transfer lands granted to the City for lands or
17 interests in lands of equal or greater value which are useful for public trust purposes if the
18 City makes certain findings as set forth below. The Act further authorizes the State Lands
19 Commission to approve such an exchange if it makes the same findings. The Act further
20 authorizes the City to sell tidelands that have been reserved to the State of California for
21 street purposes, provided that the State makes the requisite findings to allow such sale.

22 M. In accordance with the Act, the Amended PLTA, Amended CLTA and Amended
23 ACPT (collectively, the "Land Transfer Agreements") contemplate that certain lands in dispute
24 with the State of California and certain other lands subject to the public trust or the Burton Act
25 trust shall be conveyed free of those trusts to Catellus, and the public trust and the Burton Act

1 trust over the City Donation Property and certain other lands shall be terminated, in exchange
2 for:

3 i. The conveyance to the City subject to the public trust or the public trust
4 and the Burton Act trust of certain lands owned by Catellus;

5 ii. The conveyance to the City of an easement over certain other lands
6 owned by Catellus which will permanently encumber those lands with the public trust;

7 iii. The agreement by the City that certain street areas which are the subject
8 of a title dispute with the State and other areas shall be permanently subjected to the public
9 trust by easement or otherwise; and

10 iv. The donation to The Regents of certain land from the City and Catellus.

11 N. The Amended CLTA and Amended PLTA contemplate that the City and
12 Catellus transfer certain parcels of land and interests in lands within the Mission Bay
13 Development Area and that Catellus transfer the Western Pacific Transfer Parcels and
14 Western Pacific Shoreline to the City, to be held under the jurisdiction of its Port Commission.

15 O. The Amended ACPT contemplates that: (i) in consideration for the donation of
16 lands by the City and Catellus to The Regents for the UCSF Campus (a) certain lands to
17 which title is in dispute with the State of California and certain other lands subject to the public
18 trust or the Burton Act trust, or both trusts, shall be conveyed free of those trusts to The
19 Regents and (b) pursuant to Section 3 of Article X of the California Constitution, public trust
20 claims will be relinquished from certain other lands comprised of present or former street
21 areas to which title is in dispute with the State of California; and (ii) in conjunction with the
22 land transfers contemplated by the Amended CLTA and Amended PLTA, certain lands to
23 which title is in dispute with the State of California and certain other lands subject to the public
24 trust or the Burton Act trust, or both trusts, will be relinquished from such trusts in exchange
25 for the encumbrance of certain other lands with either the public trust, the Burton Act trust, or

1 both trusts, as well as the use restrictions of the Act.

2 P. Such transfers require resolution of title disputes which have long existed
3 among the City, the State of California, and Catellus, such disputes having concerned the
4 extent and nature of their respective ownership of lands and interests in lands within the
5 Mission Bay Development Area and the Western Pacific Property.

6 Q. The public interest requires the resolution of the title problems by agreement, in
7 part because of the expense, burden and predictably lengthy time of litigation to resolve the
8 many complex legal matters at issue.

9 R. Pursuant to the Burton Act, the State granted to the City certain of the filled and
10 unfilled tide and submerged lands within the Mission Bay Development Area, subject to
11 (1) the public trust for commerce, navigation and fisheries, (2) the Burton Act, (3) the terms
12 and conditions of the agreement between the State and the City which transferred title to the
13 City of lands subject to the Burton Act, and (4) the Charter of the City.

14 S. Article X, Section 3 of the California Constitution provides that tidelands within
15 two miles of any incorporated city, city and county, or town in California may be sold into
16 private ownership if such tidelands were reserved to the State solely for street purposes and
17 the California legislature finds and declares that they are not used for navigation purposes
18 and are not necessary for such purposes, subject to such conditions as the State Legislature
19 determines are necessary to be imposed in connection with any such sales to protect the
20 public interest.

21 T. Independent appraisals of the Mission Bay Development Area and the Western
22 Pacific Property have been prepared for and reviewed by the City's Director of Property and
23 the Executive Director of the Port, and they have determined that the value of the lands and
24 interests in lands which the City will receive pursuant to the Land Transfer Agreements is
25 greater than the value of the lands or interests in lands to be relinquished by the City

1 pursuant to the Land Transfer Agreements, as set forth in the letter from the Director of
2 Property and the Executive Director of the Port on file with the Clerk of the Board of
3 Supervisors in File No. 98-1435.

4 Section 3. FURTHER FINDINGS. In accordance with the Act, the Board of
5 Supervisors hereby further finds, determines and declares as follows:

6 A. The lands to be conveyed by the City and over which the public trust or the
7 public trust and the Burton Act trust will be terminated pursuant to the Amended CLTA and
8 Amended PLTA:

9 i. Have been filled and reclaimed in the course of a highly beneficial plan
10 for development of the harbor and waterfront of the City and the Port of San Francisco, and
11 consist entirely of dry land lying above the present line of mean high tide;

12 ii. Are not used, suitable, or necessary for navigation purposes and not
13 necessary for street purposes; and

14 iii. Have been and are presently cut off from access to the waters of
15 San Francisco Bay, constitute a relatively small portion of the tide and submerged lands
16 which have been granted to the City, and are no longer needed or required for the promotion
17 of the public trust or the Burton Act trust.

18 B. Certain of the tide and submerged lands within the Mission Bay Development
19 Area and the Western Pacific Property were authorized to be, and were laid off and conveyed
20 into private record ownership pursuant to various acts of the State Legislature, including
21 Chapter 41 of the Statutes of 1851, Chapter 160 of the Statutes of 1851, Chapter 407 of the
22 Statutes of 1863-1864, Chapter 543 of the Statutes of 1867-68, Chapter 490 of the Statutes
23 of 1871-72, Chapter 265 of the Statutes of 1903, Chapter 434 of the Statutes of 1947, and
24 Chapter 1252 of the Statutes of 1953.

25 C. There has been a dispute between the City and the State of California with

1 respect to the extent to which certain street areas within the Mission Bay Development Area
2 may be subject to the public trust or other encumbrances that may have arisen because the
3 lands were once sovereign lands of the State of California. It is in the public interest that this
4 dispute be resolved in a manner that furthers public trust purposes.

5 D. There has been a dispute between and among the City, the State of California
6 and Catellus, the current private owner of the Western Pacific Transfer Parcels and the
7 Western Pacific Shoreline, with respect to the extent to which the Western Pacific Property
8 may be subject to the public trust or other encumbrances that may have arisen because the
9 lands were once sovereign lands of the State of California. It is in the public interest that this
10 dispute be resolved in a manner that furthers public trust purposes.

11 E. The existing fragmented pattern of public and private ownership within the
12 Mission Bay Development Area and the Western Pacific Property, especially the industrial
13 area street system and parcelization imposed on the Mission Bay Development Area largely
14 as the result of subdivisions and sales in the latter half of the nineteenth century, limit both
15 the potential development of the area and the expansion of desirable public uses in the area,
16 including, but not limited to, the expansion of UCSF and uses consistent with the public trust
17 and the Burton Act trust, such as open space and parks along the waterfront and elsewhere
18 within those areas, and public access to and along the shoreline of the Mission Bay
19 Development Area and the Western Pacific Property. Consolidation of public and private
20 ownerships, together with addressing the environmental condition as required by applicable
21 law of all real property to be subjected to the public trust or the Burton Act trust, or both trusts,
22 or to be made available for the UCSF Campus, will permit the development of improved open
23 space, public access, waterfront parks, and other public facilities consistent with the public
24 trust and the Burton Act trust, and the development would otherwise not be feasible because
25 of existing ownership patterns and lack of city and state funds.

1 F. The consideration for the sale of lands or interests in lands pursuant to
2 Section 3 of Article X of the California Constitution shall be the conveyance to The Regents
3 of lands or interests in lands for expansion of UCSF, the value of which equals or exceeds the
4 value of the lands or interests in lands that are to be sold.

5 G. At the conclusion of the exchanges contemplated by the Land Transfer
6 Agreements, the lands that will be subject to the public trust and the Burton Act trust, or both
7 trusts, will provide lateral public access to the water along the entirety of the shoreline of the
8 Mission Bay Development Area and the Western Pacific Property.

9 H. Upon completion of the conveyances contemplated by the Land Transfer
10 Agreements, the lands subject to the public trust or the Burton Act trust, or both trusts, within
11 the Mission Bay Development Area shall be substantially in the configuration shown in
12 Section 13.6 of the Act, the lands within the Western Pacific Property shall meet the
13 requirements of the Act as it pertains to the Western Pacific Property, and the lands subject to
14 the public trust or the Burton Act Trust within the Mission Bay Development Area and the
15 Western Pacific Shoreline and Western Pacific Easement Parcels shall be restricted to the
16 uses provided for in the Act.

17 I. Substantial portions of the granted tidelands in dispute within the Mission Bay
18 Development Area to be conveyed into private ownership were reserved to the State for
19 street purposes and are not used or necessary for navigation purposes, and therefore under
20 Section 3 of Article X of the California Constitution can and should be conveyed into private
21 ownership for uses consistent with and in furtherance of the Act.

22 J. The exchange of lands and rights provided for in the Land Transfer Agreements
23 are in the best interests of the City, and will further the public trust and the Burton Act trust.

24 K. The conveyance of the City Donation Property to The Regents is in the best
25 interests of the City, and will further a public purpose, including, without limitation, the

1 promotion of public education.

2 L. No substantial interference with the public trust or the Burton Act trust will ensue
3 from the relinquishment by the City of its interest in those lands to be conveyed into private
4 ownership or to The Regents and over which the public trust or the public trust and the Burton
5 Act trust will be terminated pursuant to the Land Transfer Agreements, or from the termination
6 of the public trust or the public trust and the Burton Act trust over certain other lands pursuant
7 to the Land Transfer Agreements.

8 M. The lands or interests in lands which the City will acquire pursuant to the Land
9 Transfer Agreements are useful for the purposes of the public trust for commerce, navigation
10 and fisheries, the Burton Act trust, and the purposes described in the Act.

11 N. Based on the report of the Director of Property and the Executive Director of the
12 Port referred to above, the value of the lands or interests in lands to be conveyed to the City
13 and subjected to the public trust, or subjected to the public trust and the Burton Act trust, and
14 the value of the public trust easements to be conveyed to or obtained by the City are equal to
15 or greater than the value of the lands or interests in lands to be conveyed by the City and the
16 public trust interests and Burton Act trust interests to be terminated pursuant to the Land
17 Transfer Agreements.

18 O. Those lands or interests in lands received by the City pursuant to the Land
19 Transfer Agreements (including the Port Leasehold Parcels, as described in the Amended
20 CLTA) that are (a) the Western Pacific Shoreline, as defined in the Amended PLTA, or
21 (b) within the boundary of the Port of San Francisco (other than the parcel described as the
22 City Facilities Parcel in the Land Transfer Agreements), shall be held by the City, through its
23 Port Commission, subject to the public trust and the Burton Act trust and the public trust uses
24 described in the Act.

25 P. Those lands or interests in lands received by the City pursuant to the Amended

1 CLTA outside the boundary of the Port of San Francisco but within the Mission Bay
2 Development Area shall be held by the City subject to the public trust and the public trust
3 uses described in the Act.

4 Q. Pursuant to Section 5 of the Act, the conveyances contemplated by the
5 Amended ACPT are consistent with the legislative findings and declarations set forth in
6 Section 2 of the Act.

7 Section 4. Based on the findings and recommendations referred to herein, the
8 Board of Supervisors approves the Amended ACPT and the transactions and conveyances of
9 real property or interests therein, as contemplated thereby.

10 Section 5. The Board of Supervisors authorizes and urges the Mayor, the Director of
11 Property and the Executive Director of the Port to execute the Amended ACPT, in the name
12 and on behalf of the City, in substantially the form of such agreement presented to this Board
13 of Supervisors.

14 Section 6. The Board of Supervisors authorizes the Mayor, the Director of Property
15 and the Executive Director of the Port to enter into any additions, amendments or other
16 modifications to the Amended ACPT (including, without limitation, the exhibits) that the
17 Mayor, the Director of Property and the Executive Director of the Port determine, in
18 consultation with the City Attorney, are in the best interests of the City, do not materially
19 increase the obligations or liabilities of the City, will not have any material adverse fiscal
20 impact on the City, do not materially diminish the rights of or benefits to the City, and are
21 necessary or advisable to complete the transaction contemplated in the Amended ACPT and
22 effectuate the purpose and intent of this Ordinance, such determination to be conclusively
23 evidenced by the execution and delivery by the Director of Property and the Executive
24 Director of the Port of the Amended ACPT and any amendments thereto.

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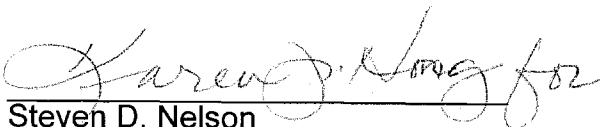
1 Section 7. The Board of Supervisors authorizes and urges the Mayor, the Director of
2 Property, the Executive Director of the Port and any other officers, agents or employees of
3 the City to take any and all steps (including, but not limited to, the execution and delivery of
4 any and all escrow instructions, agreements, notices, consents and other instruments or
5 documents, including, without limitation, any agreements to extend the applicable statutes of
6 limitation) as they or any of them deem necessary or appropriate, in consultation with the City
7 Attorney, in order to consummate the Amended ACPT in accordance with this Ordinance, or
8 to otherwise effectuate the purposes and intent of this Ordinance, such determination to be
9 conclusively evidenced by the execution and delivery by such person or persons of any such
10 documents.

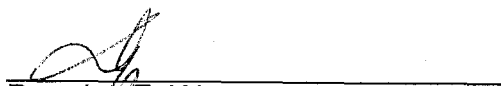
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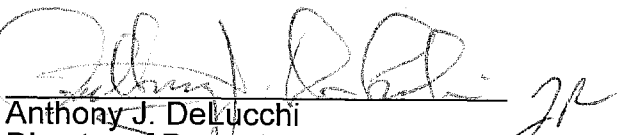
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1 Section 8. The approval under this Ordinance shall take effect upon the effective
2 date of the amendments to the General Plan approved under Board of Supervisors
3 Ordinance No. 324-98, adopted on October 30, 1998.
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5 RECOMMENDED:
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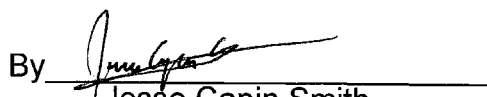
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8 
9 Steven D. Nelson
Director of Administrative Services

10
11 
12 Douglas F. Wong
Executive Director
13 Port of San Francisco

14
15 
16 Anthony J. DeLucchi
Director of Property

17 APPROVED AS TO FORM:

18 LOUISE H. RENNE, City Attorney
19

20 By 
21 Jesse Capin Smith
22 Deputy City Attorney
23
24
25

SUPERVISOR YAKI
BOARD OF SUPERVISORS



City and County of San Francisco

Veterans Building
401 Van Ness Avenue, Room 308
San Francisco, CA 94102-4532

Tails Ordinance

File Number: 981437

Date Passed:

Ordinance approving and authorizing the amendment and restatement of the agreement concerning the public trust for Mission Bay, among the City and County, including its Port Commission, the State of California and Catellus Development Corporation; adopting findings that certain transfers of land contemplated by such agreement are authorized by and consistent with the provisions of state legislation set forth in Chapter 1143 of the Statutes of 1991, as amended by Chapter 86 of the Statutes of 1992 and Chapter 203 of the Statutes of 1997; adopting findings pursuant to the California Environmental Quality Act; and adopting findings that such agreement is consistent with the City's General Plan and eight priority policies of Planning Code Section 101.1.

October 19, 1998 Board of Supervisors — PASSED ON FIRST READING

Ayes: 9 - Ammiano, Bierman, Brown, Katz, Leno, Medina, Teng, Yaki, Yee

Absent: 1 - Newsom

Excused: 1 - Kaufman

October 26, 1998 Board of Supervisors — FINALLY PASSED

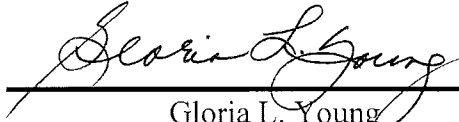
Ayes: 8 - Ammiano, Bierman, Brown, Leno, Medina, Teng, Yaki, Yee

Absent: 1 - Katz

Excused: 2 - Kaufman, Newsom

File No. 981437

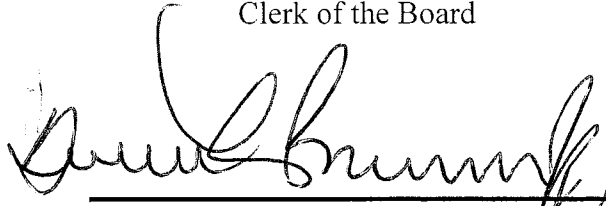
I hereby certify that the foregoing Ordinance
was **FINALLY PASSED** on October 26, 1998
by the Board of Supervisors of the City and
County of San Francisco.



Gloria L. Young
Clerk of the Board

OCT 30 1998

Date Approved



Mayor Willie L. Brown Jr.