



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: 208609

Re: Recommendation of dedication of Mission Bay South Park P3 (between 3rd and 4th Streets and Mission Creek) to public use; acceptance of an irrevocable offer for the acquisition facilities that comprise the Park improvements; designation of said facilities for public open space and park purposes only; acceptance of Park P3 for City maintenance and liability purposes, subject to specified limitations; adoption of findings under the California Environmental Quality Act.

WHEREAS, California Statutes of 1968, Chapter 1333 (the “Burton Act”) and San Francisco Charter Section 4.114 empower the San Francisco Port Commission to use, conduct, operate, maintain, manage, regulate, and control the lands within Port Commission jurisdiction subject to the public trust; and

WHEREAS, On November 2, 1998, the City, acting through its Board of Supervisors, approved the Mission Bay South Redevelopment Plan (“Mission Bay Plan”) by Ordinance No. 335-98; and

WHEREAS, On November 16, 1998, the Redevelopment Agency of the City and County of San Francisco, (the “Redevelopment Agency”) and Catellus Development Corporation (“Catellus”) entered into the Mission Bay South Owner Participation Agreement (the “South OPA”); and

WHEREAS, On November 16, 1998, the City and County of San Francisco (the “City”) and the Redevelopment Agency entered into the South Interagency Cooperation Agreement; and

WHEREAS, On July 19, 1999, the City and Catellus entered into the Amended and Restated Mission Bay City Land Transfer Agreement (the “Land Transfer Agreement”); and

WHEREAS, On July 19, 1999, the State of California quitclaimed to the City and Port certain properties within Mission Bay South subject to a public trust; and

WHEREAS, On June 1, 2001, the Redevelopment Agency and Catellus entered into the Mission Bay South Acquisition Agreement; and

WHEREAS, On November 16, 2001 (dated for reference purposes only), the City, and with respect to certain portions under Port jurisdiction, the Port, as Landlord, and the Redevelopment Agency, as tenant, entered into that certain Agency Ground Lease (the "Ground Lease"), to implement the improvement of open space, park, or plazas as contemplated by the Land Transfer Agreement and the Mission Bay Plan "Plan Documents", including the South OPA; and,

WHEREAS, On December 1, 2003, Catellus merged into Catellus Operating Limited Partnership, a Delaware limited partnership (“COLP”), and on December 31, 2003, COLP as successor by merger to Catellus contributed most of its interests in Mission Bay to Catellus Land and Development Corporation a Delaware Corporation (“CLDC”), thereby making CLDC a wholly owned subsidiary of COLP

following the merger, including all rights and obligations under the Project Permit and the Permit to Enter related to the Project; and

WHEREAS, On November 22, 2004, COLP and CLDC granted all of its property in the grant deed, and assigned all rights and obligations under the OPA, as stated in the Assumption Agreement, to FOCIL-MB, LLC, a Delaware limited liability company (“FOCIL”); and

WHEREAS, On February 1, 2012, state law dissolved the Redevelopment Agency and the transfer of all rights, obligations and liabilities of the former Redevelopment Agency to the Successor Agency to the Redevelopment Agency of the City and County of San Francisco (“Successor Agency”), commonly known as the Office of Community Investment and Infrastructure (“OCII”); and

WHEREAS, On June 11, 2019, Public Works (“PW”) approved the construction of certain Mission Bay South permanent public infrastructure improvements under the Street Improvement Permit (“SIP”) No 19IE-00485 and/or General Excavation Permit (“GEP”) within the Mission Creek Park system being a portion of Assessor’s Block Parcel No. 8714, Lot 2 and portions of 4th Street and 3rd Street; and

WHEREAS, PW issued a notice, dated October 18, 2022, as shown on Exhibit A, stating that the Mission Bay South Projects have been substantially completed pursuant to the SIP and/or GEP associated with each project and that they are ready for their intended use; and

WHEREAS, On October 25, 2022, the City and FOCIL entered into a Temporary City Access and Use Agreement whereby FOCIL granted the City a nonexclusive temporary license for the use, maintenance and repair of the Improvements, and for access in, on and over the License Area for public pedestrian and recreational use and access, ingress and egress and certain utility purposes by the City; and

WHEREAS, FOCIL irrevocably offered to the City the Public Infrastructure Improvements constructed in accordance with the Project Plans, and any authorized revisions or contract change orders thereto, related to the construction of the Mission Bay South Projects (dated as shown on Exhibit B); and

WHEREAS, In a letter dated July 27, 2023 as shown on Exhibit C, the San Francisco Planning Department determined that the acceptance of the Public Infrastructure Improvements and other actions specified herein are consistent with Board Motion No. M15-094, File number 150513, and General Plan Referral 2013, 1304R. The findings of each project Case Number regarding consistency with the General Plan and the eight priority policies of Planning Code Section 101.1, and that the contemplated actions do not trigger the need for subsequent environmental review pursuant the California Environmental Quality Act (“CEQA”) (California Public Resources Code Sections 21000 et seq.); and

WHEREAS, In a letter dated October 27, 2022, as shown on Exhibit D, OCII determined that the acceptance of the Public Infrastructure Improvements and other actions specified herein are consistent with the Mission Bay South Redevelopment Plan and Plan Documents and recommended that the Board of Supervisors accept the permanent improvements on behalf of the City; and

WHEREAS, The PW Director and the City Engineer hereby certify the following:

- 1) The Port currently holds jurisdiction over portions of Mission Creek and adjacent areas, being portions of State Trust Parcel 2, on which the Park P3 project public improvements have been constructed and which are proposed to be used for public open space purposes;
- 2) The City currently holds jurisdiction over other portions of Park P3 where project public improvements have been constructed and which are proposed to be used for public park use purposes only;
- 3) Portions of Park P3 also where constructed on a 14-foot wide section of the 4th Street right-of-way (the “4th Street Park Area”);
- 4) The 4th Street Park Area will be the subject a future Board of Supervisors action to vacate this Area, which is a portion of public right-of-way; transfer portions of the Area interdepartmentally to the Recreation and Park Department and Port of San Francisco, respectively; and formally incorporate the Area into Park P3.
- 5) FOCIL has irrevocably offered the Public Infrastructure Improvements to the City;
- 6) On behalf of FOCIL, Mission Bay Development Group, LLC, has submitted, for each project listed herein, Assignments of Reimbursements to the City from third parties, if applicable, and evidence of acceptability of the Public Infrastructure Improvements from all applicable public entities and/or non-City utilities;
- 7) For each project listed herein, PW has performed all applicable inspections, obtained test results, ensured compliance with permit conditions and mitigation measures, resolved punch list items, determined Street Improvement Permit terms have been met and received Street Improvement Plan as-built drawings;
- 8) PW has determined that as of the dates listed on Exhibit A of this Order, the Public Infrastructure Improvements are ready for their intended use and have been completed substantially in conformity with the Plans and Specifications for the Mission Bay South Projects, approved by or on behalf of the PW Director, and any authorized revision thereto, and that the projects have been constructed in accordance with all City codes, regulations, standards, and the Mission Bay South Plan and Plan Documents governing the Mission Bay South Projects;
- 9) The certifications are subject to the following exceptions: delegation to the Public Works Director the authority to accept remaining punchlist items identified below (“Punchlist Items”) and delegation to the Director of the Real Estate Division the authority to finalize and accept an easement for a private fire hydrant and related improvements as described below (“Private Fire Hydrant”)

NOW, THEREFORE BE IT ORDERED THAT,

With respect to the facilities and acceptance of park/open space:

I hereby recommend that the Board of Supervisors accept the Public Infrastructure Improvements, as referenced in the Acquisition Agreement dated June 1, 2001, and as further described in the multiple Irrevocable Offers of Improvements for the Mission Bay South Projects, dated as shown on Exhibit B of this Order and dedicate the improvements for public use.

I further recommend that the Board of Supervisors approve the Park P3 Plat, including the 4th Street Park Area, dedicate the Park Improvements to public use, and designate the property shown thereon for park and open space purposes only.

I also recommend that the Board of Supervisors acknowledge that although Public Works reviewed, permitted, inspected, and approved the Park under its public right-of-way permitting jurisdiction, the Board should not accept it as public right-of-way under California Streets and Highways Code Section 1806. Instead, I recommend that the Board dedicate and accept Park P3 solely as parkland under Public Works property jurisdiction in accordance with California Government Code Section 66477.1 and Subdivision Code Section 1438. This will allow for the efficient and orderly transfer of jurisdictional responsibility over Park P3 to other City departments through subsequent action of the Board of Supervisors without going through the unnecessary and time-consuming process of a street vacation procedure under the California Streets and Highways Code Sections 8300 et seq. and Public Works Code Section 787(a).

With Respect to Maintenance and Liability:

I hereby recommend that the Board of Supervisors accept Mission Bay Park P3 for City maintenance and liability on behalf of the City, subject to the conditions below for the Punchlist Items and the Private Fire Hydrant.

- a) Storm Drain System Testing – Testing of the 8” and 30” force main storm drain system, and setting of related valves and weirs, including those facilities within Park P3, shall be performed by FOCIL or their designee, consistent with the requirements and performance standards of the Storm Water Pump Station No. 3 Acquisition Facility (“SWPS #3”) contract specifications.
- b) Storm Drain System Correction – During the Storm Drain System Testing process referenced in paragraph (a), the test results shall meet the requirements of the contract specifications for System Testing for the SWPS #3, as approved by the City in the final permit set. Should the results of the Storm Drain System Testing not meet testing requirements, any required modification or repair, including but not limited to full system replacement, shall occur in conjunction with the SWPS #3 construction contract and any such modification, repair or replacement shall not be deemed “duplicative work” with regards to determining eligibility for reimbursement under the Acquisition Agreement. Such work shall be performed at no direct cost to the City but shall be reimbursable in accordance with terms of the Acquisition Agreement between FOCIL and OCII. Any modification, repair and/or replacement shall be completed per the SWPS #3 contract, and subject to the satisfaction and approval of the SFPW Director, prior to issuance of the Determination of Completeness for SWPS#3.

This requirement for testing and potential modification, repair, and/or replacement of storm drain, previously constructed and accepted, facilities shall be clearly stated on the SWPS#3 contract plans, specifications, and permit.

I further recommend that the Board’s acceptance of the Park P3 Improvements, which includes the 4th Street Park Area, is for the Mission Bay Park P3 only, excluding any encroachments that are permitted,

not permitted, or both; subject to OCII's maintenance responsibility for the term of the Mission Bay South Redevelopment Plan Ground Lease Agreement; and subject to maintenance responsibility of the Port of San Francisco for the portions of Park P3 within Port jurisdiction. I also recommend that the Board specifically excluded from the acceptance the Private Fire Hydrant and related improvements as shown on the Park P3 Plat. Reserved from this acceptance action are the rights and obligations of the adjacent property owner(s) One Mission Bay Owners Association to use and maintain this Private Fire Hydrant. These rights shall be the subject of a future easement or similar document acceptable to the Director of the Division of Real Estate. A copy of the draft Private Fire Hydrant easement is on file with the Clerk of the Board of Supervisors in File No. _____ and incorporated herein by reference.

I further recommend that the Board of Supervisors hereby acknowledge FOCIL's conditional assignment of all warranties and guaranties to OCII related to the construction of the above listed Park P3 Improvements and the obligation of OCII to maintain the Park Improvements until termination of the Mission Bay South Redevelopment Plan Ground Lease Agreement.

I further recommend that the Board of Supervisors directs the Real Estate Division to show Park P3 under the jurisdiction of Public Works above the mean high tide line and the Port of San Francisco below this line in accordance with this ordinance.

With Respect to Delegation of the Acceptance of Punchlist Items to Public Works and Easement Approval for the Private Fire Hydrant to Division of Real Estate:

I hereby recommend that the Board of Supervisors delegate to the PW Director the authority to accept the Park P3 Punchlist Items identified in this PW Order for public use, park and open space purposes, and City maintenance and liability, and to take other associated official actions in regard to these Punchlist Items.

I further recommend that the Board of Supervisors delegate to the Director of the Real Estate Division the authority to enter into and approve an easement agreement or similar document with One Mission Bay Owners Association in substantially the same form as the draft, as shown on Exhibit E and on file with the Board concerning the rights and obligations of this property owner(s) to use and maintain the Private Fire Hydrant. Should the Director fail to reach an acceptable arrangement, the Board authorizes the City agency with jurisdiction over Park P3 to terminate any implied or reserved rights for the Private Fire Hydrant, remove these facilities, and restore Park P3 to a condition acceptable to the City agency with jurisdiction over this Park.

X

DocuSigned by:

Albert Ko

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Engineer

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DocuSigned by:

Carla Short

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Interim Director of Public Works