

BOARD of SUPERVISORS




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MEMORANDUM

Date: February 12, 2024

To: Andrico Penick, Director, Real Estate Division

From:  Angela Calvillo, Clerk of the Board, Board of Supervisors

Subject: Conditional Property Exchange Agreement - Kensington Way LLC - Potential Exchange of Vacant Land on Edgehill Mountain Near Kensington Way for Vacant Land Near Moraga Avenue and Noriega Avenue (File No. 231261)

On January 23, 2024, the Board of Supervisors adopted Resolution No. 29-24, sponsored by Supervisor Myrna Melgar (File No. 231261, Conditional Property Exchange Agreement - Kensington Way LLC - Potential Exchange of Vacant Land on Edgehill Mountain Near Kensington Way for Vacant Land Near Moraga Avenue and Noriega Avenue); enacted on February 1, 2024.

Please find the attached courtesy copy of Resolution No. 29-24 for your office's information and consideration.

If you have any questions or concerns, please contact the Office of the Clerk of the Board at (415) 554-5184.

c: Member of the Board of Supervisors; Supervisor Myrna Melgar

1 [Conditional Property Exchange Agreement - Kensington Way LLC - Potential Exchange of
2 Vacant Land on Edgehill Mountain Near Kensington Way for Vacant Land Near Moraga
3 Avenue and Noriega Avenue]

4 **Resolution authorizing an agreement for the conditional exchange of vacant land**
5 **located on Edgehill Mountain for City's property on paper street areas near Moraga**
6 **Avenue and Noriega Avenue; finding that the exchange agreement is a conditional land**
7 **acquisition agreement under California Environmental Quality Act Guidelines, Section**
8 **15004(b)(2)(A); finding City's property to be exempt surplus land under California**
9 **Government Code, Section 54221(f)(1)(C); and authorizing the Director of Property to**
10 **execute documents, make certain modifications, and take certain actions in**
11 **furtherance of the exchange agreement that do not materially increase the obligations**
12 **or liabilities to the City and are necessary to effectuate the purposes of the exchange**
13 **agreement or this Resolution.**

14
15 WHEREAS, The City and County of San Francisco (the "City") owns unimproved real
16 property consisting of six lots or portions of lots located generally as follows: 1) one lot located
17 in a paper street area of Moraga Avenue, extending east along Moraga Avenue from the
18 intersection of Moraga Avenue with 8th Avenue; 2) one lot located in a paper street area of
19 Noriega Avenue, extending east along Noriega Avenue from the intersection of Noriega
20 Avenue with 8th Avenue; 3) three lots located in paper street areas of Noriega Avenue and
21 fronting on Laguna Honda Boulevard and 7th Avenue, extending west from the intersection of
22 Noriega Avenue with Laguna Honda Boulevard and 7th Avenue; and 4) a portion of
23 Assessor's Parcel Block No. 2440, Lot No. 020 (collectively, the "City Property"); and

24 WHEREAS, Kensington Way LLC, a California limited liability company ("Kensington")
25 owns unimproved real property consisting of five lots located on Kensington Way near

1 Vasquez Avenue, San Francisco, California, known as Assessor's Parcel Block No. 2934, Lot
2 Nos. 27, 26, 25, 24, and 10A (collectively, the "Kensington Property"); and

3 WHEREAS, The City desires to acquire fee title to the Kensington Property for City use
4 to preserve Edgehill Mountain from further destabilization, a site known to be impacted by
5 landslides, and to conserve it as open space; and

6 WHEREAS, Kensington desires to convey the Kensington Property to the City in
7 exchange for the City Property; and

8 WHEREAS, The City and Kensington have negotiated an agreement for the exchange
9 of the Kensington Property and the City Property (the "Exchange Agreement"), a copy of
10 which is on file with the Clerk of the Board of Supervisors; and

11 WHEREAS, Before the City may dispose of the City Property, the Surplus Land Act
12 (California Government Code, Section 54220 et seq.) requires the Board of Supervisors to
13 declare the City Property exempt surplus land, as supported by written findings; and

14 WHEREAS, Pursuant to the Exchange Agreement, the City will convey the City
15 Property to Kensington and Kensington will convey the Kensington Property to the City,
16 contingent upon certain conditions precedent, as set forth in the Exchange Agreement; and

17 WHEREAS, The Director of Property has determined that the fair market value of the
18 City Property is \$3,750,000.00, and the fair market value of the Kensington Property is not
19 less than \$3,750,000; the fair market values of the City Property and the Kensington Property
20 have been confirmed by appraisal and appraisal review in accordance with the requirements
21 of San Francisco Administrative Code, Section 23.3; and

22 WHEREAS, Portions of the City Property are "paper streets," which are not improved
23 as roadways and have not been designated by the City as public streets; Kensington intends
24 to pursue development approvals for the City Property during the escrow period and will have
25 the obligation to initiate and bear the cost of any necessary vacations of the public right-of-

1 way, and intends to undertake such actions prior to the exchange of the City Property and the
2 Kensington Property; at the time of the property exchange following satisfaction of the
3 conditions precedent set forth in the Exchange Agreement, the City will convey the entire City
4 Property to Kensington subject to any rights of the public; and

5 WHEREAS, The City has not completed environmental review under the California
6 Environmental Quality Act ("CEQA") (California Public Resources Code, Section 21000 et
7 seq.) the CEQA Guidelines (California Code of Regulations, Title 14, Sections 15000 et seq.),
8 and Chapter 31 of the San Francisco Administrative Code for the proposed development
9 project; and

10 WHEREAS, The Exchange Agreement is a conditional land acquisition agreement as
11 described in CEQA Guidelines, Section 15004(b)(2)(A) that designates preferred sites for
12 future use on the terms and conditions set forth in the Exchange Agreement and subject to
13 compliance with CEQA, including the conditions of CEQA Guidelines, Section 15004(b)(2)(A)
14 and Section 15004(b)(4); and

15 WHEREAS, The City does not commit to any definite course of action with regard to
16 any future use prior to CEQA compliance and further, retains its absolute discretion to: a)
17 make modifications it deems necessary to mitigate significant adverse environmental impacts,
18 b) select feasible alternatives that avoid significant adverse impacts, including the "no project"
19 alternative, 3) balance the benefits of any proposed project against the unavoidable significant
20 impacts prior to taking final action, or 4) determine not to proceed with the closing; and

21 WHEREAS, Nothing in the Exchange Agreement or this Resolution affects or
22 diminishes the right or discretion of the Planning Department, the Board of Supervisors, or
23 any City official or department to grant, deny, or condition any development application,
24 regulatory approval, or street vacation relative to the City Property; and
25

1 WHEREAS, The Director of Property, with the concurrence of the Director of Public
2 Works, have determined that it is in the best interests of the City to enter into the Exchange
3 Agreement, and that the public interest demands or will not be inconvenienced by the
4 proposed property exchange; now, therefore, be it

5 RESOLVED, That the Board of Supervisors finds that the Exchange Agreement is a
6 conditional land acquisition agreement as described in CEQA Guidelines, Section
7 15004(b)(2)(A) and subject to the conditions of Section 15004(b)(2)(A) and Section
8 15004(b)(4), and that closing is conditioned on completion of the environmental review and
9 any development approval, regulatory approval, or street vacation relative to the City
10 Property, for which the City retains its absolute discretion to grant, deny, or condition; and, be
11 it

12 FURTHER RESOLVED, That the Board of Supervisors finds that the Kensington
13 Property is necessary for the City's use to preserve Edgehill Mountain from further
14 destabilization and to conserve as open space; and, be it

15 FURTHER RESOLVED, That the Board of Supervisors declares that the exchange of
16 the City Property for the Kensington Property is "exempt surplus land" not subject to
17 procedures related to implementation of the Surplus Land Act, pursuant to Government Code,
18 Section 54221(f)(1)(C); and, be it

19 FURTHER RESOLVED, That the Board of Supervisors finds that (i) the public interest
20 or necessity demands, or will not be inconvenienced by the conveyance of the City Property,
21 (ii) competitive bidding is impractical given the nature of the exchange of real property, and
22 (iii) the exchange of real property will further a proper public purpose; and, be it

23 FURTHER RESOLVED, In accordance with the recommendation of the Director of
24 Property, the Board of Supervisors approves the Exchange Agreement in substantially the
25 form presented to the Board, and authorizes the Director of Property to accept the deed to the

1 Kensington Property upon the closing in accordance with the terms and conditions of the
2 Exchange Agreement, and to take any and all actions (including, but not limited to, the
3 execution and delivery of any and all certificates, agreements notices, consents, escrow
4 instructions, closing documents and other instruments or documents) as the Director of
5 Property, after consultation with the Office of the City Attorney, deems necessary, or
6 appropriate in order to convey the City Property in exchange for the Kensington Property
7 pursuant to the Exchange Agreement, or to otherwise effectuate the purpose and intent of this
8 Resolution, such determination to be conclusively evidenced by the execution and delivery by
9 the Director of Property of any such documents; and, be it

10 FURTHER RESOLVED, That the Board of Supervisors authorizes the Director of
11 Property to enter into any additions, amendments or other modifications to the documents
12 (including, without limitation, the attached exhibits) that the Director of Property determines, in
13 consultation with the City Attorney, are in the best interests of the City, do not materially
14 increase the obligations or liabilities of the City, do not materially reduce the benefits to the
15 City, and are necessary or advisable to complete the property exchange, such determination
16 to be conclusively evidenced by the execution and delivery by the Director of Property of the
17 documents and any amendments thereto; and, be it

18 FURTHER RESOLVED, That all actions heretofore taken by the officers of the City
19 with respect to the Exchange Agreement are hereby approved, confirmed and ratified; and, be
20 it

21 FURTHER RESOLVED, That within thirty (30) days of the Exchange Agreement being
22 fully executed by all parties, the Director of Property shall provide the final Exchange
23 Agreement to the Clerk of the Board for inclusion into the official file.
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25

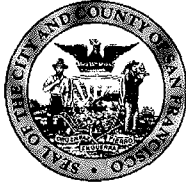
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RECOMMENDED:
REAL ESTATE DEPARTMENT

/s/ _____
Director of Property

DEPARTMENT OF PUBLIC WORKS

/s/ _____
Director



City and County of San Francisco
Tails
Resolution

City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

File Number: 231261

Date Passed: January 23, 2024

Resolution authorizing an agreement for the conditional exchange of vacant land located on Edgehill Mountain for City's property on paper street areas near Moraga Avenue and Noriega Avenue; finding that the exchange agreement is a conditional land acquisition agreement under California Environmental Quality Act Guidelines, Section 15004(b)(2)(A); finding City's property to be exempt surplus land under California Government Code, Section 54221(f)(1)(C); and authorizing the Director of Property to execute documents, make certain modifications, and take certain actions in furtherance of the exchange agreement that do not materially increase the obligations or liabilities to the City and are necessary to effectuate the purposes of the exchange agreement or this Resolution.

January 08, 2024 Land Use and Transportation Committee - RECOMMENDED

January 23, 2024 Board of Supervisors - ADOPTED

Ayes: 11 - Chan, Dorsey, Engardio, Mandelman, Melgar, Peskin, Preston, Ronen, Safai, Stefani and Walton

File No. 231261

I hereby certify that the foregoing Resolution was ADOPTED on 1/23/2024 by the Board of Supervisors of the City and County of San Francisco.

Angela Calvillo
Clerk of the Board

London N. Breed
Mayor

2/1/24

Date Approved