

City and County of San Francisco

San Francisco Public Works



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GENERAL - DIRECTOR'S OFFICE

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London N. Breed, Mayor
Mohammed Nuru, Director

Public Works Order No: 201239

RECOMMENDING APPROVAL OF PHASED FINAL MAP 8731, 5M PROJECT, PID 8731 PHASE No. 1, A MERGER AND VERTICAL SUBDIVISION OF THAT CERTAIN REAL PROPERTY DESCRIBED IN THAT CERTAIN GRANT DEED RECORDED JULY 17, 2015, DOCUMENT NO. 2015-K092345, OFFICIAL RECORDS, THAT CERTAIN GRANT DEED RECORDED JULY 17, 2015, DOCUMENT NO. 2015-K092346, OFFICIAL RECORDS, AND THAT CERTAIN GRANT DEED RECORDED DECEMBER 4, 2017, DOCUMENT NO. 2017-K544770, OFFICIAL RECORDS, BEING A PORTION OF 100 VARA BLOCK 381 RESULTING IN UP TO 8 LOTS INTENDED FOR COMMERCIAL/OFFICE USES, OPEN SPACE, AND PUBLIC RIGHT OF WAY, AND FOR DEVELOPMENT AND FURTHER SUBDIVISION IN FUTURE PHASES, SUBJECT TO CERTAIN CONDITIONS, AND A PUBLIC IMPROVEMENT AGREEMENT RELATED TO FINAL MAP 8731.

1. The 5M site is a nearly four acre area generally between Mission, Fifth and Howard Streets. The 5M Project is a mixed use development including office, residential, retail, cultural, educational, open space parking and related uses. Specifically at build-out the 5M Project would include up to 807,600 gross square feet of office uses (including ground floor uses), up to 821,300 gross square feet of residential uses (including both rental and ownership units), approximately 68,600 gross square feet of other active ground floor uses, and collectively up to 1,697,600 gross square feet of new construction, and renovated existing building space, with approximately 331 subterranean vehicle parking spaces, plus bicycle parking spaces and approximately 59,500 square feet of public and private open space.
2. On February 24, 2017, the Director of Public Works ("Director") adopted Public Works ("PW") Order No. 185734 approving Tentative Map No. 8731 ("Tentative Map") for the merger and re-subdivision of APNs 3725-089 through 091, 3725-093, 3725-094, 3725-043 through 047, 3725-077, 3725-005 through 009, 3725-012, and 3725-097 and 098 for purposes of development in multiple phases.
3. On April 3, 2019, the Director adopted PW Order No. 200951 approving a revised Tentative Map No. 8731, dated March 18, 2019 ("Revised Tentative Map"). The Revised Tentative Map supersedes the Tentative Map previously approved by PW Order No. 185734.
4. In PW Order No. 185734 as revised by PW Order No. 200951, the Director determined that the Tentative Map was subject to the mitigation measures adopted by the Planning Commission pursuant to Motion No. 19458 and affirmed and adopted by the Board of



Supervisors pursuant to Motion No. M15-166, which certified the Final Environmental Impact Report ("FEIR") for the 5M Project, prepared pursuant to the California Environmental Quality Act (California Public Resources Code §§ 21000 et seq.). Since the FEIR and the Project were approved on December 1, 2015, the Planning Department has determined there have been: i) no substantial changes to the Project; ii) no substantial changes with respect to the surrounding circumstances; and iii) no new information of substantial importance, that would result in new or more severe significant impacts than were addressed in the FEIR. Accordingly, no supplemental or subsequent EIR or other environmental review is required.

5. An application was filed for a phased final map to re-subdivide APNs 3725-005, 3725-006, 3725-008, 3725-009, 3725-012, 3725-043 through 047, 3725-077, 3725-097 and 3725-098. Said map is referred to hereafter as the "Final Map". It is an eight lot subdivision with Lot 1 intended for commercial/office use, Lots A, B and C being intended for dedication for sidewalk use, Lot 2 and 3 intended for open space. Lot E is intended for further subdivision in a subsequent phase for residential and commercial uses, and Lot D intended for open space in a subsequent phase. A nonexclusive public sidewalk easement would be dedicated on Lot 1 by separate instrument.
6. The Planning Commission by Resolution No. 19460, found that the subdivision, on balance, is consistent with the General Plan and the Priority Policies of Planning Code Section 101.1, and consistent with the Project as defined in the Development Agreement (adopted per Ordinance No. 206-15) and related project approvals. In a letter dated March 25, 2019, the Planning Department stated that the Revised Tentative Map complies with the applicable provisions of the Planning Code and is subject to the conditions contained in Planning Commission Motions No. 19467-19473, Board of Supervisors File No. 150788, and that none of the conditions in Government Code Section 66474(a)-(g) exist.
7. The PW Director hereby approves, for good cause, and after consultation with the City Attorney's Office and any affected City departments, an exception to the Subdivision Code Section 1335 and requirement of Section IV.I of the Subdivision Regulations, that generally requires that where public right of way is constructed on private property that such property be dedicated in fee simple to the City. The PW Director recommends acceptance of a public sidewalk easement on a portion of Lot 1 of the Final Map in lieu of fee ownership for good cause, being that the area subject to the easement is or will be encumbered with private improvements, specifically a sub-sidewalk basement and other associated building improvements.

It is further determined as follows with respect to the exception of the fee title dedication requirement for the Lot 1 sidewalk ramp improvement:

- a. Application of the Subdivision Code and Subdivision Regulation Section IV.I would result in practical difficulties or unnecessary hardships affecting the

property inconsistent with the general purpose and intent of the Project Documents and City Regulations.

The sidewalk ramp is necessary in order to provide handicap access. Such improvements are generally provided by the title dedication as part of the construction of the public streets. Requiring fee dedication for the sidewalk ramp property on Lot 1 would cause significant conflicts with Project construction, specifically it would conflict with the H1 building sub-sidewalk basement. Imposition of the Subdivision Code and Subdivision Regulation IV.I would therefore not be appropriate for this ramp, but fee dedications are appropriate for other sidewalk ramps on private property where such building conflicts do not exist.

- b. *Granting an exception to the Subdivision Code and Subdivision Regulations Section IV.I will not be materially detrimental to the public welfare or injurious to other property in the area in which said property is located.*

The exception will not be materially detrimental to the public welfare or impact other property. The Subdivider and the City will enter into a separate sidewalk easement agreement to address their respective responsibilities with respect to the public sidewalk easement, including Subdivider responsibility to maintain the improvements in the sidewalk easement area. With the incorporation of these conditions, the exception will not be materially detrimental to the public welfare or injurious to other property in the area.

- c. *Granting the exception will not be contrary to the Project Documents or City Regulations.*

Granting the exception will not be contrary to the 5M project documents or City Regulations. Rather, the exception will implement the 5M project in a manner consistent with the project documents.

- d. *The exception is not in violation of the Map Act.*

The Map Act does not prevent the sidewalk easement dedication as contemplated by the exception. Therefore, this exception is not in violation of the Map Act.

8. Public Works thoroughly reviewed the improvement plans and endeavored to identify all exceptions from the Subdivision Code and Subdivision Regulations that may be required. Such review included numerous rounds of plan reviews with City agencies, and technical meetings with Subdivider. All applicable City agency comments have been addressed, and Public Works has received no objection from any City agencies to the approval of the Improvement Plans.
9. Pursuant to the Subdivision Code, it is hereby determined as follows with respect to the Subdivision Code and Subdivision Regulations:

- a. The Improvement Plans have been thoroughly evaluated by all affected City agencies. Moreover, the Project itself, with which the Improvement Plans are an implementing approval, was subject to thorough public review and comment as part of the approval of the Development Agreement, Design for Development, FEIR and other Project approvals. Further, the Improvement Plans are consistent with the Revised Tentative Map.

The Director is authorized, under Subdivision Code to approve exceptions, waivers or deferrals to any of the requirements set forth in this Code and the Subdivision Regulations. Pursuant to such authority, and based on the findings herein, the Director approves any other exception, waiver or deferral necessitated by the Improvement Plans is approved.

- b. *Application of conflicting provisions of the Subdivision Code or Subdivision Regulations would result in practical difficulties or unnecessary hardships affecting the property inconsistent with the general purpose and intent of the Project documents and City Regulations.*

Application of any conflicting provisions of the Subdivision Code or Subdivision Regulations to the Improvement Plans would result in practical difficulties or unnecessary hardships inconsistent with the general purpose and intent of the Project documents and City Regulations. As stated above, Improvement Plans have been thoroughly evaluated by all applicable City agencies. The Improvement Plans reflect the agencies' comments, which were solicited as part of a lengthy review process. Based on such review, the Improvement Plans were revised to conform as closely as possible to all City requirements, including the Subdivision Code and Subdivision Regulations. Accordingly, application of any provisions of the Subdivision Code or Subdivision Regulations which conflict with the Improvement Plans and have not otherwise been addressed herein, would result in practical difficulties and unnecessary hardships that would conflict with the Project documents and City Regulations.

- c. *Granting an exception to the Subdivision Regulations and Subdivision Code, as necessary, would not be materially detrimental to the public welfare or injurious to other property in the area in which said property is located.*
- d. The Improvement Plans have been reviewed and approved by City agencies after a thorough review. Known issues requiring exceptions or design modifications are otherwise addressed and conditioned in this order. All appropriate conditions of approval are documented in this order and will be imposed as necessary. As such, granting any other exception to the Subdivision Code or Subdivision Regulations would not be materially detrimental to the public welfare or injurious to other property in the area.
- e. *Granting the exception will not be contrary to the Project documents or City Regulations.*

The Improvement Plans were prepared for purposes of consistency with the project documents. All known exceptions requiring exceptions or design modifications from the Subdivision Code or Subdivision Regulations, respectively, are described in this order. The purpose of this exception is to provide any additional exceptions necessary for the approval of the Improvement Plans as necessary in order to achieve conformity with the City Regulations.

- f. *The exception is not in violation of the Map Act.*

The Application is consistent with the Map Act as otherwise described herein. The Map Act does not regulate improvement plans separate from proposals to subdivide land. As such, the Map Act is not implicated by this exception.

10. Because the subdivider has not completed the required public improvements associated with this Final Map and certain conditions have not been fulfilled at the time of the filing of this Final Map, the San Francisco Subdivision Code requires that the subdivider and the City enter into a Public Improvement Agreement to address this requirement. FC 5M H1 LLC has executed a Public Improvement Agreement to address this requirement and has provided security pursuant to that Agreement as required under the Subdivision Code. The PW Director recommends that the Board of Supervisors approve the Public Improvement Agreement and authorize the PW Director and City Attorney to execute and file the Agreement in the Official Records of the City. As authorized by the Public Improvement Agreement, the Director recommends: (i) deferral of the requirement to obtain a master encroachment permit for certain improvements; (ii) extension of time for 120 days from the recording of the Final Map, or such additional time as the PW Director may determine, including as appropriate up to filing of the Phase 3 Final Map, to comply with Public Works Conditions 1-3, as such conditions are described in Public Works Order no. 200951 approving the Revised Tentative Map; and (iii) deferral of certain sidewalk ramp and associated pedestrian crossing improvements at the northeast and southeast corners of Minna Street and Mary Street. Subdivider will provide bonds in conjunction with the Public Improvement Agreement pertaining to Final Map No. 8731 to secure the construction of public improvements, including the deferred improvements.
11. The Final Map includes an offer of improvements required by the Public Improvement Agreement, an offer of dedication of a nonexclusive public sidewalk easement (by separate instrument) on a portion of Lot 1, and offers of dedication in fee for Lots A, B and C (for sidewalk purposes) of the Final Map. The PW Director recommends that the Board of Supervisors conditionally accept on behalf of the public the offer of improvements, the offers of dedication (Parcel A, B and C) and the Sidewalk Easement Agreement, as required by the Public Improvement Agreement, or described in the owners' statements on the Final Map, subject to the City Engineer's issuance of a Notice of Completion for the improvements and subsequent Board of Supervisors action. The PW Director further recommends that the Board of Supervisors acknowledge that the Director of the Division of Real Estate shall accept the offers of dedications and sidewalk easement and associated Sidewalk Easement Agreement by separate instrument.

- 12. The Project is subject to a Development Agreement, and other project approvals, including use permits describing public sidewalk and street improvements. In addition, the street design is further described in the Design for Development approved for the Project.
- 13. The PW Director and County Surveyor find that the phased Final Map is consistent with the requirements and conditions imposed by the Subdivision Map Act, California Government Code Sections 66410 et seq., the San Francisco Subdivision Code, and the Revised Tentative Map, and substantially conforms to the Revised Tentative Map.
- 14. The PW Director, City Engineer, and County Surveyor recommend that the Board of Supervisors approve the phased Final Map subject to the conditions specified herein.
- 15. DECISION (EXCEPTION FOR ANY OTHER PROVISION OF THE SUBDIVISION CODE OR SUBDIVISION REGULATIONS)

An exception, waiver or deferral from any provision of the Subdivision Code or Subdivision Regulations necessitated by the Improvement Plans is approved.

X DocuSigned by:
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County Surveyor

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