File No.	100833	Committee Item No	1_
		Board Item No	39
			OF SHAPE

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee:	Land Use and Economic Developm	ent_Date _July 26, 2010		
Board of Su	pervisors Meeting	Date Avgust 3,2010		
Cmte Boar	rd			
	Motion Resolution Ordinance Legislative Digest Budget Analyst Report Legislative Analyst Report Youth Commission Report Introduction Form (for hearings) Department/Agency Cover Letter MOU Grant Information Form Grant Budget	and/or Report		
	Subcontract Budget Contract/Agreement Form 126 – Ethics Commission Award Letter Application Public Correspondence			
OTHER X X X X X X X X X X X X X X X X X X	(Use back side if additional space Major Encroachment Permit Request, D. Planning Department General Plan Dete Street Encroachment Agreement Project Plans	ated May 07, 2009		
		Pate July 23, 2010		
Completed by: Alisa somera Date July 20, 2010				

An asterisked item represents the cover sheet to a document that exceeds 25 pages.

The complete document can be found in the file.

Department of Public Works BOARD OF SUPERVISORS

[Approving Street Encroachment at Lake Merced Boulevard and Higuera Avenue]

Resolution granting revocable permission to Park Merced Investors Properties, LLC to occupy a portion of the public right-of-way for the installation and maintenance of a neighborhood sign (4' high x 36' wide x 32" deep) at the corner of Lake Merced Boulevard and Higuera Avenue in the median island (Block 0807, Lot 012), conditioned upon the payment of an annual assessment fee.

WHEREAS, pursuant to Public Works Code Section 786, permission was requested by Stellar Management, agent for the owner, Park Merced Investors Properties, LLC to occupy a portion of the public right-of-way for the installation and maintenance of a neighborhood sign at the corner of Lake Merced Boulevard and Higuera Avenue in the median, as shown on the plans, a copy of which is on file in the office of the Clerk of the Board of Supervisors in File No. 100833; and

WHEREAS, The Department of City Planning, by letter dated April 14, 2010, declared that the proposed encroachment does conform with the General Plan and with the priority policies of Planning Code Section 101.1. A copy of said letter is on file with the Clerk of the Board of Supervisors in File No. 100833, and is incorporated herein by reference; and

WHEREAS, At a duly noticed public hearing on June 2, 2010, the Department of Public Works recommended approval of the proposed encroachment; and

WHEREAS, Notwithstanding the determination set forth above, it is the decision of the Board of Supervisors that the propose encroachments are in the best interest of the general public, are desirable and convenient with the owner's use and enjoyment of its property, and is appropriate use of the public right-of-way; and

Page 1 6/21/2010

WHEREAS, The permit and associated encroachment agreement, which are incorporated herein by reference and attached hereto as Exhibit A, shall not become effective until:

- (a) The Permittee executes and acknowledges the permit and delivers said permit to the City's Controller, and
- (b) Permittee delivers to the City Controller a policy of insurance provided for in said agreement and the Controller shall have had approved the same as complying with the requirement of said agreement. The Controller may, in his discretion, accept, in lieu of said insurance policy, the certificate of an insurance company certifying to the existence of such a policy; and
- (c) The City Controller records the permit and associated agreement in the office of the County Recorder; and

WHEREAS, The Permittee, at the Permittee's sole expense and as is necessary as a result of this permit, shall make the following arrangements:

- (a) To provide for the support and protection of facilities belonging to the Department of Public Works, San Francisco Water Department, the San Francisco Fire Department and other City Departments, and public utility companies; and
- (b) To remove or relocate such facilities and provide access to such facilities for the purpose of constructing, reconstructing, maintaining, operating, or repairing such facilities; and

WHEREAS, The Permittee shall procure the necessary permits from the Central Permit Bureau, Department of Building Inspection and/or Bureau of Street-Use and Mapping, Department of Public Works, and pay the necessary permit fees and inspection fees before starting work; and

WHEREAS, The Board of Supervisors shall implement an annual assessment fee for the use of said right-of-ways, which shall be increased at the beginning of each fiscal year based upon the Consumer Price Index quotient, and shall be re-evaluated by DPW every five (5) years; and

WHEREAS, No structure shall be erected or constructed within said street right-of-way except as specifically permitted herein; and

WHEREAS, The Permittee shall assume all costs for the maintenance and repair of the encroachments and no cost or obligation of any kind shall accrue to the City and County of San Francisco by reason of this permission granted; now, therefore, be it

RESOLVED, That pursuant to Public Works Code Section 786, the Board of Supervisors hereby grants permission, revocable at the will of the Director of the Department of Public Works, to Park Merced Investors Properties, LLC, to occupy a portion of the public right-of-way for the installation and maintenance of a neighborhood sign (4' high x 36' wide x 32" deep) at the corner of Lake Merced Boulevard and Higuera Avenue in the median island (Block 7333C, Lot 001), conditioned upon the payment of an annual assessment fee; and, be it

FURTHER RESOLVED, That this Board adopts the findings of the Planning Department, which determined that said permit is consistent with the General Plan and the priority policies of Planning Code Section 101.1.

Department of Public Works BOARD OF SUPERVISORS

RECEIVED BUREAU OF STREET USE & MAPPING -

JUL 2 0 2009

DEPT. OF PUBLIC WORKS

7 May 2009

City of San Francisco
Department of Public Works
875 Stevenson Street
San Francisco, CA 94103
Attn: Edward Reiskin

RE: Major Encroachment Permit Application

Dear Edward,

I am writing this letter to request a Major Encroachment Permit for the construction of a new monument sign at the corner of Lake Merced Boulevard and Higuera Avenue. Please find the enclosed 6 sets of drawings of the projects and a completed General Plan Referrel Application.

Description of Project: Addition of an approximately 4' high by 36' wide by 32" deep monument sign, located at Lake Merced Blvd. street median at Higuera Avenue. The monument sign will be constructed of concrete masonry units with a stucco finish. Raised letters will be installed on both of the long vertical faces of the sign indicating "Park Merced." A cast stone cap will be installed on the top of the monument sign, in keeping with existing monument signs at Park Merced.

Client: Stellar Management, 3711 19th Avenue, San Francisco, CA 94132 (attn: Adam Mayer)

Client's Representative: Surfacedesign, Inc., 131 Lower Terrace, San Francisco, CA 94114 (attn: Geoff di Girolamo.

Associated Work: Currently, the Client maintains a small planting bed in the center of the aforementioned median. The area around the proposed sign will be planted and irrigated. In December 2008, the client submitted a sidewalk planting application with the Bureau of Urban Forestry.

Thank you for your attention to this application. Please do not hesitate to call me if you have any questions about the project or if I can provide you with additional information.

Best regards,

Geoff di Girolamo, Client's Representative Cc: Adam Mayer, Stellar Management April 14, 2010

RECEIVED
BUREAU OF STREET USE & MAPPING

San Francisco, CA 94103-2479

1650 Mission St.

Suite 400

Clinton Choy

City and County of San Francisco

Department of Public Works/BSM

875 Stevenson St, Room 460

San Francisco, CA 94103

APR 2 0 2010

DEPT. OF PUBLIC WORKS

Reception: 415.558.6378

Fax: 415.558.6409

Planning Information: 415.558.6377

RE: Case No. 2009.0867R; Higuera Avenue Monument

Dear Mr. Choy,

We are responding to your request for a General Plan Referral for the installation of a major encroachment in the public right-of-way fronting the property at the intersection of Lake Merced Boulevard and Higuera Avenue. The General Plan Referral is conducted pursuant to San Francisco Charter Section 4.105 and Section 2A.53 of the Administrative Code. We find the proposed project to be on balance in conformity with the General Plan.

Findings Summary

The project proposes the construction of a 4' high by 36" wide by 32" deep concrete and stucco monument sign in the median of the intersection of Lake Merced Boulevard and Higuera Avenue. The sign will be surrounded by landscaping and irrigation.

While the General Plan contains *policies* that stress the importance of retaining the public rights-of-way, on balance the proposed project is consistent with the General Plan. The key concern with the project pertains not so much to the project itself as to the cumulative impacts of similar projects should it set a precedent. This warrants further discussion, but the stance of staff is that this does not constitute sufficient grounds for a finding that the project is not in General Plan conformity.

Environmental Review

The project is a Class 3 Categorical exemption, New Construction of conversion of small structures and Class 1(c) (5) all work on sidewalks, curbs and gutters, including addition of sidewalk bulbs.

Planning Code Section 101.1 Priority Policies

The project has been reviewed for consistency with the Eight Priority Policies of the Planning Code Section 101.1 and the findings are attached.

Sincerely

John Rahaim

Director of Planning

Attachments:

- 1. General Plan Case Report
- 2. Planning Code Sec. 101.1(b) Priority Policies

CC: A. Kiefer, Planner

General Plan Policy Findings

Note: General Plan Objectives and Policies are in **bold font**, General Plan text is in regular font, and staff comments are in *italic font*.

DESIGN ELEMENT OF GENERAL PLAN

Objective 2

Conservation of resources which provide a sense of nature, continuity with the past, and freedom from overcrowding.

Street Space

Policy 2.8

Maintain a strong presumption against the giving up of street areas for private ownership or use, or for construction of public buildings.

Like other public resources, streets are irreplaceable, and they should not be easily given up. Short-term gains in stimulating development, receipt of purchase money and additions to tax revenues will generally compare unfavorably with the long-term loss of public values. (...) A strong presumption should be maintained, therefore, against the giving up of street areas, a presumption that can be overcome only by extremely positive and far reaching justification.

While the policy talks about streets as "irreplaceable", the project is in effect establishing a positive addition to the neighborhood. However, the major encroachment of part of the street remains the only concern with the project from the perspective of Policy 2.8, but also Policy 2.10, which states that "[S]treet areas should be treated as precious assets which might be required for unanticipated public needs at some future time." (See more below.)

Policy 2.9

Review proposals for the giving up of street areas in terms of all the public values that streets afford.

Every proposal for the giving up of public rights in street areas, through vacation, sale or lease of air rights, revocable permit or other means, shall be judged with the following criteria as the minimum basis for review:

- a. No release of a street area shall be recommended which would result in:
 - (1) Detriment to vehicular or pedestrian circulation; *Project is not in conflict with this policy.*
 - (2) Interference with the rights of access to any private property; *Project is not in conflict with this policy.*
 - (3) Inhibiting of access for fire protection or any other emergency purpose, or interference with utility lines or service without adequate reimbursement; *Project is not in conflict with this policy*.
 - (4) Obstruction or diminishing of a significant view, or elimination of a viewpoint; industrial operations;

Project is not in conflict with this policy.

(5) Elimination or reduction of open space which might feasibly be used for public recreation;

Project is not in conflict with this policy.

(6) Elimination of street space adjacent to a public facility, such as a park, where retention of the street might be of advantage to the public facility;

Project is not in conflict with this policy.

(7) Elimination of street space that has formed the basis for creation of any lot, or construction or occupancy of any building according to standards that would be violated by discontinuance of the street;

Project is not in conflict with this policy.

(8) Enlargement of a property that would result in (i) additional dwelling units in a multi-family area; (ii) excessive density for workers in a commercial area; or (iii) a building of excessive height or bulk;

Project is not in conflict with this policy.

(9) Reduction of street space in areas of high building intensity, without provision of new open space in the same area of equivalent amount and quality and reasonably accessible for public enjoyment;

Project is not in conflict with this policy.

(10)Removal of significant natural features, or detriment to the scale and character of surrounding development.

Project is not in conflict with this policy.

(11)Adverse effect upon any element of the General Plan or upon an area plan or other plan of the Department of City Planning; or

Project is not in conflict with this policy.

(12) Release of a street area in any situation in which the future development or use of such street area and any property of which it would become a part is unknown.

Project is not in conflict with this policy.

- a. Release of a street area may be considered favorably when it would not violate any of the above criteria and when it would be:
 - Necessary for a subdivision, redevelopment project or other project involving assembly of a large site, in which a new and improved pattern would be substituted for the existing street pattern;

Not Applicable.

(2) In furtherance of an industrial project where the existing street pattern would not fulfill the requirements of modern industrial operations;

Not Applicable.

(3) Necessary for a significant public or semi-public use, or public assembly use, where the nature of the use and the character of the development proposed present strong justifications for occupying the street area rather than some other site;

The major encroachment of this portion of the street for this sign would support this policy because the character of the sign is neighborhood-serving.

- (4) For the purpose of permitting a small-scale pedestrian crossing consistent with the principles and policies of The Urban Design Element; or *Not Applicable*.
- (5) In furtherance of the public values and purposes of streets as expressed in The Urban Design Element and elsewhere in the General Plan.

The "public values" is interpreted to be a preservation of the public realm where possible. The project enhances the public realm by adding neighborhood signage.

Policy 2.10

Permit release of street areas, where such release is warranted, only in the least extensive and least permanent manner appropriate to each case.

In order to avoid the unnecessary permanent loss of streets as public assets, methods of release short of total vacation should be considered in cases in which some form of release is warranted. Such lesser methods of release permit later return of the street space to street purposes, and allow imposition of binding conditions as to development and use of the street area.

(...)

[S]treet areas should be treated as precious assets which might be required for unanticipated public needs at some future time.

Streets are emphasized as public assets, and this release of the street area is warranted because it is limited and appropriate for the street signage.



CITY AND COUNTY OF SAN FRANCISCO DEPARTMENT OF PUBLIC WORKS

STREET ENCROACHMENT AGREEMENT

WITNESSETH

In consideration of the adoption by the	Board of Supervisors of the City a	nd County of
San Francisco of Resolution No.	at its meeting of	
true copy of which is attached hereto m	narked Exhibit A, and by this refere the terms, conditions and restriction	ence ons of this
Agreement, also by reference incorpora	ated herein, Permittee agrees that	in accordance
with this agreement and Exhibit A:		

- The permitted encroachment shall constitute a revocable license, shall be personal
 to Permittee and shall not be assignable or transferable by Permittee, whether
 separate from or together with any interest of Permittee.
 - Upon revocation the undersigned permittee, subsequent owners, or their heirs and assignees will within 30 days remove or cause to be removed the encroachment and all materials used in connections with its construction, without expense to the City and County of San Francisco, and shall restore the area to a condition satisfactory to the Department of Public Works.
- 2. The occupancy, construction and maintenance of the encroachment shall be in the location and as specified by the plans submitted, revises, approved and filed in the Department of Public Works. The permittee, by acceptance of this permit, acknowledges its responsibility to comply with all requirements of the occupancy, construction and maintenance of the encroachment as specified in Public Works Code Section 786 and with the sidewalk maintenance requirements specified in Public Works Code Section 706.
- 3. The permittee shall verify the locations of City and public service utility company facilities that may be affected by the work authorized by this permit and shall assume all responsibility for any damage to such facilities due to the work. The permittee shall make satisfactory arrangements and payments for any necessary temporary relocation of City and public utility company facilities.
- 4. In consideration of this Permit being issued for the work described in the application, Permittee on its behalf and that of any successor or assign, and on behalf of any lessee, promises and agrees to perform all the terms of this Permit and to comply with all applicable laws, ordinances and regulations.

Permittee agrees on its behalf and that of any successor or assign to hold harmless, defend, and indemnify the City and County of San Francisco, including, without limitation, each of its commissions, departments, officers, agents and employees (hereinafter collectively referred to as the "City") from and against any and all losses, liabilities, expenses, claims, demands, injuries, damages, fines, penalties, costs or judgments including, without limitation, attorneys' fees and costs (collectively, "claims") of any kind allegedly arising directly or indirectly from (i) any act by, omission by, or negligence of, Permittee or its subcontractors, or the offices, agents or employees of either, while engaged in the performance of the work authorized by this Permit, or while in or about the property subject to this Permit for any reason connected in any way whatsoever with the performance of the work authorized by this Permit, or allegedly resulting directly or indirectly form the maintenance or installation of any equipment, facilities or structures authorized under this Permit, (ii) any accident or injury to any contractor or subcontractor, or any officer, agent, or employee of either of them, while engaged in the performance of the work authorized by this Permit, or while in or about the property, for any reason connected with the performance of the work authorized by this Permit, or arising from liens or claims for services rendered or labor or materials furnished in or for the performance of the work authorized by this Permit, (iii) injuries or damages to real or personal property, good will, and persons in, upon or in any way allegedly connected with the work authorized by this Permit from any cause or claims arising at any time, and potentially falls within this indemnity provision, even if the allegations are or may be groundless, false or fraudulent, which obligations arises at the time such claim is tendered to Permittee by the City and continues at all times thereafter. Permittee agrees that the indemnification obligations assumed under this Permit shall survive expiration of the Permit or completion of work.

Permittee shall obtain and maintain through the terms of this Permit general liability, automobile liability or workers' compensation insurance as the City deems necessary to protect the City against claims for damages for personal injury, accidental death and property damage allegedly arising from any work done under this Permit. Such insurance shall in no way limit Permittee's indemnity hereunder. Certificates of insurance, in form and with insurers satisfactory to the City, evidencing all coverages above shall be furnished to the City before commencing any operations under this Permit, with complete copies of policies furnished promptly upon City request.

5. Permittee will, at its own expense, maintain in full force and effect an insurance policy or policies issued by and insurance company or companies satisfactory to the City's Controller and written by an insurance company or companies having a policy holders surplus of at least Twenty Million Dollars (\$20,000,000) or if insurance is written by more than one company, each company shall have policy holders surplus of at least ten times the amount insured.

Policy or policies shall afford liability insurance covering all operations, including but not limited to premises (definition of "premises" to be expanded to include this encroachment), products, personal injuries and automobiles and injury to property for single limit of not less than Two Million Dollars (\$2,000,000) applying to bodily injuries, personal injuries and property damage or a combination of such injuries. Said policy or policies shall include the City and County of San Francisco and its

officers and employees jointly and severally as additional insured and shall apply as primary insurance and shall stipulate that no other insurance affected by the City and County of San Francisco will be called on to contribute to a loss covered hereunder. Said policy or policies shall provide thirty (30) days notice to Controller, City and County of San Francisco, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102, if the policy or policies should be canceled or materially changed. The permission granted by said resolution shall automatically terminate upon the termination of such insurance. Upon such termination, Permittee shall restore the right-of-way, without expense to the "Personal Injuries", as used herein, shall include wrongful death.

- The permittee shall obtain a building permit as the Central Permit Bureau, 1660 Mission Street for the construction or alteration of any building.
- 7. The permitee shall contact the Street Permit Section (415) 554-5810, at least 48 hours prior to starting work to arrange an inspection schedule.
- 8. The permittee acknowledge its responsibility to notify any successor owners of the existence of the encroachment and the successor owner's obligation to obtain a permit from the Department of Public Works 60 days in advance of any pending sale of the permittee's adjacent property. The permittee's obligation to remove the encroachment and restore the right-of-way to a condition satisfactory to the Department of Public Works shall survive the revocation, expiration or termination of this permit or sale of permittee's adjacent property.

9. The permitee's right to use City property, as set forth in this permit is appurtenant to

the property described as: Yarkmarket, Corner ex Lave Merces
Blud and thousa fee in the Median Island
. The provisions of the permit shall bind all subsequent purchases and
owners of the described property.
Subsequent purchasers and owners shall be subject to the revocation and termination provisions set forth in this permit.
O. The permittee or subsequent owners recognize and understand that this permit may create a possessory interest subject to property taxation and that the permittee or subsequent owner or owners may be subject to the payment of such taxes.
11. The permittee or subsequent owner or owners recongnize the recordation of this permit.
All of the provisions of this agreement shall be deemed provisions of said resolution. All of the provisions of said resolution shall be deemed provisions of this agreement.
n witness whereof the undersigned Permittee(s) have executed this agreement this, 20/10.
Make Make

California All-Purpose Acknowledgement —	
State of California } County of SAN FRANCISCO	
On 10 2010 before me, KP21	STINE D. BAKZ, a Notary Public
personally appeared Poon Pon W	AVER
	,
KRISTINE D. BAKR Commission & 1820365 Nótary Public - California San Francisco County My Comm. Expires Oct 28, 2012	who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he she/they executed the same in his/her/their authorize capacity(jes), and that by his/her/their signature(s) of the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument. I certify under PENALTY OF PERJURY under the law of the State of California that the foregoing paragraph is true and correct.
	WITNESS my hand and official seal.
Notary Public Seal	Notary Public Signature
Description of Attached Document	OPTIONAL
Title or Type of Document: PARKLIFEGED STRE	
Document Date: 6 10 2010	Number of Pages:3
Signer(s) Other than Named Above:	
Capacity(ies) Claimed by Signer(s)	
Thumborint of Signer 1 Corporate Officer: Partner - Limited General Attorney-in-Fact Trustee Guardian or Conservator Other: Signer is Representing:	☐ Individual ☐ Corporate Officer: ☐ Partner - ☐ Limited ☐ General ☐ Attorney-in-Fact ☐ Trustee ☐ Guardian or Conservator ☐ Other: ☐ Signer is Representing:

HEIGHT: OCCUPANCY TYPE: CODE USED: 2007 STATE OF CALIFORNIA & SAN FRANCISCO BUILDING CODE. PROPOSED PROJECT:
NEW MONUMENT SIGN LOCATED
IN STREET MEDIAN. ASSESORS LOCATION: STREET ROW ADJACENT TO BLOCK 7333C CONSTRUCTION TYPE: SITE LOCATION: 3711 19TH AVENUE SAN FRANCISCO, CA 94132 PROJECT DATA AREA OF WORK: 1) LOCATION AND LIGHTING PLAN RECEIVED
BUREAU OF STREET USE & MAPPIN DEPT. OF PUBLIC WORKS JUN 1 5 2010 Οŝ II. Landscape Plan Status Management 2711 Monatemate Average Earn Francisco, CA \$4132 Carupattas Dooreas Loke Merced Shrd. Landscape Perk Merced San Francisco, CA 94132 10) Shore Toroca for Freezing, EA 64154 410,481,6522 b 410,481,4852 f 0.0





