OCII
office of
COMMUNITY INVESTMENT
and INFRASTRUCTURE

122-0012021-002

Agenda Item **No. 5(d)**
Meeting of January 19, 2021

MEMORANDUM

TO: Community Investment and Infrastructure Commissioners

FROM: Sally Oerth, Interim Executive Director

SUBJECT: Conditionally approving a variation to the Transbay Redevelopment Plan's on-site affordable housing requirement as it applies to the mixed-use project at 542-550 Howard Street, subject to approval by the Board of Supervisors of the City and County of San Francisco in its capacity as legislative body for the Successor Agency to the San Francisco Redevelopment Agency, and authorizing the payment of an affordable housing fee to fulfill the project's affordable housing obligation; providing notice that this approval is within the scope of the Transit Center District Plan project approved under the Transit Center District Plan Final Environmental Impact Report ("FEIR"), a program EIR, and is adequately described in the FEIR for the purposes of the California Environmental Quality Act; and adopting environmental review findings; Transbay Redevelopment Project Area

EXECUTIVE SUMMARY

Assembly Bill 812 (2003) requires that a total of 35% of the residential units in the Transbay Redevelopment Project Area ("Project Area") be available to low- and moderate-income households. (A map of the Project Area is attached as Exhibit A). The Redevelopment Plan for Project Area ("Redevelopment Plan") and several enforceable obligations would fulfill this requirement through the combination of stand-alone and inclusionary housing in the Project Area. The Redevelopment Plan and the Planning Code require that all housing developments within the Project Area contain a minimum of 15% on-site affordable housing and the Planning Code required that large market-rate residential projects with for-sale units contain 20% affordable housing (together the "On-Site Requirement"). Approval of projects on designated development blocks located in Zone Two of the Project Area are under the purview of the Planning Department, pursuant to the San Francisco Planning Code.

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542-550 Howard Street (also known as Transbay Parcel F) is a mixed-use, high-rise development project (the "Project") located in Zone Two of the Project Area that is being developed by a Hines' entity known as Parcel F Owner LLC (the "Developer"). On January 9, 2020, the Planning Commission approved Resolutions 20613 and 20614, and Motions 20615, 20616, 20617, 20618; on June 5, 2020, the Zoning Administrator issued a variance decision (collectively, the "Approvals") for the Project. The approved Project would include a new 61-story mixed-use building reaching a height of approximately 750 feet (approximately 800 feet including rooftop screen/mechanical equipment), and including 165 dwelling units, 189 hotel rooms, 275,674 gross square feet of office use floor area, approximately 9,000 square feet of retail space, approximately 20,000 square feet of open space, 178 Class 1 and 34 Class 2 bicycle parking spaces, and four below-grade levels to accommodate up to 183 vehicle parking spaces for the residential, hotel, and office uses.

When the Developer acquired Transbay Parcel F from the Transbay Joint Powers Authority, it concurrently entered into an option agreement with the Office of Community Investment and Infrastructure ("OCII") for the acquisition and development of Transbay Block 4 in Zone One on which the Developer intends to build both market-rate and affordable residential units. By entering into the option agreement, OCII selected the Transbay Block 4 developer through a sole source. At that time, the On-Site Requirement would be met by the developer's completion of Transbay Block 4, with the percentage of affordable units at Transbay Block 4 set an amount to ensure the 35% Project Area requirement was met. That percentage resulted in 327 affordable units at Transbay Block 4, or approximately 48% of total units in the mixed-income project. To effectuate this structure, completion of Transbay Block 4 would be a requirement prior to Parcel F receiving certain occupancy permits. Over the past several years, however, lenders and investors found the financial risk of two large, complicated projects dependent on this structure unacceptable. To create financial feasibility instead of the current structure, the Developer proposes a variation to allow for the payment of an affordable housing fee in lieu of complying with the On-Site Requirement as further described below.

To comply with the On-Site Requirement, the Approvals require the Project to include approximately 33 inclusionary below-market-rate units that are affordable to income-eligible households. All of the Project's approximately 165 residential units are located on the highest 17 floors of the building. The residential units will be for-sale units with homeowners association (HOA) assessments that the Developer estimates will exceed $2,500 per month. The requirement to include the affordable units on-site will create practical difficulties for maintaining the affordability of the units because the homeowners' association fees, already high in such developments, will likely increase over time such that the original residents would not be able to afford the payments and thus create an undue hardship for both the Developer and the future owners of the affordable units.

The Approvals assumed that the Developer was seeking relief from the On-Site Requirement by asking the Office of Community Investment and Infrastructure ("OCII") for a variation that would permit the Developer to build affordable units at another location in the Transbay Project Area instead of in the

Project itself. Letter, Parcel F Owner LLC, to N. Sesay (June 28, 2018) (the "Original Variation Request"). Subsequently, the Developer modified its request to build affordable units off-site and now seeks instead to pay an in-lieu fee to OCII that it would use to build affordable housing. The Developer has therefore asked OCII to grant a variation from the On-Site Requirement and allow the payment an in-lieu fee for affordable housing. Specifically, the Developer has proposed, in a revised request for a variation, paying "to OCII an amount equal to one hundred fifty percent (150%) of the inclusionary housing fee that Section 415.5 of the Planning Code would otherwise require if the Project were not subject to the On-Site Requirement." Letter, Parcel F Owner LLC, to S. Oerth (Dec. 17, 2020) (the "Revised Variation Request") (attached as Exhibit B). OCII estimates that the amount of the proposed in-lieu fee would be approximately $45-47 million ("Affordable Housing Fee").[1] Based on the assumptions underlying the Planning Code's authorization of in-lieu affordable housing fees, the proposed Affordable Housing Fee would subsidize approximately 82 units of affordable housing.

Section 3.5.5 of the Redevelopment Plan gives the Commission the ability to grant a variation from On-Site Requirement if: (1) enforcement otherwise results in practical difficulties for development creating undue hardship for the property owner; (2) enforcement would constitute an unreasonable limitation beyond the intent of the Plan, the Design for Development or the Development Controls and Design Guidelines; and (3) there are unique physical constraints or other extraordinary circumstances applicable to the property. The Redevelopment Plan also gives the Commission the authority to condition its approval of a variation as necessary to secure the goals of the Redevelopment Plan and related documents.

Staff has analyzed the Revised Variation Request, and has proposed findings as required by the Redevelopment Plan that: (1) enforcement of the on-site housing requirement creates practical difficulties for maintaining the affordability of the units, thereby creating undue hardship for the Developer, the future homeowners, and the Mayor's Office of Housing and Community Development; (2) this hardship constitutes an unreasonable limitation beyond the intent of the Redevelopment Plan to create affordable housing for the longest feasible time; and (3) extraordinary circumstances, in particular the small number of for-sale units at the top of the high-rise tower, apply to the Project.

As required by Board of Supervisors Ordinance No. 215-12, the Commission's approval of the Revised Variation Request would be subject to approval by the Board of Supervisors of the City and County of San Francisco ("Board of Supervisors"), in its capacity as legislative body for OCII, because it constitutes a material change to OCII's affordable housing program. Additionally, because the Project is located in Zone Two of the Project Area, the Planning Commission and Board of Supervisors will consider approving a development agreement with the Developer that is consistent with this action.

[1] Calculation of the Affordable Housing Fee under Section 415.5 of the Planning Code is based on the fee schedule in the San Francisco Citywide Development Impact Fee Register that is in effect at the time of the final approvals for this Project. The Planning Department has not yet published the 2021 fee schedule.

Staff recommends conditionally approving a variation to the Redevelopment Plan's on-site affordable housing requirement as it applies to the mixed-use project at 542-550 Howard Street, subject to approval by the Board of Supervisors in its capacity as legislative body for OCII, and authorizing the acceptance of the Affordable Housing Fee by OCII for use in fulfilling its affordable housing obligations in the Project Area.

BACKGROUND

Transbay Affordable Housing Obligation

Assembly Bill 812, enacted by the California Legislature in 2003 and codified at California Public Resources Code §5027.1, mandates that a total of 25% of the residential units in the Project Area be available to low income households, and an additional 10% be available to moderate income households, for a total of 35% affordable housing units (the "Transbay Affordable Housing Obligation"). The Transbay Affordable Housing Obligation is incorporated into the Transbay Redevelopment Project Implementation Agreement (2005) that the Department of Finance has finally and conclusively determined to be an enforceable obligation of OCII. OCII estimates that this obligation requires the construction of approximately 1,200 affordable units through a combination of units within market rate buildings, or inclusionary units, and stand-alone 100% affordable projects to be built on publicly owned properties.

To comply with the Transbay Affordable Housing Obligation, the Redevelopment Plan, at Section 4.9.3, and the San Francisco Planning Code, at Section 249.28(b)(6), require that all housing developments within the Project Area contain on-site affordable housing. Neither the Redevelopment Plan nor the Planning Code authorizes off-site affordable housing construction or an "in-lieu" fee payment as an alternative to the On-Site Requirement in the Project Area.

Variation Requirements

The Redevelopment Plan provides a procedure and standards by which certain of its requirements, including the On-Site Requirement, may be waived or modified. Section 3.5.5 of the Redevelopment Plan gives the Commission the ability to grant a variation from the Redevelopment Plan, the Development Controls and Design Guidelines, or the Planning Code where enforcement would otherwise result in practical difficulties for development creating undue hardship for the property owner and constitute an unreasonable limitation beyond the intent of the Plan, the Design for Development or the Development Controls and Design Guidelines. Section 3.5.5 also states that variations can only be granted by the Commission because of unique physical constraints or other extraordinary circumstances applicable to the property, and that the Commission shall condition the variation as necessary to secure the goals of the Redevelopment Plan, the Design for Development and the Development Controls and Design Guidelines.

542-550 Howard Street Mixed-Use Project

On January 9, 2020, the Planning Commission approved Resolutions 20613 and 20614, and Motions 20615, 20616, 20617, 20618; on June 5, 2020, the Zoning Administrator issued a variance decision (collectively, the "Approvals") for the Project. The approved Project would include a new 61-story mixed use building reaching a height of approximately 750 feet (approximately 800 feet including rooftop screen/mechanical equipment), and including 165 dwelling units, 189 hotel rooms, 275,674 gross square feet of office use floor area, approximately 9,000 square feet of retail space, approximately 20,000 square feet of open space, 178 Class 1 and 34 Class 2 bicycle parking spaces, and four below-grade levels to accommodate up to 183 vehicle parking spaces for the residential, hotel, and office uses. The Project also includes a bridge to the future elevated City Park situated on top of the Transbay Transit Center. At the time of the Approvals, the Developer had filed with OCII its Original Variation Request seeking relief from the On-Site Requirement by building affordable units off-site

DISCUSSION

Revised Variation Request

The Developer has requested a variation from the On-Site Requirement that would allow for the conversion of the Project’s 33 on-site affordable units to market-rate units and the payment of an in-lieu fee for affordable housing (see Exhibit B, the “Revised Variation Request). In the Revised Variation Request, the Developer explained that the Project was unique in that (1) it is the only approved or proposed mixed-use, luxury project combining office, hotel, and housing in the Project Area, and (2) its 165 residential units are located on the upper floors of an approximately 61-story tower. The Revised Variation Request concludes that the application of the On-Site Requirement to the Project creates “practical difficulties for maintaining the long-term affordability of the units” because homeowners association (“HOA”) fees, already high in such developments, will likely increase such that the original residents would not be able to afford the payments” and thus “creates an undue hardship for the Project Sponsor, the Project’s [HOA], and the [below-market-rate] unit owners themselves.” Letter, PARCEL F OWNER LLC to S. Oerth (Dec. 17, 2020) at page 1. The Project’s developer estimates that the homeowners’ association fees for the residential units will exceed $2,500 per month. Finally, the Revised Variation Request proposes that OCII grant a variation on the condition that the Developer pay to OCII an amount equal to one hundred fifty percent (150%) of the inclusionary housing fee that Section 415.5 of the Planning Code would otherwise require if the Project were not subject to the On-Site Requirement. OCII estimates that the amount of the Affordable Housing Fee would be in the range of $45 - 47 million depending on the applicable fee in the updated San Francisco Citywide Development Impact Fee Register. The City’s affordable housing fee program assumes that this amount of funding would subsidize approximately 82 units of affordable housing.

Analysis of the Revised Variation Request

As noted above, the Commission can authorize a variation from the On-Site Requirement if the following findings can be made: (1) enforcement of the On-Site Requirement would result in practical difficulties for development creating undue hardship for the property owner; (2) enforcement of the On-Site Requirement would constitute an unreasonable limitation beyond the intent of the Plan, the Design for Development or the Development Controls and Design Guidelines; and (3) there are unique physical constraints or other extraordinary circumstances applicable to the property.

Practical Difficulties/Undue Hardship

Given the unique nature of the Project, in particular the affordable units at the top of a high-rise, luxury tower, the On-Site Requirement creates practical difficulties for the Project, as well as undue hardships for the future owners of the inclusionary below-market-rate units ("BMR Owners") and the Mayor's Office of Housing and Community Development ("MOHCD"), as the housing successor responsible for enforcing the long-term affordability restrictions on the units, as follows:

1) HOA fees pay for the costs of operating and maintaining the common areas and facilities of a condominium project and, per state law, generally must be allocated equally among all of the units subject to the assessment (Cal. Code Reg., title 10, § 2792.16 (a)). HOA fees may not be adjusted based on the below-market-rate ("BMR") status of the unit or the income level of the homeowner. If HOA fees increase, BMR owners will generally be required to pay the same amount of increases as other owners;

2) OCII's Limited Equity Homeownership Program ("LEHP") ensures that income-eligible households are able to afford, at initial occupancy, all of the housing costs, but does not cover increases in HOA dues that occur over time. Initially, the LEHP will decrease the cost of the BMR unit itself to ensure that income-eligible applicants are able to meet all of the monthly costs, including HOA fees. Neither OCII nor MOHCD has a program, however, for assisting owners in BMR units when increases in regular monthly HOA fees occur;

3) HOA members may approve increases in HOA fees without the support of the BMR Owners because BMR owners, particularly in a development with inclusionary units, typically constitute a small minority of the total HOA membership. Increases less than 20% of the regular assessment may occur without a vote of the HOA; increases exceeding 20% require a majority vote of members in favor. (Cal. Civil Code § 1366 (b)) To date, state legislation to provide protections to low- and moderate-income households in inclusionary BMR units of a market-rate building when HOA fees increase has been unsuccessful; and

4) When HOA fees increase or special assessments are imposed, BMR owners whose incomes have not increased comparably may have difficulty making the higher monthly payments for HOA

fees. The result is that housing costs may become unaffordable and some BMR owners will face the hardship of having to sell their unit at the reduced prices required under the limited equity programs of OCII and/or MOHCD. If a BMR owner is forced to sell the inclusionary unit because of the high HOA fees, the cost of the restricted affordable unit, which will now include the high HOA fees, will be assumed by either the subsequent income-eligible buyer or by MOHCD. In either case, the high HOA dues will have caused an additional hardship.

Unreasonable Limitation

The hardship imposed by the On-Site Requirement, as described above, constitutes an unreasonable limitation beyond the intent of the Redevelopment Plan to create affordable housing for the longest feasible time, as required under the Transbay Affordable Housing Obligation.

Extraordinary Circumstances

There are several extraordinary circumstances applicable to the Project. The Project is unique in that it is a mixed-use, high-rise luxury development with a for-sale, on-site inclusionary affordable housing units at the top of the tower. As previously noted, the construction of affordable housing units in a luxury high-rise building creates practical difficulties for maintaining the affordability of the units.

Additionally, the Developer has offered to contribute to OCII one hundred fifty percent (150%) of the inclusionary housing fee under Section 415.5 of the Planning Code toward the development of affordable housing in the Project Area. The San Francisco Citywide Development Impact Fee Register annually establishes the fee for the City's Inclusionary Affordable Housing Program, but the 2021 update has not yet been published. At 100%, the inclusionary housing fee would be approximately $31OCII estimates that the proposed fee would be in the range of $45 -47 million (instead of $31 million if 100% of the inclusionary housing fee), which OCII may use for development of affordable housing at Transbay Block 4 or at other sites in the Transbay Project Area. As currently proposed, OCII would use the proposed fee to subsidize the 192-unit, 100% affordable mid-rise component of Transbay Block 4.

Compliance with the Transbay Affordable Housing Obligation

The Transbay Affordable Housing Obligation is an enforceable obligation under Redevelopment Dissolution Law and requires that 35% (approximately 1,300 units) of the residential units in the Project Area shall be developed for low- and moderate-income households. OCII is on track to meet the Transbay Affordable Housing Obligation (which has been finally and conclusively determined to be an enforceable obligation by the State Department of Finance) through a combination of stand-alone and inclusionary housing on the OCII assisted parcels in Zone One of the Project Area as well as inclusionary units on privately developed projects in Zone Two. To date in Zone 1, OCII has completed

693 very-low, low and moderate-income units on Blocks 1, 6, 7, 8, 9 and 11 that contribute toward meeting the 35% requirement. Blocks 2, 4 and 12 will be the next housing parcels to developed in Zone 1 with approximately 652 affordable units. In Zone 2, 60 affordable inclusionary units have been completed. Cumulatively, the affordable units in these projects total approximately 1,300 units, which will achieve the 35% Transbay Affordable Housing Obligation. Please see Exhibit A for a map of the Transbay Project Area for further reference.

The payment of the Affordable Housing Fee as a condition of granting the Revised Variation Request ensures that the variation will not be materially detrimental to the public welfare. OCII will use the payment to fulfill the Transbay Affordable Housing Obligation. Specifically, OCII may use the fee to provide a construction loan for the proposed 192-unit 100% affordable housing component of Transbay Block 4. In the event the current developer of Transbay Block 4 does not perform pursuant to a Disposition and Development Agreement, the Affordable Housing Fee will remain with OCII for funding future OCII-assisted affordable housing in the Transbay Project Area.

NEXT STEPS

As required by Board of Supervisors Ordinance No. 215-12, the Commission's approval of the Revised Variation Request would be subject to approval by the Board of Supervisors, in its capacity as legislative body for OCII, because it constitutes a material change to OCII's affordable housing program. Additionally, the Planning Commission and Board of Supervisors will consider approving a development agreement with the Developer that would, among other things, provide relief from the on-site affordable housing requirement in Section 249.28 of the Planning Code, require the developer to pay the Affordable Housing Fee, and allow the Developer to pay the Affordable Housing Fee at a date later than the Planning Code requires (which is typically at issuance of first construction documents). To ensure payment of the Affordable Housing Fee, the Developer will have to provide an irrevocable standby letter of credit securing the full amount of the fee if OCII and the Developer reach agreement on a project at Transbay Block 4. Letter, C.J. Higley to R. Hillis (Jan. 6, 2021) (attached as Exhibit C)

CALIFORNIA ENVIRONMENTAL QUALITY ACT

Approval of the Revised Variation Request will not result in a physical change to the Project that was approved by the Planning Commission on January 9, 2020. In approving the Project, the Planning Commission found that because the Project was consistent with the Transit Center District Plan and was encompassed within the analysis contained in the Transit Center District Plan Final EIR, it did not require further environmental review under Section 15183 of the California Environmental Quality Act ("CEQA") Guidelines and Public Resources Code Section 21083.3. The fact that that the Developer now proposes to pay an in-lieu fee instead of building off-site affordable units is inconsequential to the CEQA analysis here because under either scenario there is no physical change to the Project.

The payment of the Affordable Housing Fee as a condition of granting the Revised Variation Request would be used by OCII to fund units that would have otherwise been constructed in the Project Area and that were previously analyzed in the Environmental Impact Statement/Environmental Impact Report for the Transbay Terminal/Caltrain Downtown Extension/Redevelopment Project, which was certified in 2004. Any development project financed under the OCII-assisted Transbay affordable housing program would require its own CEQA determination prior to project approval.

STAFF RECOMMENDATION

Staff recommends conditionally approving a variation to the Redevelopment Plan's On-Site Requirement as it applies to the mixed-use project at 542-550 Howard Street, subject to approval by the Board of Supervisors in its capacity as legislative body for OCII, and authorizing the acceptance of a future payment of the Affordable Housing Fee to OCII for use in fulfilling the Transbay Affordable Housing Obligation.

(Originated by Jeff White, Housing Program Manager)

DocuSigned by:
Sally Oerth
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Sally Oerth
Interim Executive Director

Exhibit A: Map of the Transbay Redevelopment Project Area
Exhibit B: Letter, Parcel F Owner LLC, to S. Oerth (Dec. 17, 2020)
Exhibit C: Letter, C.J. Higley to R. Hillis (Jan. 6, 2021)

Exhibit A:

TRANSBAY REDEVELOPMENT PROJECT AREA

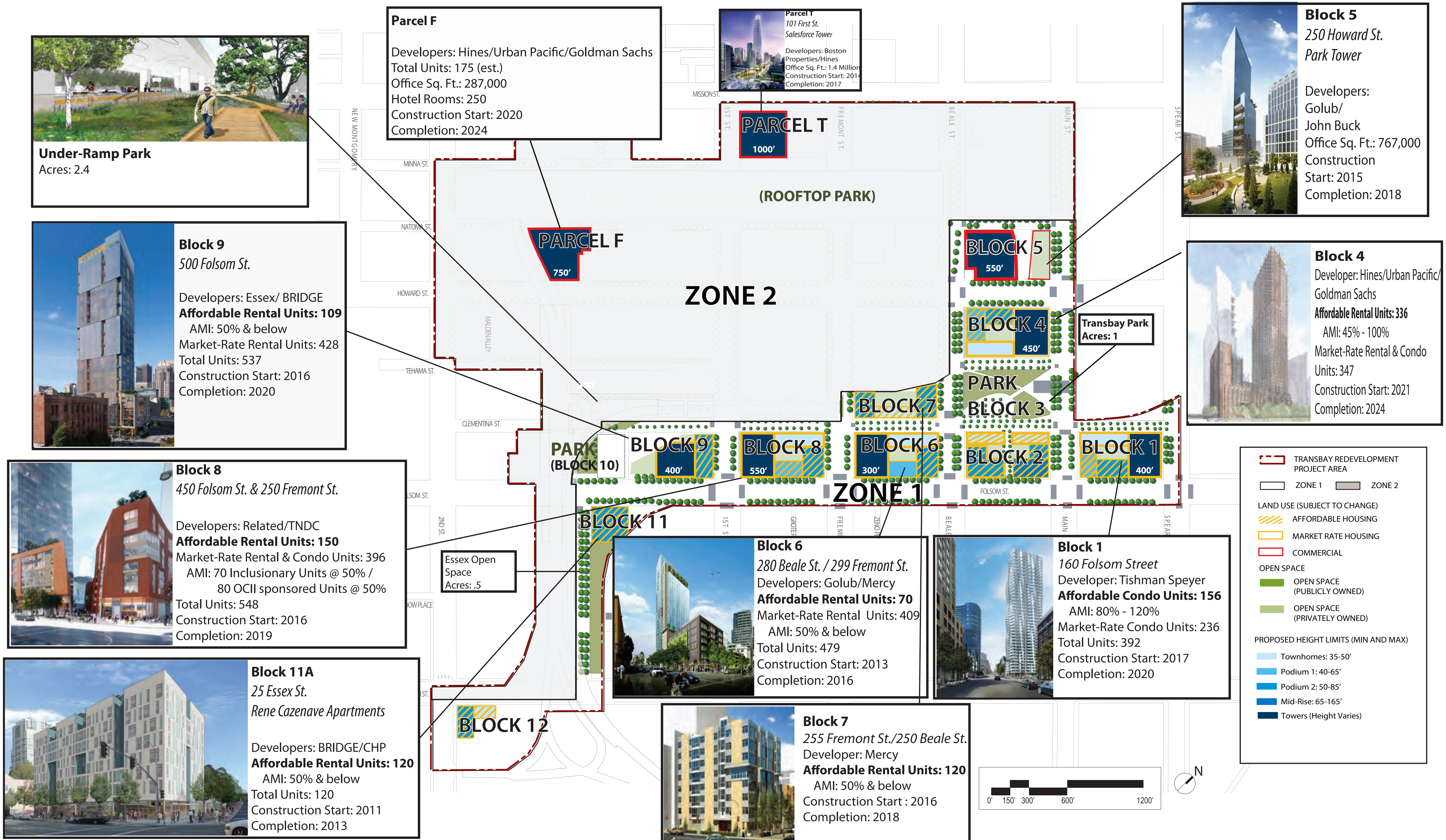

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Exhibit B: Letter, PARCEL F OWNER LLC to S. OERTH (Dec. 17, 2020)
(Revised Variation Request)

December 17, 2020

By Email

Office of Community Investment and Infrastructure ("***OCII***")
Attn: Sally Oerth, Interim Executive Director
1 South Van Ness Avenue, 5th Floor
San Francisco, CA 94103

Re: Request for Variation, 542-550 Howard Street, Transbay Redevelopment Area Parcel F, San Francisco, CA Block 3721/Lots 16, 135, 136, 138

Dear Director Oerth:

This request for a variation from the Transbay Redevelopment Plan (the "***Plan***") amends and restates our previous request, dated June 28, 2018. Parcel F Owner LLC (the "***Sponsor***") owns the property at 542-550 Howard Street ("***Parcel F***"), located within Zone 2 of the Transbay Redevelopment Project Area (together with Zone 1, the "***Plan Area***"), which is subject to requirements of the Plan and Planning Code that all housing developments within the Plan Area provide on-site affordable housing. Redevelopment Plan, § 4.9.3. (the "On-Site Requirement"). The Sponsor has submitted development applications to the San Francisco Planning Department for a 62-story mixed use tower on Parcel F, with a 9 floor hotel, 15 office floors, 7 floors of shared amenities and retail spaces, and 165 residential "for-sale" condominiums (collectively, the "***Project***").

Pursuant to section 3.5.5 of the Plan, the Sponsor hereby requests a variation from the On-Site Requirement whereby the Sponsor would instead pay to OCII an amount equal to one hundred fifty percent (150%) of the inclusionary housing fee that Section 415.5 of the Planning Code would otherwise require if the Project were not subject to the On-Site Requirement. As you know, the Sponsor has been negotiating diligently with OCII regarding development of Transbay Block 4, in Zone 1 of the Plan Area. Per our recent discussions, there is a preference for the Parcel F payment described above to be used to support the development of 192 units of high-quality affordable housing in the mid-rise (100% affordable) component of the proposed Block 4 project.

As discussed in greater detail, below, the Sponsor seeks the variation described in this letter because providing on-site, for-sale BMR units on Parcel F would create practical difficulties for maintaining the long-term affordability of the units, leading to undue hardship for the Project Sponsor, the Project's homeowners' association ("***HOA***"), and the BMR unit owners themselves. HOA fees for luxury view condominiums in similar developments are prohibitively high for low- and moderate-income households. In addition, these high HOA dues will inevitably increase over time, making it difficult or impossible for low- and moderate-income households in the Project to afford to remain in their units. The Project Sponsor's payment would fund new rental units that will remain permanently affordable to low- and middle-income households, and will therefore better fulfill the Plan's objectives and state law requirements to create affordable housing in the Plan Area.

Redevelopment Plan Provides for Variation

Pursuant to section 3.5.5 of the Plan, OCII may grant a variation from the Plan, the Development Controls and Design Guidelines, or the Planning Code if strict enforcement would result in practical difficulties for the development creating undue hardship for the property owner. OCII may grant variations only if there are unique physical constraints or other extraordinary circumstances applicable to the property. Any variation granted must be in harmony with the Plan and not materially detrimental to the public welfare or neighboring property or improvements.

Challenges for Long-Term Affordability of On-Site BMR Units

The Project will be the first building in San Francisco to include a mix of hotel, offices, and residential units in the same high-rise building, with the residential units occupying Floors 34 to 61. When it is completed, the 800-foot tower will be one of the tallest buildings in San Francisco, taking up a prominent position in the City's skyline. In addition, the Project will include unique and desirable public amenities, including a public pedestrian way connecting Howard Street to the new Transbay Transit Center, a pedestrian bridge providing public access to the Transit Center's new rooftop park, and a public elevator connecting Natoma Street to the pedestrian bridge.

Due to the extraordinary nature of the Project, maintaining the long-term affordability of the on-site BMR units as envisioned by the Plan would create practical difficulties that would prevent the administration of a successful affordable housing program. The residential condominium units within the Project will be assessed extremely high HOA fees, in excess of $2,500 per month.[1] The high HOA fees are the product of a variety of factors, including expensive building maintenance for residential units at the top of a downtown high-rise building, property taxes (including Transbay Community Facilities District special taxes) for common areas, and significant costs for providing services and amenities for the building residents.

Although the initial price of the BMR units could potentially be adjusted to reflect the cost of the HOA fees, after completion of the Project, the HOA may raise fees at any time without regard to the effect on the BMR units and unit-owners. In addition to the already very high regular, monthly assessments for ongoing maintenance, taxes, and services, the HOA can also be

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[1] For context, the HOA fees for residences at 181 Fremont, a Transbay project with a comparable residential program, range from approximately $2600/month for smaller units (studio, one bedroom), up to $4500 for larger units. For rough comparison, MOHCD currently sets permitted housing costs for 100% AMI residents at $2382 for a one bedroom. For 60% AMI residents, MOHCD sets permitted housing costs for a one bedroom at $1,357.

expected, from time to time, to levy "special assessments" to pay for one-time costs, like major renovations, replacements and repairs. State law requires, generally, that HOA fees must be allocated equally among all of the units subject to the assessments. *See* 10 CCR 2792.16(a). Note, increases in HOA fees will be beyond the control of the Sponsor, since the HOA will be made up of the owners of all the units in the Project, a majority of whom will be owners of the Project's market-rate luxury view units. Thus, it is simply not feasible for a BMR unit owner to be protected, over time, from increases in regular and special HOA assessments.

Because of the infeasibility of keeping up with payment of HOA fees, BMR unit owners can be expected either to sell (or attempt to sell) the units to other qualifying buyers, or worse, default on their obligations to the HOA and potentially be *forced* to sell their units to pay for past due HOA fees. In both scenarios, the cost of the restricted affordable unit with high HOA fees will be assumed by either the subsequent income-eligible buyer or by the Mayor's Office of Housing and Community Development ("***MOHCD***"), the City agency that administers the BMR program. The potential increase in turnover of the units would destabilize ownership and occupancy of the BMR units within the Project and create an undue hardship for the Sponsor, the HOA, MOHCD, and future owners of the BMR units.

Variation to Allow Payment to OCII to Fund Affordable Housing

The Sponsor proposes that the obligation to provide on-site BMR units for the Project be fulfilled instead by making payment to OCII in an amount to be approved by OCII and the San Francisco Board of Supervisors. The Sponsor's payment would be used by OCII to fund affordable housing in Zone 1 of the Plan Area. Per the Sponsor's discussions with OCII staff, there would be preference for the payment to be used to support the development of 192 units of high-quality affordable housing in the mid-rise component of the proposed Transbay Block 4 project.

Consistent with Goals and Objectives of the Plan

The variation is consistent with the Plan's goal of creating a new downtown neighborhood, and supports the Plan's objective of creating a mixture of housing types to attract a diverse residential population, including families and people of all income levels. As a result of the practical difficulties described above, if the Project were to provide on-site BMR units, the great likelihood is that those units would remain unoccupied for substantial amounts of time, due to the inability of low-and middle-income homeowners to purchase or fund the ongoing costs of ownership, and the resulting high turn-over. The variation, however, would allow OCII to fund permanently affordable rental projects within the Plan Area that do not present the same challenges with the HOA. The stability created by this approach will achieve the objective of attracting (and retaining) low- and moderate-income residents to the new neighborhood in the nearby surrounding Plan Area. In addition, the variation will have no detrimental impact to the public welfare or neighboring property or improvements. To the contrary, the variation will enhance the public welfare by facilitating the development of a stable, vibrant neighborhood with a range of housing options and opportunities.

Conclusion

A variation will allow the Sponsor to deliver the Project in a way that satisfies the many goals and objectives of the Plan, including the goals of fostering a new Transbay neighborhood and providing affordable housing for the longest feasible time. *See* Health & Safety Code Section 33334.3(1). Accordingly, the Sponsor is committed to working with OCII to provide affordable housing that will actually serve the needs of low- and moderate-income residents, rather than set them (and the Project) up for greater hardship. The need for affordable housing in San Francisco is too great to waste resources on an on-site approach that is bound to fail. Thank you for your consideration, and we look forward to working with OCII on this important matter.

Sincerely,

PARCEL F OWNER LLC,
a Delaware limited liability company

DocuSigned by:

By: ______________________
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Name: Cameron Falconer

Its: Authorized Signatory

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FARELLA BRAUN + MARTEL LLP

CHARLES J. HIGLEY
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January 6, 2021

Via E-Mail & U.S. Mail

San Francisco Planning Department
49 South Van Ness Ave., Suite 1400
San Francisco, California 94103-2479
Attn: Rich Hillis, Director

Re: F4 Transbay Partners, LLC - Application for Development Agreement, Administrative Code § 56.4
542-550 Howard Street (Transbay Parcel F) Block/Lot: 3721/016, 135, 136, 138

Dear Director Hillis

Pursuant to San Francisco Administrative Code Section 56.4, F4 Transbay Partners, LLC ("F4") submits this letter application for a Development Agreement ("DA") with respect to the mixed-use project at 542-550 Howard Street (Transbay Parcel F) (the "Project").

As you know, on January 9, 2020, the Planning Commission approved Resolutions 20613 and 20614, and Motions 20615, 20616, 20617, 20618; and on June 5, 2020, the Zoning Administrator issued a variance decision (collectively, the "Approvals") for the Project. The Approvals approved (subject to the Board of Supervisor's adoption of an ordinance modifying the zoning on the Project site) a new 61-story mixed use building reaching a height of approximately 750 feet (approximately 800 feet including rooftop screen/mechanical equipment), and including 165 dwelling units, 189 hotel rooms, 275,674 gross square feet of office use floor area, approximately 9,000 square feet of retail space, approximately 20,000 square feet of open space, 178 Class 1 and 34 Class 2 bicycle parking spaces, and four below-grade levels to accommodate up to 183 vehicle parking spaces for the residential, hotel, and office uses. The Project also includes a public elevator to a publicly accessible pedestrian bridge connecting the Project to the future elevated City Park situated on top of the Transbay Transit Center.

At the time the Approvals were granted, the Project sponsor proposed to satisfy its affordable housing obligation by constructing off-site inclusionary units. F4 has had extensive discussions with the City and the Office of Community Investment and Infrastructure ("OCII") about the practical challenges associated with the off-site obligation due to the financing risk associated with conditioning occupancy of the Project on the timely completion of a separate, off-site project. Providing on-site affordable units is also infeasible, due to the extraordinarily high HOA fees associated with high-rise development. (See the enclosed Variation Request to OCII dated December 17, 2020).

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F4's discussions with City stakeholders have led to this proposal for payment of an *in lieu* affordable housing fee to OCII in the amount of 150% of the typical affordable housing fee required of residential projects in the City pursuant to Planning Code Section 415, et seq. This fee would be used to fund permanently affordable housing within the Transbay Redevelopment Project Area. Note, the Project sponsor continues to be deeply engaged in negotiations with OCII regarding the development of Transbay Block 4. It is the intent and expectation of the Project sponsor that the fee generated by the proposed DA would be used to fund a portion of the affordable housing planned for the Block 4 project, specifically the development's 100% affordable mid-rise component which is slated to include 191 units of permanently affordable housing at a wide range of AMI levels.

The extraordinary fee contemplated by the proposed DA — estimated to be approximately $45 Million — exceeds significantly the affordable housing contribution the City would otherwise be permitted to require under the existing ordinances and regulations governing the approval of the Project, and will fund development of far more affordable housing units in the Transbay neighborhood than would result from strict compliance with the existing on-site requirement.

In exchange for this substantial public benefit, the DA would provide F4 with the following public benefits: (1) relief from the on-site affordable housing requirement under Planning Code Section 249.28; (2) the ability to pay the 150% affordable housing fee two years after the effective date of the DA (provided the first addendum to the site permit for the Project has been issued); and (3) a "freezing" of impact fees for the Project at the 2021 fee amounts.

We look forward to working with the Planning Department and the Planning Commission regarding consideration of the DA proposed by this letter application. Please do not hesitate to contact me if you have any questions regarding our proposal.

Very truly yours,

Charles J. Higley

CJH:rmg

ENCL.

cc: Sally Oerth (via E-Mail)
Anne Taupier (via E-Mail
Cameron Falconer (via E-Mail)
Dan Esdorn (via E-Mail)