

Oversight Board to the Successor Agency of the Redevelopment Agency
of the City County of San Francisco

RESOLUTION NO. 2-2014

Adopted April 28, 2014

RESOLUTION ADOPTING ENVIRONMENTAL REVIEW FINDINGS PURSUANT TO THE CALIFORNIA ENVIRONMENTAL QUALITY ACT AND CONDITIONALLY AUTHORIZING A FIFTH AMENDMENT TO THE MISSION BAY NORTH OWNER PARTICIPATION AGREEMENT WITH FOCIL-MB, LLC, A DELAWARE LIMITED LIABILITY COMPANY, TO ALLOW BLOCK N4P3 WHICH IS BOUNDED BY BERRY STREET TO SOUTH AND THE I-280 OFF-RAMP TO THE NORTH, TO BE DEVELOPED WITH 26 MODERATE RATE INCOME RENTAL INCLUSIONARY UNITS AND 103 MARKET RATE RENTAL UNITS; AND SUBMITTING THE OVERSIGHT BOARD'S RECOMMENDATIONS TO THE DEPARTMENT OF FINANCE; MISSION BAY NORTH REDEVELOPMENT PROJECT AREA

WHEREAS, The Commission of the former Redevelopment Agency of the City and County of San Francisco ("Redevelopment Commission") and the San Francisco Planning Commission, together acting as co-lead agencies for conducting environmental review for the Redevelopment Plans for the Mission Bay North Redevelopment Project area and the Mission Bay South Redevelopment Project Area (the "Plans"), the Mission Bay North Owner Participation Agreement ("North OPA") and the Mission Bay South Owner Participation Agreement ("South OPA"), and other permits, approvals and related and collateral action (the "Mission Bay Project"), prepared and certified a Final Subsequent Environmental Impact Report ("FSEIR") and have subsequently issued addenda thereto as described below (collectively referred to as the FSEIR"); and,

WHEREAS, On September 17, 1998, the Redevelopment Commission adopted Resolution No. 182-98 which certified the FSEIR as a program EIR for Mission Bay North and South pursuant to the California Environmental Quality Act ("CEQA") and State CEQA Guidelines Sections 15168 (Program EIR) and 15180 (Redevelopment Plan EIR). On the same date, the Redevelopment Commission also adopted Resolution No. 183-98, which adopted environmental findings (including without limitation a statement of overriding considerations and mitigation monitoring and reporting program) ("CEQA Findings"), in connection with the approval of the Mission Bay Project. The San Francisco Planning Commission ("Planning Commission") certified the FSEIR by Resolution No. 14696 on the same date. On October 19, 1998, the Board of Supervisors adopted Motion No. 98-132 affirming certification of the FSEIR by the Planning Commission and the Redevelopment Agency, and Resolution No. 854-98 adopting environmental findings, including without limitation a statement of overriding considerations and a mitigation monitoring and reporting program for the Mission Bay Project; and,

WHEREAS, On September 17, 1998, the Redevelopment Commission adopted Resolution No. 188-98, authorizing execution of a North OPA and related documents between Catellus Development Corporation, a Delaware corporation ("Catellus"), and the Redevelopment Agency. On October 26, 1998, the San Francisco Board of Supervisors ("Board of Supervisors"), by Ordinance No. 327-98, adopted the Mission Bay North Redevelopment Plan ("North Plan"). The North Plan and its

implementing documents, as defined in the North Plan, constitute the “Plan Documents”; and,

WHEREAS, Subsequent to certification of the FSEIR, the Planning Department and the Redevelopment Agency and Successor Agency, as defined below, issued several addenda to the FSEIR. The addenda do not identify any substantial new information or new significant impacts or a substantial increase in the severity of previously identified significant effects that alter the conclusions reached in the FSEIR. The first addendum, dated March 21, 2000, analyzed temporary parking lots to serve the AT&T Ballpark. The second addendum, dated June 20, 2001, analyzed revisions to 7th Street bike lanes and relocation of a storm drain outfall provided for in the Mission Bay South Infrastructure Plan, a component of the South OPA. The third addendum, dated February 10, 2004, analyzed revisions to the Mission Bay South Design for Development (“Design for Development”) with respect to the maximum allowable number of towers, tower separation and requires step-backs. The fourth addendum, dated March 9, 2004, analyzed the Design for Development with respect to the permitted maximum number of parking spaces for bio-technical and similar research facilities and the North OPA with respect to changes to reflect a reduction in permitted commercial development and associated parking. The fifth addendum, dated October 4, 2005, analyzed the UCSF proposal to establish a Phase I 400-bed hospital in the Mission Bay South Redevelopment Project Area (“Mission Bay South”) on Blocks 36-39 and X-3. The sixth addendum, dated September 10, 2008, addressed revisions of the UCSF Medical Center at Mission Bay. The seventh addendum, dated January 7, 2010, addressed the construction of a Public Safety Building on Block 8 in Mission Bay South. The eighth addendum, dated May 15, 2013, addressed the third Mission Bay South OPA amendment on Block 1 to allow residential uses in addition to a hotel. The ninth addendum, dated May 30, 2013, addressed the fourth Mission Bay South OPA amendment to allow an institutional use on Block 7 East; and,

WHEREAS, Catellus, the original master developer of the Mission Bay North and South Redevelopment Project Areas, has sold most of its remaining undeveloped land in Mission Bay to FOCIL-MB, LLC, (“FOCIL-MB” or “Master Developer”), a subsidiary of Farallon Capital Management, LLC, a large investment management firm. The sale encompassed approximately 71 acres of land in Mission Bay, and the remaining undeveloped residential parcels in Mission Bay South and Mission Bay North. FOCIL-MB assumed all of Catellus’ obligations under the North OPA and South OPA, as well as all responsibilities under the related public improvement agreements and land transfer agreements with the City and County of San Francisco (“City”). FOCIL-MB is bound by all terms of the OPAs and related agreements, including the requirements of the affordable housing program, equal opportunity program, and design review process; and,

WHEREAS, Under California Assembly Bill No. 1X26 (Chapter 5, Statutes of 2011-12, First Extraordinary Session) (“AB 26”) and the California Supreme Court’s decision in California Redevelopment Association v. Matosantos, No. 5194861, all redevelopment agencies in the State of California (the “State”), including the Redevelopment Agency, were dissolved by operation of law as of February 1, 2012, and their non-affordable housing assets and obligations were transferred to certain designated successor agencies; and,

WHEREAS, Under the provisions of AB 26, the City was designated as the successor agency to the Redevelopment Agency (“Successor Agency”) to receive the assets of the Redevelopment Agency; and,

WHEREAS, In June of 2012, the California legislature adopted Assembly Bill 1484 (“AB 1484”) amending certain provisions of AB 26, and the Governor of the State signed the bill and it became effective on June 27, 2012. Among other things, AB 1484 provided that a successor agency is a separate public entity from the public agency that provides for its governance; and,

WHEREAS, Subsequent to the adoption of AB 1484, on October 2, 2012 the Board of Supervisors of the City, acting as the legislative body of the Successor Agency, adopted Ordinance No. 215-12 (the “Implementing Ordinance”), which Implementing Ordinance was signed by the Mayor on October 4, 2012, and which, among other matters: (a) acknowledged and confirmed that, as of the effective date of AB 1484, the Successor Agency, commonly known as the Office of Community Investment and Infrastructure (“OCII”), is a separate legal entity from the City, and (b) established this Successor Agency Commission (“Commission”) and delegated to it the authority to (i) act in place of the Redevelopment Commission to, among other matters, implement, modify, enforce and complete the Redevelopment Agency’s enforceable obligations, (ii) approve all contracts and actions related to the assets transferred to or retained by the Successor Agency, including, without limitation, the authority to exercise land use, development, and design approval, consistent with applicable enforceable obligations, and (iii) take any action that the Redevelopment Dissolution Law (Cal. Health & Safety Code §§ 34170 et seq., as amended in the future) requires or authorizes on behalf of the Successor Agency and any other action that this Successor Agency Commission deems appropriate, consistent with the Redevelopment Dissolution Law, to comply with such obligations, and (c) provided that the Commission shall not modify the Major Approved Development Projects, including Mission Bay North, in any manner that would decrease the commitment of property tax revenue for affordable housing or materially change the obligations to provide affordable housing without obtaining the approval of the Board of Supervisors; and,

WHEREAS, The Board of Supervisors’ delegation to the Commission, commonly known as the Commission on Community Investment and Infrastructure, includes the authority to grant approvals under specified land use controls for the Mission Bay Project consistent with the approved Plans and enforceable obligations, including amending an existing obligation as allowed by the Redevelopment Dissolution Law; and,

WHEREAS, On November 20, 2012 OCII submitted a request to the Department of Finance (“DOF”) for a Final and Conclusive Determination (“Request”) for the Mission Bay North and South Owner Participation Agreements and Tax Increment Allocation Pledge Agreements (“Existing Obligations”). On January 24, 2014, DOF completed its review of the Request and made its final and conclusive approval of the Existing Obligations as enforceable obligations pursuant to Health and Safety Code Section 34177.5(i); and,

WHEREAS, Under the North OPA, 20% of the total housing units in Mission Bay North are required to be affordable units. These units are developed through a combination of rental and ownership units developed by the Master Developer and its developer transferees, and by OCII-sponsored, nonprofit developers on sites conveyed by the Master Developer to OCII. At full build out, 593 of the 2,964 total housing units in Mission Bay North are required to be affordable. The Master Developer is required to build 245 of the 593 total affordable housing units at prescribed area median income (“AMI”) levels. Of the 245 total affordable units developed by the Master Developer, the North OPA requires the

affordable units to be allocated among very low-income (98 units at up to 50% AMI), low-income (35 units at up to 70% AMI) and moderate income levels (112 units at up to 110% AMI); and,

WHEREAS, As of January 2014 a total of 2,835 units have been constructed in Mission Bay North with 672 units, or 23.7% of the total units, restricted for lower income households. Of the affordable units, 407 are OCII-sponsored units, and 265 were developed by the Master Developer or its transferee. The Master Developer has exceeded its requirement in total number of units by 20. However, since the majority of affordable units constructed by the Master Developer are affordable to very low (98 units) and low income households (135 units), the Master Developer is still required to build an additional 80 moderate income units; and,

WHEREAS, Pursuant to the North OPA these remaining 80 units must be for-sale units targeting moderate-income households earning up to 110% of area median income; and,

WHEREAS, Block N4P3 ("N4P3") in Mission Bay North is the last remaining developable parcel in Mission Bay North. As a result, it is the location where the Master Developer is required to construct its remaining affordable units. Overall, the Master Developer is permitted to build up to 129 for-sale units on N4P3, of which 80 units (or 62% of the total project) are required to be affordable to households at 110% of AMI ("N4P3 Inclusionary Requirement"); and,

WHEREAS, A previous third party developer was unable to finance a project on Block N4P3 with the existing N4P3 Inclusionary Requirement and since the North Plan was adopted in 1998 no other developers that have expressed interest to OCII staff have pursued development of Block N4P3. A study prepared by The Concord Group, a San Francisco-based real estate market research firm, in 2013 confirmed that constructing 80 moderate rate for-sale units on N4P3 with 49 market rate units would require a substantial subsidy; and,

WHEREAS, There is a strong need for additional moderate income housing in Mission Bay and San Francisco, and N4P3 is the only site in Mission Bay to provide moderate income housing; and,

WHEREAS, There will be additional affordable housing constructed in Mission Bay South under the South OPA, with at least 1,108 affordable units required to be built by OCII-sponsored non-profits on land donated by the Master Developer. However, it is anticipated that all of the new OCII-sponsored affordable units in Mission Bay South will target very low or low income households (maximum of 60% AMI) since currently there are no affordable housing financing tools, such as tax credit or bond financing, available for moderate income development. In addition, the only Master Developer requirement for inclusionary housing in Mission Bay South is on Block 1 and any affordable units constructed on that site will be affordable to low income households at 60% AMI. Therefore, the only foreseeable opportunity for additional moderate income housing in Mission Bay is Mission Bay North; and,

WHEREAS, In 2011, FOCIL-MB began discussions with The Integral Group ("Integral"), a national real estate investment firm focused on the revitalization of urban communities, about developing a financially feasible alternative project on N4P3; and,

- WHEREAS, The Master Developer has proposed a fifth amendment to the North OPA (“Fifth Amendment”) to allow N4P3 to be developed with 26 moderate rate income rental inclusionary units at 90% AMI and 103 market rate rental units (“N4P3 Project”). With the change to rental from for-sale, reduction in affordable units, and increase of the AMI levels, the project would be financially feasible without any additional subsidies, other than a land donation proposed by Owner and an equity investment comparable to other non-subsidized housing projects; and,
- WHEREAS, Once the N4P3 Project is developed, the total number of affordable housing units constructed under the North OPA would continue to exceed the 20% affordable housing requirement in the North OPA. At full build-out of Mission Bay North there would be 698 affordable housing units, or 23.5% of the total 2,964 residential units built in Mission Bay North. The Master Developer will have built 46 units more than required under the existing North OPA, or an increase of 18.8% over its original requirement; and,
- WHEREAS, With the completion of the N4P3 Project, FOCIL-MB’s requirements to construct affordable housing under the North OPA as the Master Developer will be completed and all of the property in Mission Bay North will be developed; and,
- WHEREAS, On January 21, 2014, after holding a duly noticed public hearing and consistent with its authority under Ordinance 215-12, the Successor Agency Commission conditionally approved, by Resolution No. 05-2014, a fifth amendment to the North OPA that would allow N4P3 to be developed with 45 moderate-income rental inclusionary units affordable to households earning up to 120% AMI and 84 market rate rental units (“Commission Action”); and,
- WHEREAS, Subsequent to the Commission Action, FOCIL and Integral proposed a revised fifth amendment to the North OPA that deepens the affordability level to 90% AMI (which still targets moderate-income households) and provides 26 affordable inclusionary rental units and 103 market rate rental units; and,
- WHEREAS, AB 1484 authorizes Oversight Boards to approve amendments to enforceable obligations if it finds that the amendments would be in the best interest of the taxing entities. (Cal. Health & Safety Code Section 34181(e)),
- WHEREAS, By allowing for the development of an economically feasible project on the final parcel under the North OPA, the Fifth Amendment will (1) result in the development of a site that currently does not have a viable development program; (2) accelerate the completion of development under the North Plan and the North OPA; and (3) generate more property tax revenues than the existing, undeveloped conditions; and,
- WHEREAS, The Fifth Amendment does not propose any new capital expenditures by OCII or any change in OCII’s overall method of financing the redevelopment of Mission Bay North,
- WHEREAS, The Fifth Amendment is considered a material change to the North OPA housing program, and thereby requires Board of Supervisors approval pursuant to the Implementing Ordinance; and,
- WHEREAS, The Board of Supervisors, acting in its capacity as legislative body of the Successor Agency, conditionally approved the Fifth Amendment on April 8, 2014 by Resolution No. 112-14; and,

WHEREAS, Successor Agency staff has reviewed the Fifth Amendment for purposes of compliance with CEQA and the State CEQA Guidelines; and,

WHEREAS, Approval of the Implementing Action is an undertaking pursuant to and in furtherance of the North Plan in conformance with CEQA Section 15180; and,

WHEREAS, Successor Agency staff, in making the necessary findings for the Implementing Action contemplated herein, considered and reviewed the FSEIR, and has made documents related to the Implementing Action and the FSEIR files available for review by the Oversight Board and the public, and these files are on file with the Successor Agency Secretary and are incorporated in this Resolution by this reference; and,

WHEREAS, The FSEIR findings and statement of overriding considerations adopted in accordance with CEQA by the Redevelopment Commission by Resolution No. 183-98 dated September 17, 1998, reflected the independent judgment and analysis of the Redevelopment Agency, were and remain adequate, accurate and objective and were prepared and adopted following the procedures required by CEQA, and the findings in said resolutions are incorporated herein by reference as applicable to the Implementing Action; and,

WHEREAS, OCII staff has reviewed the Fifth Amendment, and finds it acceptable and recommends approval thereof; now, therefore, be it

RESOLVED, That the Oversight Board finds and determines that the Fifth Amendment submission is an Implementing Action within the scope of the Project analyzed in the FSEIR and requires no additional environmental review pursuant to State CEQA Guidelines Sections 15180, 15162 and 15163 for the following reasons:

1. The Implementing Action is within the scope of the Project analyzed in the FSEIR and no major revisions are required due to the involvement of new significant environmental effects or a substantial increase in the severity of significant effects previously identified in the FSEIR.
2. No substantial changes have occurred with respect to the circumstances under which the Project analyzed in the FSEIR was undertaken that would require major revisions to the FSEIR due to the involvement of new significant environmental effects, or a substantial increase in the severity of effects identified in the FSEIR.
3. No new information of substantial importance to the Project analyzed in the FSEIR has become available which would indicate that (a) the Implementing Action will have significant effects not discussed in the FSEIR; (b) significant environmental effects will be substantially more severe; (c) mitigation measures or alternatives found not feasible which would reduce one or more significant effects have become feasible; or (d) mitigation measures or alternatives which are considerably different from those in the FSEIR will substantially reduce one or more significant effects on the environment;

and, be it further

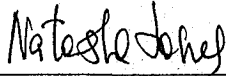
RESOLVED, That the Oversight Board has reviewed and considered the FSEIR findings, the CEQA findings that were previously adopted by the Redevelopment Commission, including without limitation the statement of overriding considerations and the

mitigation monitoring and reporting program, and hereby adopts as its own the CEQA findings set forth in Redevelopment Commission Resolution No. 183-98, which are incorporated herein, and those set forth above; and, be it further

RESOLVED, That the Oversight Board approves the Fifth Amendment, substantially in the form lodged with the Oversight Board Secretary and recommends forwarding the Fifth Amendment to the California Department of Finance for its approval, subject to the following condition:

1. The Fifth Amendment to the Mission Bay North Owner Participation Agreement is conditioned on the approval of the California Department of Finance.

I hereby certify that the foregoing resolution was adopted by the Oversight Board at its meeting of April 28, 2014.



Natesh Jones
Oversight Board Secretary