MEMORANDUM

TO: Oversight Board

FROM: Tiffany Bohee
Executive Director

SUBJECT: Adopting environmental review findings pursuant to the California Environmental Quality Act and conditionally approving 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 the 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

EXECUTIVE SUMMARY

Block N4/Parcel 3 (“N4P3”) is .94 acres in size and is the last remaining developable parcel in Mission Bay North Redevelopment Project Area (“Mission Bay North”). N4P3 is bounded by Berry Street to the south and the I-280 off-ramp to the north, with Mission Walk, a completed Office of Community Investment and Infrastructure (“OCII”)-sponsored low and moderate income affordable housing parcel to the east (see Exhibit 1). The land use designation in the Mission Bay North Redevelopment Plan (“North Redevelopment Plan”) for N4P3 is Mission Bay Residential.

Under the Mission Bay North Owner Participation Agreement (“North OPA”) between OCII, as successor to the San Francisco Redevelopment Agency (“Former Redevelopment Agency”), and FOCIL-MB, LLC (“FOCIL”), the Mission Bay Master Developer (“Master Developer”), N4P3 is to be developed with 129 for-sale residential units, including 80 moderate income affordable units serving households earning up to 110% of the Area Median Income (“AMI”) (“Existing N4P3 Requirement”). Previous efforts to develop N4P3 with 80 moderate income for-sale units have not resulted in the any units being constructed on site; recent market analyses indicate that achieving financial feasibility with a for-sale model under the Existing N4P3 Requirement is very unlikely.

FOCIL is requesting a fifth amendment to the North OPA (“Fifth Amendment”) to allow an alternative project proposed by the Integral Group (“Integral”), a national real estate investment firm focused on the revitalization of urban communities. Integral is proposing to develop a mixed income rental project with 26 affordable units at 90% of AMI and 103 market rate units (“Integral Project”). Integral would provide an estimated $13.8 million in equity and FOCIL would donate the land, with an estimated value of $10.5 million. Changing the site from for-sale to rental addresses the changes in the market since the Existing N4P3 Requirement was imposed. In order to achieve financial feasibility and given that there are no OCII subsidies available for the site, the number of affordable units need to be reduced. On January 21, 2014 the OCII
Commission approved 45 affordable units at 120% AMI, but the project was subsequently changed to the current 26 units at 90% AMI in order to further deepen affordability for moderate income renters. The Board of Supervisors, acting in its capacity as the legislative body of the Successor Agency under Board of Supervisors’ Ordinance 215-12 approved the current unit configuration on April 8, 2014.

While the number of affordable units has decreased on the N4P3, the overall affordable housing units required to be produced by the Master Developer will exceed the North OPA requirements by 46 units. In addition, the Integral Project would provide greatly needed moderate income housing with no subsidy, which is a benefit to the larger community since no additional moderate income housing is anticipated to be constructed in Mission Bay South.

Adopting the Fifth Amendment would create several benefits for affected taxing entities, a requirement to amend enforceable obligations under Dissolution Law: (1) supports the full economic use of N4P3; (2) accelerates the completion of development under the North Redevelopment Plan and the North OPA; and (3) generates more property tax revenues than the existing, undeveloped conditions. Prior to the proposed Fifth Amendment becoming final additional approvals are required by the Oversight Board and the California Department of Finance (“DOF”).

As part of its actions on September 17, 1998, establishing the Mission Bay Redevelopment Project Areas, the former Redevelopment Agency Commission (“Former Agency Commission”) certified the Final Subsequent Environmental Impact Report (“FSEIR”) (Resolution No. 182-98) and adopted findings under the California Environmental Quality Act (“CEQA”) (Resolution No. 183-98). This FSEIR includes by reference a number of addenda. OCII staff has reviewed the Fifth Amendment and found it to be within the scope of the Project analyzed in the FSEIR and addenda and no additional environmental review is needed.

Staff recommends conditional approval of the Fifth Amendment to the Mission Bay North Owner Participation Agreement.

BACKGROUND

Mission Bay North Redevelopment Plan and Owner Participation Agreement

On September 17, 1998, by Resolution No. 185-98, the Former Agency Commission approved the North Redevelopment Plan. On the same date, the Former Agency Commission adopted related documents, including authorizing execution of the North OPA and related documents between the former Mission Bay Master Developer, Catellus Development Corporation (“Catellus”), and the Former Redevelopment Agency (Resolution No. 188-98). The Board of Supervisors approved and adopted the North Redevelopment Plan by Ordinance No. 327-98 on October 26, 1998. FOCIL subsequently assumed the rights and responsibilities of the Master Developer from Catellus in 2004 under the North OPA. The North OPA has been amended four times by the Former Agency Commission, on February 17, 2004 (Resolution No. 22-2004), March 16, 2004 (Resolution 35-2004), January 18, 2005 (Resolution 8-2005) and March 15, 2005 (Resolution No. 47-2005).
With approval from a successor agency’s Oversight Board and DOF, a successor agency may continue to implement “enforceable obligations” — existing contracts, bonds, leases, etc. — which were executed prior to the suspension of redevelopment agencies’ activities on June 28, 2011, the date that AB 26 was approved. Redevelopment Dissolution Law, comprised of AB 26 and AB 1484, defines “enforceable obligations” to include bonds, loans, judgments or settlements, and any “legally binding and enforceable agreement or contract that is not otherwise void as violating the debt limit or public policy,” (Cal. Health & Safety Code Section 34171(d)(1)(E)) as well as certain other obligations, including but not limited to requirements of state law and agreements made in reliance on pre-existing enforceable obligations. On January 24, 2014 DOF finally and conclusively determined that the North OPA is an enforceable obligation.

Process for Amending Existing Obligations

AB 1484 authorizes an oversight board 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)). Therefore, the approval of the Fifth Amendment to the North OPA is conditioned upon the Oversight Board approval of the amendment and its determination of the benefit to the taxing entities, and then DOF’s subsequent review and approval of the Oversight Board’s action.

Board of Supervisors Ordinance 215-12

In accordance with Redevelopment Dissolution Law, by Ordinance 215-12, the San Francisco Board of Supervisors (“Board of Supervisors”) named the Successor Agency (also commonly known as the Office of Community Investment and Infrastructure, or "OCII"), as the successor agency to the Former Redevelopment Agency and delegated to the Successor Agency Commission the authority to act in place of the Former Agency Commission to implement, modify, enforce and complete surviving redevelopment projects, including the Mission Bay North and Mission Bay South Projects, the Hunters Point Shipyard/Candlestick Point Project, and the Transbay Transit Center Project (collectively, the “Major Approved Development Projects”).

Ordinance 215-12 provides that the Successor Agency 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 any required approval of the Oversight Board. The Fifth Amendment received unanimous Board of Supervisors approval on April 8, 2014 by Resolution No. 112-14.

Existing Mission Bay North OPA Affordable Housing Requirements

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. As shown in Table 1, 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 ("Master Developer Affordable Housing Requirement"). Of the 245 total affordable units developed by the Master Developer, the North OPA requires them to be allocated among between very low-income, low-income and moderate income levels, as detailed in Table 2, below.

<table>
<thead>
<tr>
<th>North OPA Affordable Housing Requirement and Units Built to Date Summary Table</th>
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</thead>
<tbody>
<tr>
<td><strong>North OPA Affordable Housing Requirement</strong></td>
</tr>
<tr>
<td><strong>OPA Requirements</strong></td>
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<tr>
<td>Total Units at Buildout</td>
</tr>
<tr>
<td>North OPA Affordable Housing Requirement</td>
</tr>
<tr>
<td>Total Affordable Units Required</td>
</tr>
<tr>
<td>Master Developer Share of Affordable Requirement</td>
</tr>
</tbody>
</table>

| Table 2 |
| Master Developer Affordable Units |
| Income Distribution Requirements |

<table>
<thead>
<tr>
<th>Required Distribution by Income Category</th>
<th># Required Units</th>
<th>Total Built (without N4P3)</th>
<th>Difference</th>
</tr>
</thead>
<tbody>
<tr>
<td>Type of Unit</td>
<td>Units</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Very Low Income (up to 50% AMI)</td>
<td>98</td>
<td>98</td>
<td>0</td>
</tr>
<tr>
<td>Low Income Units (up to 70% AMI)</td>
<td>35</td>
<td>135</td>
<td>+100</td>
</tr>
<tr>
<td>Moderate Income (up to 110% AMI)</td>
<td>112</td>
<td>32</td>
<td>-80</td>
</tr>
<tr>
<td>Total Master Developer Units</td>
<td>245</td>
<td>265</td>
<td>+20</td>
</tr>
</tbody>
</table>

As shown in Table 1, to date a total of 2,835 units have been constructed in Mission Bay North with 672 units, or 23.7%, of those units restricted for lower income households (Exhibit 2 lists the completed affordable housing projects in Mission Bay North). 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 and low income households, the Master Developer is still required to build an additional 80 moderate income units, as shown in Table 2.

Pursuant to the North OPA these remaining 80 units must be for-sale units targeting moderate-income households earning up to 110% of AMI. The Master Developer is not required to provide any subsidy for the affordable units. However, the Master Developer is not allowed to develop any additional market rate units in Mission Bay North without also constructing the affordable component.

There will be additional affordable housing constructed in Mission Bay South under the Mission Bay South Owner Participation Agreement, 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 on N4P3, as described below.

**Block N4P3 Site**

Block N4P3 is approximately 41,170 square feet (.94 acres) in size and 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 ("Existing N4P3 Requirement").

N4P3 is bounded by Berry Street to the south and the I-280 off-ramp to the north (see Exhibit 1). It abuts an OCII-sponsored affordable housing parcel to the east (Block N4/Parcel 2). The site has a triangular shape, with a slightly curved property line to the north. The land use designation for N4P3 is Mission Bay Residential.

Both Catellus and FOCIL in their roles as Master Developer have been actively marketing N4P3 over the past decade. In 2006, a third party developer entered into an agreement with FOCIL to develop the N4P3 per the Existing N4P3 Requirement. As part of that project, a Combined Basic Concept and Schematic Design for Block N4P3 ("N4P3 Schematic Design") was approved by the Former Agency Commission on April 3, 2007 (Resolution No. 27-2007). The N4P3 Schematic Design includes a mixture of one to three bedroom units within a 5-story building. A shared open space podium is located in the center of the project and parking is screened from Berry Street by at-grade units.

However, after working on the project for several years, the original developer was not able to secure financing for the project under the Existing N4P3 Requirement and notified FOCIL that it would no longer be developing N4P3. While OCII staff has received numerous inquiries on the site over the years, no other developer has expressed any on-going interest to OCII staff in developing N4P3 pursuant to the Existing N4P3 Requirement.
DISCUSSION

Integral Project

In 2011, FOCIL 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. As part of its due diligence, Integral hired The Concord Group, a San Francisco-based real estate market research firm, to prepare a market research report, dated September 10, 2013 ("Concord Study"). The Concord Study shows that development of N4P3 pursuant to the Existing N4P3 Requirement is financially infeasible as a for-sale site without a significant public subsidy. Specifically, the Concord Study concludes that the market rate sales prices needed to achieve financial feasibility are extremely unlikely in the foreseeable future, due in part to market changes and that N4P3 is considered an inferior for-sale location due to the highway adjacency and lack of canal creek frontage. The Concord Study found that it is unlikely, based on historic market trends and current forecasts, that there would be any significant future housing sale price increases great enough to allow the market rate units to fully finance the large number of affordable units, so any future development would also require significant subsidies. In addition, the site and building program does not support the luxury amenities that exist in many Mission Bay developments; therefore, a for-sale project would sell units in the lower price range of the Mission Bay housing market. The Concord Study is included as Exhibit 3.

Staff has worked with the Mayor’s Office of Housing and Community Development ("MOHCD") to determine what parameters should be used to evaluate the alternative proposal. At the request of OCII and MOHCD, Integral also prepared several alternative financing studies on a range of project alternatives assuming a change from for-sale to rental, comparing low to moderate affordability levels, and exploring different financing tools to determine projects that could be built without additional subsidies. The various alternatives studies by Integral took into consideration that lenders and investors become concerned with mixed use projects that have a high percentage of affordable units compared to the market rate units. Lenders are concerned with a high affordable share in a project since it limits investors’ ability to benefit from any upswings in improved rental markets by capping the rents that can be charged for the affordable units, while leaving the project exposed to any downturn in the market where market rate rents drop significantly. These studies showed that a rental project with 80 moderate rate income units would also be infeasible without a substantial subsidy of approximately $20.1 million.

OCII staff reviewed the Concord Study and the Integral studies, and at OCII’s request, MOHCD engaged CSG Advisors, an independent financial analyst ("FA") to review the assumptions of the Integral studies, including the Integral Project, described below. The FA confirmed the developer’s analyses incorporated standard market assumptions and that a project with 80 affordable units would require a significant subsidy to construct, but even with a subsidy would not address the concerns of investors as to the constraints associated with a majority of the units being rent restricted. OCII and MOHCD staff worked with Integral to study the various options to determine which would provide a maximum number of moderate rate affordable units, since N4P3 is the only opportunity for moderate income housing in Mission Bay.
The preferred alternative project would result in the development of 26 moderate income rental units at 90% AMI and 103 market rate rental units (“Integral Project”). Integral is committed to contribute between up to $13.8 million in equity into the project. FOCIL has also agreed to donate the land, with an estimated value of $10.5 million, to maximize the number of affordable units the market rate units can subsidize; no other subsidy would be required other than the equity investment and market-rate financing. The proposal includes allowing a decrease in AMI from 110% AMI to 90% AMI. As context, a 110% AMI San Francisco household of four could earn up to $106,800, while a 90% AMI household of four could earn up to $87,400.

On January 21, 2014, the Commission approved by Resolution No. 05-2014, a Fifth Amendment that would allow Block N4P3 to be developed with 45 moderate-income rental inclusionary units affordable to households at 120% AMI and 84 market rate rental units. Subsequent to the Successor Agency’s Commission action, after consultation with Board of Supervisors and affordable housing community groups, Integral proposed a revised Fifth Amendment that deepens the affordability of the inclusionary units to 90% AMI (which still targets moderate income households) and provides 26 affordable inclusionary units. The revised Fifth Amendment was adopted by the Board of Supervisors on April 8, 2014 by Resolution No. 112-14.

Based on these terms, the Integral Project is able to demonstrate a Return on Cost (the ratio of the net operating cost once fully leased compared to the cost to build) of almost 7%, which is Integral’s minimum requirement for an investment opportunity. Both OCII and MOHCD staff have reviewed the proposal and recommend approval of the OPA amendment since the Integral Project is the only financially feasible proposal brought forward to develop this last remaining site in Mission Bay North, and staff believes that there are no indications that market conditions will change to the extent necessary to complete the project under the Existing N4P3 Requirement prior to the expiration of the North OPA in 2043.

**Proposed Amendments to North OPA**

FOCIL is seeking a Fifth Amendment (included as Exhibit 4) to the North OPA to allow the development of the Integral Project. Specifically, the Fifth Amendment would amend the affordable housing requirement for the Master Developer for N4P3 to the following:

- Develop affordable units as rental units instead of for-sale.
- Construct 26 affordable units instead of 80.
- Restrict the affordable units to moderate income households up to 90% of AMI or less instead of 110% AMI.

These changes would require changes in the North OPA to amend the total number of required Master Developer affordable housing units, rental/for-sale ratio, affordability levels, and other provisions, as detailed in the attached Fifth Amendment. The total number of affordable housing units constructed under the North OPA would continue to exceed the 20% affordable housing requirement. As shown in Table 3, with the Fifth Amendment at full build-out of Mission Bay North there would be 698 affordable housing units, or 23.5% of the total 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 almost 19%.
Table 3
North OPA Affordable Housing Production at Complete Build Out
Summary Table

<table>
<thead>
<tr>
<th>North OPA Housing Requirement Comparisons</th>
<th>Total Built with 5th Amendment (with N4P3)</th>
<th>Difference</th>
</tr>
</thead>
<tbody>
<tr>
<td>Current OPA Requirements</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total Units at Buildout</td>
<td>2,964 units</td>
<td>0</td>
</tr>
<tr>
<td>North OPA Affordable Housing Requirement</td>
<td>20% of total units</td>
<td></td>
</tr>
<tr>
<td>Total Affordable Units Required</td>
<td>593 units</td>
<td>+105</td>
</tr>
<tr>
<td>Master Developer Share of Affordable Requirement</td>
<td>245 units</td>
<td>+46</td>
</tr>
<tr>
<td>OCII Share of Affordable Requirements</td>
<td>348 units</td>
<td>+59</td>
</tr>
</tbody>
</table>

Findings – Compliance with Redevelopment Dissolution Law

By allowing an economically-feasible project, the Fifth Amendment will support the full economic use of N4P3 and will accelerate the completion of development under the North Redevelopment Plan, the North OPA and the related enforceable obligations. By allowing a project that is financially feasible, the Fifth Amendment will increase property tax revenue generated from property taxes payable to the taxing entities by ensuring that the parcel is developed quickly to generate additional property taxes. The Fifth Amendment would generate more revenues from property taxes payable to the taxing entities, including the City and County of San Francisco, the Bay Area Rapid Transit District, the San Francisco Community College District, and the San Francisco Unified School District, compared with the existing, undeveloped conditions. 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.

Mission Bay Program in Diversity

Integral shall comply with the OCII’s Nondiscrimination in Contracts, Minimum Compensation and Health Care Accountability policies and has worked closely with contract compliance staff to comply with the Small Business Enterprise (“SBE”) Program on this development. To date, Integral has achieved 68.8% SBE participation (53.9% San Francisco-SBEs, 44.5% Minority Business Enterprises and 5.3% Women-owned Business Enterprises) for professional services consultants. LDA Architects, a local Asian-owned SBE has been selected as the architect for this project. A full list of consultants is included as Exhibit 5.

During the construction phase of this project, Integral is committed to meet OCII’s requirements and goals which includes the 50% SBE construction subcontracting participation goal, payment of prevailing wages and the 50% local construction workforce hiring goal.
Citizens Advisory Committee

The Mission Bay Citizens Advisory Committee ("CAC") discussed the Fifth Amendment at its September 12, 2013 meeting. OCII staff updated the CAC monthly from November 2013 through April 2014 to reflect changes to the Fifth Amendment as negotiations progressed with the Master Developer and Integral. The CAC was supportive of amending the North OPA to allow a financially feasible project at N4P3 since it would result in the completion of Mission Bay North and develop the last remaining parcel along Berry Street and provide much needed moderate income housing.

CALIFORNIA ENVIRONMENTAL QUALITY ACT

As part of its actions on September 17, 1998, establishing the Mission Bay Redevelopment Project Areas, the Former Agency Commission certified the FSEIR (Resolution No. 182-98), adopted findings under CEQA, adopted a series of mitigation measures, and established a comprehensive system for mitigation monitoring (Resolution No. 183-98). The Board of Supervisors, the Planning Commission and various City departments adopted similar findings and mitigation measure monitoring plans. This FSEIR includes by reference a number of addenda.

Copies of the full four-volume FSEIR were distributed to the Former Agency Commission prior to the 1998 certification and adoption of the environmental findings. Copies of the FSEIR were provided to the Oversight Board as part of the June 11, 2012 Commission memo for Block 40, and are available for review at OCII's offices.

OCII staff has reviewed the proposed Fifth Amendment and has considered and reviewed the FSEIR and addenda. OCII staff finds the Fifth Amendment to be within the scope of the project analyzed in the FSEIR and subsequent addenda and no additional environmental review is required pursuant to State CEQA Guidelines Sections 15180, 15162, and 15163.

NEXT STEPS

The Oversight Board approval of the Fifth Amendment will be conditioned on the final approval by DOF. DOF has a five day period to request a review of an Oversight Board action, and then 40 days from the date of that request to either approve the Oversight Board's action or return it to the Oversight Board for reconsideration.

In addition to the approval of the Fifth Amendment, additional design work is required prior to start of construction of the N4P3 project. Integral is anticipating that it will retain the originally approved N4P3 Schematic Design for the building. If it substantially changes the overall design of the project, such that it is no longer consistent with the approved 2007 N4P3 Schematic Design, a revised schematic design will be brought to the OCII Commission for consideration. Assuming final DOF approval is received by June 11, 2012 meeting. Integral is anticipating a start of construction by August 2014 and completion of the project by the end of 2015.
STAFF RECOMMENDATION

Staff recommends approval of the Fifth Amendment to the Mission Bay North Owner Participation Agreement, conditioned on the final approval by the California Department of Finance.

(Originated by Lila Hussain, Assistant Project Manager and Catherine Reilly, Project Manager)

Tiffany Bohee
Executive Director

Exhibit 1: Mission Bay Site Location
Exhibit 2: Affordable Housing in Mission Bay North
Exhibit 3: Concord Group Study
Exhibit 4: Fifth Amendment to the Mission Bay North Owner Participation Agreement
Exhibit 5: N4P3 Professional Consultant List
Exhibit 6: Board of Supervisors Resolution No. 112-14