

COMMISSION ON COMMUNITY INVESTMENT AND INFRASTRUCTURE

RESOLUTION NO. 54-2015

Adopted, September 1, 2015

ADOPTING ENVIRONMENTAL FINDINGS PURSUANT TO THE CALIFORNIA ENVIRONMENTAL QUALITY ACT AND AUTHORIZING THE EXECUTIVE DIRECTOR TO ACCEPT THE NAVY'S TENDER OF PARCELS D-2, UC-1 AND UC-2 OF THE HUNTERS POINT NAVAL SHIPYARD AND AUTHORIZING A FOURTH AMENDMENT OF THE INTERIM LEASE WITH HPS DEVELOPMENT CO., LP AND CP DEVELOPMENT CO., LP; HUNTERS POINT SHIPYARD REDEVELOPMENT PROJECT AREA

- WHEREAS, Under Chapter 5, Statutes of 2011, ABx1 26, and Assembly Bill No. 1484 (Chapter 26, Statutes of 2011-12, Regular Session), the San Francisco Redevelopment Agency ("Agency") was dissolved and certain obligations of the Agency were transferred by operation of law to the Successor Agency, commonly known as the Office of Community Investment and Infrastructure ("OCII"). ABx1 26 and Assembly Bill No. 1484 are codified in Sections 34161 et seq. of the California Health and Safety Code, which sections, as amended from time to time, shall be referred to herein as the "Dissolution Law;" and,
- WHEREAS, Dissolution Law requires an oversight board for each successor agency to oversee certain fiscal and other actions of the successor agency. As required by AB 26, the oversight board for OCII (the "Oversight Board") was timely established, and has been meeting since March 2012 to perform its duties under the Dissolution Law; and,
- WHEREAS, On October 2, 2012, the Board of Supervisors in its capacity as the legislative body of OCII adopted Ordinance No. 215-12, acknowledging that OCII is a separate legal entity as a result of AB 1484 and creating the Commission on Community Investment and Infrastructure (the "Commission") as the policy body of OCII to implement three Major Approved Development Projects (1. Hunters Point Shipyard/Candlestick Point, 2. Mission Bay and 3. Transbay), the Retained Housing Obligations, and other enforceable obligations under the Dissolution Law; and,
- WHEREAS, The Candlestick Point and the Hunters Point Shipyard ("the Project") is one of OCII's Major Approved Development Projects which as successor agency, OCII must continue to implement under the Dissolution Law. The Project covers over 700 acres at the former Hunters Point Shipyard Naval Base (the "Shipyard") and at the adjacent Candlestick Point. In connection with the Phase 1 Project, the former Agency and HP Development Co., LP ("Phase 1 Developer") entered into a Disposition and Development Agreement (Hunters Point Shipyard Phase 1), dated December 2, 2003 (the "Phase 1 DDA") by Resolution No. 179-2003. And in connection with the Phase 2 Project, the former Agency and CP Development Co., LP ("Phase 2 Developer") entered into a Disposition and Development Agreement (Candlestick Point and Phase 2 of the Hunters Point Shipyard), dated June 3, 2010 (the "Phase 2 DDA") by Resolution No. 69-2010; and,

- WHEREAS, At a special meeting on April 29, 2004, the Commission of the former Redevelopment Agency of the City and County of San Francisco (“Redevelopment Commission”) authorized by Resolution 50-2004 the Conveyance Agreement between the United States, acting by and through the Secretary of the Navy (the “Navy”) and the former Agency, which establishes a framework and orderly process for the Agency to receive conveyances of parcels at the Shipyard from the Navy in phases (hereinafter the “Conveyance Agreement”); and,
- WHEREAS, On December 3, 2004 in furtherance of the Phase 1 DDA, the former Agency and Phase 1 Developer entered into an Interim Lease under which Agency real property in the Phase 1 Project area is leased to the Phase 1 Developer and the Phase 1 Developer takes on property management responsibilities of the property; and,
- WHEREAS, The Oversight Board and the California Department of Finance (“DOF”) have recognized the DDA and a number of related binding agreements attached to or referenced in the text of the DDA, including the Conveyance Agreement and Interim Lease, as enforceable obligations under the Dissolution Law. The Dissolution Law, in particular California Health and Safety Code Section 34177, provides that the Successor Agency is required to (1) perform obligations required pursuant to any Enforceable Obligation, and (2) continue to oversee development of properties until the contracted work has been completed; and,
- WHEREAS, In 1992, the Navy divided the Shipyard into five contiguous parcels to expedite remedial actions. Subsequent modifications to these parcels have occurred resulting in a total of 12 parcels (A, A-1, B-1, B-2, C, D-1, D-2, E-1, E-2, F, G, IR7-18) and three utility corridors (UC-1, UC-2, and UC-3); and,
- WHEREAS, On November 16, 2004 the Redevelopment Commission adopted Resolution No. 135-2004 authorizing the Executive Director to accept the Navy’s tender of Parcels A and A-1 pursuant to the Conveyance Agreement. The transfer of Parcels A and A-1 subsequently occurred on December 3, 2004; and,
- WHEREAS, The Navy is now tendering Parcels D-2, UC-1, and UC-2 to OCII for acceptance. Parcel D-2 was originally part of Parcel A, is mostly paved and includes Building 813. Parcel D-2 is approximately 5.3 acres. Parcels UC-1 and UC-2 have historically been paved roadway or parking area. Parcel UC-1 is approximately 3.5 acres and Parcel UC-2 is approximately 3.8 acres; and,
- WHEREAS, The Conveyance Agreement specifies four conditions that must be met before the Navy can tender any Shipyard parcel to OCII: (a) the Navy must have concluded finally that planned development on the parcel will not present a risk to human health or safety and have offered to convey the parcel without restrictions or notices that would restrict OCII’s intended uses of the parcel, as set forth in the Hunters Point Shipyard Redevelopment Plan (the “Plan”); (b) the Navy must have obtained written assurances from the United States Environmental Protection Agency (“USEPA”) and the State of California Environmental Protection Agency, represented by the Department of Toxic Substances Control (“DTSC”) and the California Regional Water Quality Control Board (“RWQCB”) (collectively, the “Regulators”), that a parcel is safe for its intended uses under the Plan before offering the parcel to the OCII; (c) the Navy’s Quitclaim Deed must be consistent with the Conveyance Agreement and be acceptable in form and

substance to the OCII; and (d) the Navy may not be in default of its obligations under the Conveyance Agreement; and,

WHEREAS, In addition to the Conveyance Agreement requirements, the Navy is required to satisfy the requirements of the federal Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”), 42 USC Section 9620(h) prior to transfer of any property. CERCLA requires a federal agency transferring federal property to establish that all remedial actions necessary to protect human health and environment from risks associated with hazardous substances released into soil or groundwater, in consideration of the uses contemplated by the recipient of the property, have been taken before transfer. The Navy documents its compliance with this requirement by preparing a Finding of Suitability to Transfer (“FOST”) before transferring property; and,

WHEREAS, On June 29, 2011, the Navy issued a draft final Finding of Suitability to Transfer (“FOST”) for Parcel D-2 of the Shipyard, stating its conclusion that the environmental condition of Parcel D-2 is suitable for transfer. The Navy executed the final FOST on March 27, 2012, satisfying the first condition to tender; and,

WHEREAS, The Regulators have submitted written concurrences in the FOST conclusion that Parcel D-2’s environmental condition is suitable for transfer satisfying the second condition to tender. Specifically, USEPA issued its written concurrence on May 29, 2012; DTSC issued its written concurrence on May 2, 2012; and RWQCB issued its written concurrence on May 2, 2012; and,

WHEREAS, On February 11, 2011, the Navy issued its draft final FOST for Parcels UC-1 and UC-2 of the Shipyard, stating its conclusion that the environmental conditions of Parcels UC-1 and UC-2 are suitable for transfer. The Navy executed the final FOST on March 25, 2015, satisfying the first condition to tender; and,

WHEREAS, The Regulators have submitted written concurrences in the FOST conclusion that Parcels UC-1 and UC-2’s environmental condition are suitable for transfer, satisfying the second condition to tender. Specifically, USEPA issued its written concurrence February 19, 2015; DTSC issued its written concurrence on February 6, 2015; and RWQCB issued its written concurrence on February 6, 2015; and,

WHEREAS, The Navy has submitted its proposed form of Quitclaim Deed to OCII for review, and OCII counsel has deemed it consistent with the Conveyance Agreement and acceptable in form and substance to OCII, satisfying the third condition to tender; and,

WHEREAS, The Navy is not in default of its obligations under the Conveyance Agreement, satisfying the fourth condition to tender; and,

WHEREAS, OCII’s independent environmental consultants, Lagan Treadwell, Rollo, and the San Francisco Department of Public Health have completed their review of the environmental investigation and remediation activities undertaken by the Navy and concluded that the intended development on Parcels D-2, UC-1, and UC-2 will not present a risk to human health or safety; and,

WHEREAS, Parcels D-2, UC-1, and UC-2 are the first parcels to be tendered by the Navy in the Phase 2 Project Area. The Phase 1 Developer, Phase 2 Developer and OCII seek to extend to the Phase 2 Developer the rights and obligations of the Interim Lease relating to the Phase 2 Project Area; and,

- WHEREAS, The environmental remediation for Parcels UC-1 and UC-2 requires that a durable cover remain in place, the maintenance of which is required to be undertaken by future property owners through both a Covenant to Restrict Use of Properties ("CRUP") entered into between DTSC and the Navy and additionally through deed restrictions placed by the Navy; and,
- WHEREAS, All of the conditions to the Navy's tender of Parcels D-2, UC-1, and UC-2 have been satisfied, and OCII wishes to execute the Navy's Quitclaim Deeds and take all other actions necessary to accept title to Parcels D-2, UC-1, and UC-2 from the Navy; and,
- WHEREAS, In approving the transfer of Parcels D-2, UC-1, and UC-2 from the Navy to OCII, OCII is fulfilling its enforceable obligations, which the California Department of Finance has finally and conclusively determined to be obligations of OCII, as Successor Agency, Letter, S. Szalay, Local Government Consultant, Department of Finance, to T. Bohee, Executive Director, OCII (December 19, 2012); and,
- WHEREAS, The Fourth Amendment to the Interim Lease assigns OCII's obligations, as the future property owner of UC-1 and UC-2, to Phase 2 Developer, including obligations imposed by the CRUP and deed restrictions; and,
- WHEREAS, The Redevelopment Commission and the San Francisco Planning Commission certified the Final Environmental Impact Report ("FEIR") for the Project and the Redevelopment Commission adopted California Environmental Quality Act ("CEQA") findings, including a mitigation monitoring and reporting program, and statement of overriding considerations in support of approval of the Project on June 3, 2010 by Resolution Nos. 58-2010 and 18096, respectively. The Board of Supervisors affirmed the Planning Commission's certification of the FEIR on August 3, 2010 by Resolution No. 347-10. Since then, the OCII, in consultation with the City's Planning Department has prepared two addenda to the FEIR to support OCII approval of certain refinements in the phasing program for the Project and the first Major Phase, and City approval of a proposed Automated Waste Collection System intended to serve the Project. Together, the FEIR and the addenda constitute "the FEIR." The resolutions and findings referenced in this paragraph are incorporated in this Resolution by this reference; and,
- WHEREAS, The OCII has reviewed and considered the information contained in the FEIR, the findings contained in Resolution 58-2010 and written and oral information provided by OCII staff, the public, relevant public agencies and other experts, and the administrative files of the Project; and,
- WHEREAS, The action proposed by this Resolution will further the implementation of the Project as described by the FEIR and is, therefore, within the scope of the environmental analysis in the FEIR and will not result in any new significant impacts or a substantial increase in the severity of previously identified significant effects that alter the conclusions reached in the FEIR. The FEIR and any supporting documents have been made available to OCII and the public, are on file with the Commission Secretary; now therefore, be it
- RESOLVED, That the Commission has reviewed and considered the FEIR and record as a whole and finds on the basis of substantial evidence in light of the whole record that the FEIR is adequate for its use as the decision-making body for the approval of the transfer of Parcels D-2, UC-1 and UC-2 and incorporates in this Resolution by this

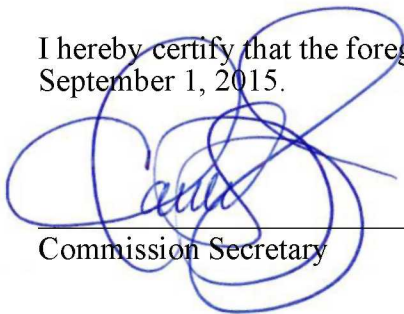
reference the CEQA findings contained in Resolution 58-2010, including the Statement of Overriding Considerations; and be it further

RESOLVED, The OCII finds that since the FEIR was finalized: (a) there have been no substantial modifications in the Project and reflected in the approval before the Commission that will require important revisions to the FEIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; (b) no substantial changes have occurred with respect to the circumstances under which the Project and the implementing actions will be undertaken that would require major revisions to the FEIR due to the involvement of new significant environmental effects, or a substantial increase in the severity of effects identified in the FEIR; (c) no new information of substantial importance to the Project and the implementing actions has become available which would indicate (i) the Project or implementing actions will have significant effects not discussed in the FEIR; (ii) significant environmental effects will be substantially more severe; (iii) mitigation measures or alternatives found not feasible that would reduce one or more significant effects have become feasible; (iv) mitigation measures or alternatives that are considerably different from those in the FEIR would substantially reduce one or more significant effects on the environment; (v) the implementing actions are within the scope of the Project analyzed in the FEIR; and (vi) no new environmental documentation is required; and, be it further

RESOLVED, That the Executive Director is authorized to execute the Navy's Quitclaim Deeds and take all other actions necessary to accept title to Parcels D-2, UC-1, and UC-2 from the Navy; and, be it further

RESOLVED, That the Executive Director is authorized to execute the Fourth Amendment to the Interim Lease with Phase 1 Developer and Phase 2 Developer and make certain amendments, substantially in the form lodged with OCII General Counsel, and to enter into any and all ancillary documents or take any additional actions necessary to consummate the transaction.

I hereby certify that the foregoing resolution was adopted by the Commission at its meeting of September 1, 2015.



Commission Secretary