

COMMISSION ON COMMUNITY INVESTMENT AND INFRASTRUCTURE

RESOLUTION NO. 6 – 2016

Adopted February 16, 2016

**APPROVING A THIRD REVISED SCHEMATIC DESIGN OF TRANSBAY
BLOCK 7 (255 FREMONT STREET/222 BEALE STREET) TO GRANT A VARIATION
OF NINE INCHES TO THE MINIMUM SIX-FOOT TOWNHOUSE SETBACK ON
CLEMENTINA STREET, AND MAKING ENVIRONMENTAL FINDINGS PURSUANT
TO THE CALIFORNIA ENVIRONMENTAL QUALITY ACT; TRANSBAY
REDEVELOPMENT PROJECT AREA**

WHEREAS, The California Legislature in 2003 enacted Assembly Bill 812 (“AB 812”) authorizing the demolition of the historic Transbay Terminal building and the construction of the new Transbay Transit Center (“TTC”) (Stat. 2003, Chapter 99, codified at § 5027.1 of the Cal. Public Resources Code). AB 812 also mandated that 25% of the residential units developed in the area around the Center “shall be available to” low income households, and an additional 10% “shall be available to” moderate income households if the City and County of San Francisco (“City”) adopted a redevelopment plan providing for the financing of the Center; and,

WHEREAS, In 2003, in an agreement with the Transbay Joint Powers Authority (“TJPA”) and the City, the State agreed to transfer approximately 10 acres of State-owned property (“State-owned parcels”) in and around the then-existing Transbay Terminal to the City and the TJPA, which would then sell the State-owned parcels and use the revenues from the sales to finance the TTC (“Cooperative Agreement”). The City agreed, among other things, to commit property tax revenue through its Redevelopment Agency to the Center. Under the Cooperative Agreement, the State relied on tax increment financing under a redevelopment plan to improve and sell the parcels; and,

WHEREAS, The Board of Supervisors of the City and County of San Francisco approved a Redevelopment Plan for the Transbay Redevelopment Project Area (“Project Area”) by Ordinance No. 124-05, adopted on June 21, 2005 and by Ordinance No. 99-06, adopted on May 9, 2006 (the “Redevelopment Plan”). The Redevelopment Plan provided for the financing of the TTC and established a program for the Redevelopment Agency of the City and County of San Francisco (the “Former Agency”) to redevelop and revitalize the blighted Project Area; and,

WHEREAS, In 2005, at the same time the Redevelopment Plan was adopted, the Former Agency adopted the Development Controls and Design Guidelines for the Transbay Redevelopment Project (the “DCDG”), which provides detailed controls and recommendations for development within Zone One of the Project Area, including Blocks 6/7. In 2006, the Former Agency adopted the Transbay Redevelopment Project Area Streetscape and Open Space Concept Plan (the “Streetscape and Open Space Plan”), which provides detailed concept plans for all

public infrastructure in the Project Area necessary for the development of the State-owned parcels; and,

WHEREAS, In 2006, the TJPA and the Former Agency executed an agreement (“Implementation Agreement”), which required the Former Agency to take the lead role in facilitating the development of the State-owned parcels. Specifically, the Implementation Agreement required the Former Agency to: (1) prepare and sell the State-owned parcels to third parties, (2) deposit the sale proceeds into a trust account to help the TJPA pay the cost of constructing the TTC, (3) implement the Redevelopment Plan to enhance the financial feasibility of the Project, and (4) fund the state-mandated affordable housing program; and,

WHEREAS, On July 6, 2011, pursuant to the Implementation Agreement, the Former Agency issued a Request for Proposals (the “RFP”) from development teams to design and develop a high-density, mixed-income residential project on Blocks 6/7 in the Project Area. On December 6, 2011, after a competitive selection process, the Former Agency Commission authorized staff to enter into negotiations for the development of Blocks 6/7 with the development team lead by Golub Real Estate Corp. (“Golub”) and Mercy Housing California (“Mercy”), along with Solomon Cordwell and Buenz as the lead architect for the market-rate component of the development and Santos Prescott and Associates, a small business enterprise, as the architect for the affordable component; and,

WHEREAS, On February 1, 2012, the Former Redevelopment Agency was dissolved pursuant to the provisions of California State Assembly Bill No. 1X 26 (Chapter 5, Statutes of 2011-12, First Extraordinary Session) (“AB 26”), codified in relevant part in California’s Health and Safety Code Sections 34161 – 34168 and upheld by the California Supreme Court in California Redevelopment Assoc. v. Matosantos, No. S194861 (Dec. 29, 2011). On June 27, 2012, AB 26 was subsequently amended in part by California State Assembly Bill No. 1484 (Chapter 26, Statutes of 2011-12) (“AB 1484”). (Together, AB 26 and AB 1484, as amended from time to time, are referred to as the “Redevelopment Dissolution Law.”); and,

WHEREAS, Pursuant to the Redevelopment Dissolution Law, all of the Former Redevelopment Agency’s assets (other than completed housing assets) and obligations were transferred to the Office of Community Investment and Infrastructure (“OCII”), as Successor Agency to the Former Agency. Some of the Former Agency’s completed housing assets were transferred to the City, acting by and through the Mayor’s Office of Housing and Community Development (“MOHCD”); and,

WHEREAS, Redevelopment Dissolution Law authorizes successor agencies to enter into new agreements if they are “in compliance with an enforceable obligation that existed prior to June 28, 2011.” Cal. Health & Safety Code § 34177.5 (a). Under this limited authority, a successor agency may enter into contracts if a pre-existing enforceable obligation requires that action. See also Cal. Health & Safety Code § 34167 (f) (providing that the Redevelopment Dissolution Law does not interfere with an agency’s authority under enforceable obligations to “enforce existing

covenants and obligations, or . . . perform its obligation.”). The Implementation Agreement and several other Transbay obligations are “enforceable obligations” requiring OCII to take the actions proposed by this Resolution. Cal. Health & Safety Code § 34171 (d) (1); and,

WHEREAS, On April 15, 2013 the California Department of Finance (“DOF”) approved OCII’s request that DOF determine “finally and conclusively” that the Implementation Agreement, AB 812 and the Pledge Agreement are enforceable obligations that will not require additional DOF review in the future. On September 10, 2013, through an email from DOF’s Assistant Program Budget Manager to OCII’s Executive Director, DOF interpreted this Final and Conclusive Determination as meaning that “any sale, transfer, or conveyance of property related to this project, and as outlined in the project documents, is authorized” and further verified that it would not initiate an “objection to any sale, transfer and/or conveyance of property related to this project.”; and,

WHEREAS, The original proposal from Golub/Mercy included a purchase price of \$30,000,000, 545 residential units (409 market-rate units, including 61 inclusionary units and 136 stand-alone affordable units), and a requested subsidy from the Former Agency for the stand-alone affordable units of approximately \$200,000 per unit. However, due to the dissolution of the Former Agency on February 1, 2012, and the challenges that created for funding the affordable component of the development, the original proposal from Golub/Mercy was revised; and,

WHEREAS, On April 16, 2013, the Commission approved the development and disposition agreement (“DDA”) and schematic designs (the “Schematic Design”) for Blocks 6/7; and,

WHEREAS, On August 19, 2014, the Commission approved a revision to the Schematic Design for Block 7 to add eight units on an additional floor, made some minor modifications to the ground floor, and eliminated the basement level. The revised design and additional height were consistent with the DCDG, the DDA and the RFP. The revised Block 7 development program increased the total affordability of Blocks 6/7 from 26% in the initial revised plan (of a 77-unit project) to 28% in the updated revised plan (of an 85-unit project); and,

WHEREAS, On August 18, 2015, the Commission approved a second revision to the Transbay Block 7 Schematic Design (“Second Revised Schematic Design”), which was consistent with the DCDG. The Second Revised Schematic Design added three stories to the westernmost, mid-rise podium building; added two additional stories to the easternmost, mid-rise podium building; and increased the development’s total unit count by 35 extra units. The updated design also further refined the ground floor plans of the two mid-rise podium buildings and the development’s outdoor space, resulting in 120-units (53 one-bedroom units, 43 two-bedroom units, and 23 three-bedroom units, and one two-bedroom manager’s unit), a childcare facility and an associated open space (the “Project”); and,

- WHEREAS, The Department of Building Inspection (“DBI”) in reviewing the Project’s plans has determined the proposed structures on Block 7 to be seismically safe and, that, during a major seismic event, the tallest portions of the structures will sway nine inches. Since the second revision of the Schematic Design authorized portions of the 85-foot-high podium structures to be located at the northern property line, adjacent to an existing, privately owned lot, DBI requires that the entire structure be shifted nine inches away from that northern property line since it does not allow for the sway of the structure to encroach onto neighboring properties; and,
- WHEREAS, In compliance with DBI requirements, the Third Revised Schematic Design consists of a shift of the Project’s footprint nine-inches to the south, thereby encroaching nine inches into the required minimum six-foot townhouse setback on Clementina Street; and,
- WHEREAS, The encroachment into Block 7’s minimum six-foot townhouse setback on Clementina Street by nine inches, which results in a five-foot, three-inch setback, requires the Commission to grant a variation to the DCDG’s townhouse setback control; and,
- WHEREAS, The enforcement of the required townhouse setback would otherwise result in practical difficulties for the Project due to extraordinary circumstances and create undue hardship for the property owner, including economic shortfalls and the inability to meet pending financing deadlines; and, said enforcement would constitute an unreasonable limitation beyond the intent of the Redevelopment Plan, the Planning Code, the Design for the Development or the DCDG; and,
- WHEREAS, OCII has found that the reduced townhouse setback is solely on the Block 7 Clementina Street frontage, that there are no existing or proposed townhouse developments on the northern frontages of Clementina Street on either block adjacent to Block 7, and that, since there would be no break in streetwall rhythm, the nine-inch variation is in harmony with the Redevelopment Plan, the Design for Development, and the DCDG; and,
- WHEREAS, OCII has found that the reduction in the townhouse setback by nine inches is minimal and that the setback is largely maintained and will provide areas for landscaping, townhouse stoops, and for ample light and air, and is, therefore, in harmony with the Redevelopment Plan, the Design for Development, and the DCDG, and shall not be materially detrimental to the public welfare or materially injurious to neighboring property or improvements in the vicinity; and,
- WHEREAS, A copy of the Third Revised Schematic Design is on file with the Commission Secretary in the OCII office; and,
- WHEREAS, On April 20, 2004, the Former Agency Commission adopted Resolution No. 45-2004, certifying the Final Environmental Impact Statement/Environmental Impact Report (the “Final EIS/EIR”) for the Transbay Redevelopment Project, and on January 25, 2005 adopted Resolution No. 11-2005, adopting findings under the

California Environmental Quality Act (“CEQA”), a Statement of Overriding Considerations and a Mitigation Monitoring and Reporting Program in connection with the adoption of the Redevelopment Plan. The Board of Supervisors and the City Planning Commission adopted similar findings. Because the Final EIS/EIR includes evaluation of the new TTC, the TJPA also adopted environmental findings; and,

WHEREAS, The Final EIS/EIR includes by reference eight addenda. Addenda 1 through 7 were related to changes in the transportation infrastructure in the Project Area and Addendum 8 was related to a proposed height increase of the Transbay Block 1 tower parcel; and,

WHEREAS, The eight addenda to the Final EIS/EIR do not affect, change, or impact the development as proposed on Blocks 6/7; and,

WHEREAS, In adopting each addendum, the lead agencies determined that modifications to the Project would not require subsequent environmental review and would not require major revisions to the Final EIS/EIR; and,

WHEREAS, The Final EIS/EIR is a program EIR under CEQA Guidelines Section 15168 and a redevelopment plan EIR under CEQA Guidelines Section 15180. The Final EIS/EIR is also a project EIR under CEQA Guidelines Section 15161 for certain structures and facilities, including the Temporary Terminal. The development of approximately 556 units of market-rate and affordable housing on Transbay Blocks 6/7 is an undertaking pursuant to and in furtherance of the Redevelopment Plan in conformance with CEQA Sections 15180 and 15168; and,

WHEREAS, OCII staff has reviewed the Third Revised Schematic Design for the Project and finds the proposed actions to be Implementing Actions to facilitate construction of market-rate and affordable housing on Transbay Block 7 and within the scope of the Project analyzed in the Final EIS/EIR and subsequent addenda and no additional environmental review is required pursuant to State CEQA Guidelines Sections 15180 and 15168; and,

WHEREAS, OCII staff, in making the necessary findings for the Implementing Actions contemplated herein, considered and reviewed the Final EIS/EIR and addenda, has made documents related to the Implementing Actions, the Final EIS/EIR, and addenda available for review by the Commission on Community Investment and Infrastructure (“CCII”) and the public, and these files are part of the record before CCII; and,

WHEREAS, The Final EIS/EIR findings and statement of overriding considerations adopted in accordance with CEQA by the Agency Commission by Resolution No. 11-2005 dated January 25, 2005 were and remain adequate, accurate and objective and are incorporated herein by reference as applicable to the Implementing Actions; now therefore, be it

RESOLVED, The Commission on Community Investment and Infrastructure finds and determines that the approval of the Third Revised Schematic Design and granting a variation of the required Clementina Street townhouse setback are Implementing Actions within the scope of the project analyzed in the Final EIS/EIR and Addenda and requires no additional environmental review pursuant to State CEQA Guidelines Sections 15180, 15168, 15162 and 15163 for the following reasons:

- a. The Implementing Actions are within the scope of the project analyzed in the Final EIS/EIR and Addenda 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 Final EIS/EIR; and,
- b. No substantial changes have occurred with respect to the circumstances under which the project analyzed in the Final EIS/EIR and Addenda was undertaken that would require major revisions to the Final EIS/EIR due to the involvement of new significant environmental effects, or a substantial increase in the severity of effects identified in the Final EIS/EIR; and,
- c. No new information of substantial importance to the project analyzed in the Final EIS/EIR and Addenda has become available which would indicate that (a) the Implementing Actions will have significant effects not discussed in the Final EIS/EIR; (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 Final EIS/EIR will substantially reduce one or more significant effects on the environment; and, be it further

RESOLVED, The Commission on Community Investment and Infrastructure, acting as the Successor Agency to the Redevelopment Agency of the City and County of San Francisco, hereby approves the Third Revised Schematic Design for a proposed affordable housing development on Transbay Block 7 and grants a variation of the required six-foot minimum townhouse setback on Clementina Street to reduce the required townhouse setback by nine inches, resulting in a five-foot, three-inch townhouse setback on the north frontage of Clementina Street on Transbay Block 7.

I hereby certify that the foregoing resolution was adopted by the Commission at its meeting of February 16, 2016.



Commission Secretary