



126-0102023-002

Agenda Item **No. 5 (c)**
Meeting of November 7, 2023

MEMORANDUM

TO: Commission on Community Investment and Infrastructure

FROM: Thor Kaslofsky, Executive Director

SUBJECT: Approving termination of an Agency Ground Lease, and transfer to the City and County of San Francisco ("City") of its interests in the Agency Ground Lease, that is between the Successor Agency to the Redevelopment Agency of the City and County of San Francisco ("Successor Agency") and the City for the Mission Bay Open Space parcels; approving a joint community facilities agreement between the Successor Agency, acting in its capacity as Community Facilities District ("CFD") No. 5, and the City, acting through the Recreation and Parks Department and Port of San Francisco, for the funding of maintenance of the Mission Bay Open Space parcels, subject to appropriation in the annual CFD budget; Mission Bay North and South Redevelopment Project Areas

EXECUTIVE SUMMARY

Under the 1998 Mission Bay North and South Owner Participation Agreements ("OPAs"), FOCIL-MB, LLC ("FOCIL" or "Mission Bay Master Developer") is responsible for constructing public park, plaza, and open space improvements in Mission Bay ("Open Space") on land that the Mission Bay Master Developer previously owned and that ultimately was conveyed to the City. Also in 1998, Redevelopment Plans for the Mission Bay South and Mission Bay North Project Areas were adopted to, among other things, govern land uses in the Project Areas ("Redevelopment Plans").

The former Redevelopment Agency of the City and County of San Francisco ("Former Agency") and now its successor, the Office of Community Investment and Infrastructure ("OCII"), has the responsibility to 1) reimburse the Mission Bay Master Developer for the costs of construction and 2) manage and pay for the cost of maintenance of the Open Space within CFD No. 5, which will total 41.5 acres upon completion. To fulfill its property management responsibility, the Former Agency entered into a long-term Ground Lease ("Agency Lease") with the City whereby the Former Agency agreed to maintain the Open Space with funding from special tax assessments levied on Mission Bay property owners

London N. Breed
MAYOR

Thor Kaslofsky
EXECUTIVE DIRECTOR

Bivett Brackett
CHAIR

Dr. Carolyn Ransom-Scott
Vanessa Aquino
Tamsen Drew
COMMISSIONERS

One S. Van Ness Ave.
5th Floor
San Francisco, CA
94103

415 749 2400

www.sfocii.org

within CFD No. 5, as authorized under the Mello-Roos Community Facilities District Act. To date 24.2 acres of Open Space have been developed and opened to the public. Ten parks in the Open Space totaling 17.3 acres remain to be built and or are being used on an interim basis.

The implementation of the Redevelopment Dissolution Law established OCII as the Successor Agency to the Former Agency and required it to dispose of the Former Agency's real property interests. In December 2015, the California Department of Finance ("DOF") approved OCII's Long Range Property Management Plan ("PMP") that the Oversight Board had approved by Resolution No. 14-2015 (November 23, 2015) and that provided for, among other things, a transfer of property management responsibilities to the City through an early termination of the Agency Lease of the Open Space upon completion of certain phases.

Over the past several years, OCII has worked with the City's Real Estate Division ("RED"), Recreation and Parks Department ("RPD"), the Port of San Francisco ("Port") and Department of Public Works ("Public Works") on a plan for the transfer of maintenance responsibility of the Open Space. On June 6, 2023, the OCII Commission approved, by Resolution No. 18-2023 and Resolution No. 19-2023, Memoranda of Agreement ("MOA") with RPD and the Port for maintenance and operations of their portions of the Open Space beginning July 1, 2023. Since then, OCII, RPD, the Port, RED and Public Works have been working to terminate the Agency Lease and create a new long-term joint community facilities agreement ("Agreement") for the maintenance and operations of Mission Bay Parks and Open Spaces between OCII, RPD and the Port which details the funding of the maintenance of the Open Space using CFD No. 5 funds.

The termination of the Agency Lease, transfer of Open Space responsibilities, approval of the Agreement and transfer of jurisdiction of the Open Space to RPD and Port will require approval by the Board of Supervisors ("BOS") OCII will remain the administrator of CFD No. 5 and provide CFD No. 5 funds for Open Space maintenance until the CFD terminates at the end of fiscal year 2043-44 ("FY").

Staff recommends the Commission authorize the Agreement terminating the Agency Lease and establishing procedures for payments for Open Space maintenance with CFD No. 5 funds.

BACKGROUND

Mission Bay Open Space System

In November 1998, the Former Agency and the Mission Bay Master Developer entered into the OPAs authorizing a mixed-use, mixed-income transit-oriented development on 302 acres of land. Under the OPAs, the Mission Bay Master Developer is required, among other things, to develop Open Space on land that it conveyed to the City as part of the Land Transfer Agreements (described below) or on Port land, which the City, including the Port, in turn leased to the Former Agency for Open Space maintenance purposes.

The Land Transfer Agreements between the Mission Bay Master Developer, RED and the Port, were executed in 1998 and include:

- Amended and Restated Mission Bay City Land Transfer Agreement ("CLTA").
- Amended and Restated Mission Bay Port Land Transfer Agreement ("PLTA").

- Amended and Restated Agreement Concerning the Public Trust. Includes the State of California as a party, ("Public Trust Agreement").

Together, the OPAs, the CLTA and the PLTA require the City and the Port to lease approximately 41.5 acres of City and Port-owned land designated as Open Space in the Redevelopment Plans to the Former Agency. After the Mission Bay Master Developer completes and transfers the Open Space improvements to the City, OCII is then required to lease the completed Open Space improvements from the City and to maintain them using funds generated from CFD No. 5.

The Agency Lease for the Open Space terminates in 2046 and currently covers over 24 acres. The OPAs and Agency Lease require OCII to add Open Space, as it is developed, to the Agency Lease after the City and the OCII have received the Mission Bay Master Developer's notice that the Open Space has been completed and the City accepts the improvements ("the Completed Parcels").

There are 18 Completed Parcels. All are open to the public and managed by OCII through MOAs with RPD and the Port under the Agency Lease including:

- Portions of Mission Creek Park, including the sports courts (parks P1, P3 and NP1-NP5).
- Four parks along Terry François Boulevard (parks P18, P21, P23 and P24).
- The first two segments of the Mission Bay Commons Park (parks P16 and P17).
- Mariposa Park adjacent to the USCF Hospital (P26).
- Kids Park (P6).
- Dog Park (P5).
- Small Open Space parcels at the western edge of Mission Bay Drive (P10 and P11/11A).

In FY 2023-24, Park P22, which is a 5.4 acre park along the San Francisco Bay, located just east of Chase Center, will be opened to the public and added to the Open Space for which OCII will have funding responsibility under CFD No. 5. Attachment 1, the Mission Bay Open Space System Map, depicts Open Space that is in different stages of completion.

Mission Bay Open Space (completed and future)

Park/Open Space	Approximate Acreage
COMPLETE	
Mission Bay North	
• NP1, NP2, NP3, NP4 & NP5	6.52
Mission Bay South	
• P1, P3, P5, P6, P10, P11/11a, P16, P17, P18, P21, P23/24 & P26	17.76
FUTURE	
Mission Bay South (FY 2023-24)	
• P22	5.4
Mission Bay South	
• P2, P7, P8, P9, P12, P13, P15, P19 & P27	11.86
Grand Total	41.54

Long Range Property Management Plan

Redevelopment Dissolution Law requires OCII to dispose of the Former Agency's real property interests under the DOF-approved PMP. The PMP was drafted with input from various parties, including the Mission Bay Citizens Advisory Committee ("MBCAC"), the Mission Bay community and the Commission. Under Redevelopment Dissolution Law, the Oversight Board had final authority over the PMP subject to DOF review. The Oversight Board approved the PMP, by Resolution Nos. 12-2013 and 14-2015, and on December 7, 2015, the DOF approved the PMP, which established the transfer of Open Space under the Agency Lease to the City.

Current Open Space System Management

On June 6, 2023, the OCII Commission approved, by Resolution No. 18-2023 and Resolution No. 19-2023, separate MOAs for RPD and the Port to assume an initial phase of maintenance and operations responsibilities of the Mission Bay Open Space starting July 1, 2023. The resolutions included budget approval through December 31, 2023.

Since July 1, 2023, RPD has focused on maintaining the high quality of the parks, while learning the individual characteristics of the new parks. RPD staff has attended all MBCAC meetings, to develop strong relationships and communication with the Mission Bay community. RPD has added 14 dedicated positions to Mission Bay, included (1) Park Services Manager, (1) Park Section supervisor, 3 custodians, 1 custodial supervisor, 1 gardener captain, 6 gardeners, and 2 Park Ranger, as well as 4 public service trainees. RPD has hosted 2 volunteer workdays and has 7 more scheduled in the coming weeks. RPD has many highly skilled union positions, including plumbers, carpenters, painters, iron workers, arborists, stonemasons, electricians and more, who are available as needed to work in Mission Bay.

The Port has similarly been diligently working to continue providing great care of its new Mission Bay parks and parcels since the July 1, 2023, transition. Located less than ¼ mile from the parks, the Port's Maintenance division has a full complement of trades to provide service to the parks and parcels. The Port has been able to make upgrades and repairs to the irrigation system at P24 and weeding of all of the tree wells along Terry Francois Blvd. The Port hired ParkLab Open Space Management owner/former Mission Bay Open Space general manager Cathy Hickey to the Port team to manage the programming of our Mission Bay parks and other Port parks and open spaces. Her addition will bring years of knowledge and experience around Mission Bay park management to the Port. Additionally, the Port is in the process of bringing on a Park Section Supervisor, 3 Gardeners and 2 Laborers in anticipation of the opening in early 2024 of the new 5.4 acre Bayfront Park (P22) across from the Chase Center.

Funding for Open Space Management

In December 1999, as required by the OPA, the Former Agency formed, by Resolution No. 217-99, CFD No. 5 to collect special taxes for the purpose of operating, maintaining, and repairing the Open Space for until 2043. All funding for maintenance of the Open Space is derived from special taxes paid by Mission Bay property owners, including UCSF, but excluding affordable housing sites. OCII is the administrator of CFD No. 5 and annually levies and collects the special taxes within CFD No. 5 according to the formula in the Commission-approved Rate and Method of Apportionment. OCII will continue as the CFD administrator and funder of the maintenance of the Mission Bay Open Space until the CFD terminates at the end of FY 2043-44.

When CFD No. 5 was established in 1999, the annual assessment was based on cost estimates to maintain the Open Space for 45 years. However, the actual costs to maintain the Open Space have exceeded the annual CFD No. 5 increases that are the lesser of CPI or 5.5%. Furthermore, City wide enjoyment of the Open Space, and therefore wear and tear on the Open Space, has been greater than anticipated, resulting in greater maintenance costs. Since the Open Space system is not fully built out, the annual assessments have been sufficient to cover operating costs and to create a set-aside fund for repairs or funding shortfalls. For FY 2023-24, a portion of the set-aside funds will be used to offset a projected shortfall. As more parks are built, future shortfalls will continue for the life of CFD No. 5. The set-aside funds are projected to cover any shortfalls for the next five years, after which the City may have to supplement the CFD No. 5 funds for RPD and Port costs in maintaining the Open Space.

DISCUSSION

The state-approved PMP proposed an early termination or transfer of the Agency Lease obligations to the City. The Agency Lease provides for a transfer of OCII's interests to the City as successor so long as the transfer does not adversely affect certain specified development interests of the Mission Bay Master Developer.¹ To date OCII has not transferred any portion of the Agency Lease obligations due to the complexities of the negotiations of having the City assume jurisdiction over new parks and construction and other administrative issues. Over the past two years, OCII has worked with RED, RPD, the Port and Public Works to finalize the Open Space transfer and now is prepared to terminate the Agency Lease and enter into an Agreement with RPD and the Port to provide CFD No. 5 funds for the Open Space maintenance and operations.

RPD and The Port

RPD manages over 4,000 acres of recreational land, which includes 181 playgrounds and play areas, 82 recreation centers and club houses, 222 neighborhood parks, serving San Francisco residents and visitors. RPD's long-term commitment, values, mission, ties with community partners, and broad reach make it the ideal party to operate the RPD Open Space Parcels.

The Port manages 7.5 miles of waterfront subject to the Public Trust and Burton Act Trust that is home to popular destinations and attractions, historic districts, small businesses and robust maritime opportunities. The Port manages 150 acres of shoreline open spaces and parks that serve all Californians and visitors from around the world. The Port works to advance environmentally and financially sustainable maritime, recreational, and economic opportunities for the City, Bay Area, and California.

¹ A transfer of Agency Lease interests to the City as the successor to OCII is permitted where "such transfer does not (a) preclude or materially increase the cost of compliance with the Redevelopment Plans or the applicable Plan Documents; (b) do any of the following: (i) affect the rights or obligations of Owner under the applicable Plan Documents, (ii) alter the permitted use, (iii) decrease the height of any building, (iv) delay development, or (v) reduce the density or intensity of development contemplated under the applicable Plan Documents; or (iv) otherwise take any action inconsistent with the North ICA or South ICA, as applicable." Ground Lease, Section 20.4 at p. 22.

Mission Bay Agreement Terms

Agency Lease Termination

The termination of the Agency Lease will release OCII from the responsibilities, liabilities and indemnifications associated with the Agency Lease. The City anticipates enacting an ordinance pursuant to which the Mission Bay Parks will be transferred to the jurisdiction of Port and RPD (the "Transfer Ordinance"). As required in the Agency Lease, OCII has obtained FOCIL's consent to terminate the Agency Lease.

Term

OCII's CFD funding of the Agreement shall continue until the CFD expires at the end of FY 2043-44.

RPD and Port Budgets

On an annual basis the Commission will approve the CFD No. 5 budget, and in no instance is OCII required to provide any funding beyond what is available in CFD No. 5. Both RPD and the Port annual budgets, which together totaled \$3,350,774, are part of the FY 2023-24 CFD No. 5 budget approved by the Commission by Resolution No. 12-2023. OCII will reimburse RPD and Port costs in arrears using CFD No. 5 funds through a review and approval process described in the Agreement. CFD No. 5 funds will not be used for any other park system within the larger RPD and Port portfolios. Future CFD No. 5 budgets will continue to be reviewed and approved by the Commission until the CFD terminates at the end of FY 2043-44.

The current MOAs include a \$950,000 six-month budget for RPD and \$510,000 six-month budget for the Port. These amounts are part of the approved FY 2023-24 CFD No. 5 budget.

Port and RPD Jurisdiction

Attachment 2 is a map indicating the Open Spaces the Port will manage, and Attachment 3 is a map indicating the Open Spaces RPD will manage, see the summary below:

The Port will be responsible for:

- P18, P19, P21, P23 and P24.
- P22 (once completed).

RPD will be responsible for:

- NP1-NP5, P1 and P3 of Mission Creek Park, P16 and P17 of Mission Bay Commons, P5, P6 (Kids Park), P10, P11/11a and P26 of Mariposa Park,
- And P7, P9, P2/P8 of Mission Creek Park, P27 and P12, P13 and P15 of the Mission Bay Commons (once completed).

Maintenance and Management Responsibilities

RPD and the Port's responsibilities will continue to include overall management of the parks, landscape gardening, janitorial and general maintenance, security and events permitting/reservations, including the following:

- Management and General Operations: Oversight of Mission Bay Open Space operations, including tasks such as coordinating and supervising all landscaping, janitorial, maintenance, and security services; providing an on-site property manager; maintaining all mechanical and constructed systems; coordinating and promoting special events; issuing permits for use of facilities; and providing customer service and resolving day-to-day issues as they arise.
- Landscape Maintenance: Maintenance of all landscaped and planted areas including lawn areas, trees, shrubs, plantings, and ground cover, in a healthy, attractive, and safe condition.
- Janitorial: Trash removal, sweeping, and janitorial services, as well as graffiti abatement and general maintenance services for all hardscape and constructed areas, including pathways, and all site furnishings, as well as of park structures.
- Security: A combination of onsite and roving Park Rangers for RPD and 3rd party security for the Port will be provided. Additional security may be provided as needed for special events.
- Event Permitting/Reservations: RPD has incorporated the Mission Bay Open Space into its existing permitting/reservations system. The Port has a permitting/reservations program for medium to large size events and is currently working on a reservation system for smaller events which they plan to implement by the end of the year.

To monitor the work performed, the Port and RPD will be required to submit quarterly reimbursement reports to OCII detailing expenditures and services provided, and on an annual basis (or as needed) OCII will review the Operations Plan with the Port and RPD and make changes as necessary. In addition to the reporting specified in the Agreement, for RPD, Section F1.102 of the City Charter requires the City Controller to conduct annual audits of the City's park maintenance and cleaning obligations.²

CITIZENS ADVISORY COMMITTEE

From January 2022 through May 2023, OCII, RPD and the Port presented information on the Open Space jurisdictional transfers to the MBCAC that addressed topics and concerns in the community regarding a continuation of the level of service under the former OCII open space contractors and the overall necessity under the PMP and Dissolution Law of the transfer of the Open Space from private to City management. The MBCAC voted in favor of recommending the MOAs to the Commission for approval on April 13, 2023.

On September 14, 2023, OCII staff presented the framework of the Agreement and Agency Lease termination to the MBCAC. Questions from the public included how OCII would stay involved in oversight of the Open Space management, what the long-term plan was for the Mission Bay Commons that currently hosts interim uses of the SPARK food truck park and mini golf, and what would happen if the cost to maintain the parks exceeds CFD No. 5 revenue. Members of the public were reassured that OCII would remain the administrator of the CFD No. 5 funds and would review quarterly

² Section F1.102 https://codelibrary.amlegal.com/codes/san_francisco/latest/sf_charter/0-0-0-4222

Audit scores: <https://sfgov.maps.arcgis.com/apps/MapSeries/index.html?appid=04937b03318a44ae81d90c240de4e3d1>

reimbursements requests from the Port and RPD and that if CFD No. 5 funds were not adequate to fund maintenance that it was the City's responsibility to fill the funding gap. They were also notified of the public process future parks would undergo for programming and design, including the Mission Bay Commons. The MBCAC voted in favor of recommending the Agreement and Agency Lease termination. At every MBCAC meeting since RPD and the Port assumed maintenance and operational responsibility on July 1, 2023, the feedback from the MBCAC Members and community at large has been positive. Only one complaint, which was about a nominal fee being charged for staff time to open and close the Pavilion in Park P1 for Community use, has been received by staff in the past 4 months.

SMALL BUSINESS ENTERPRISE PROGRAM COMPLIANCE

The City and the Port generally employ staff that are members of Local 261 within their respective agencies to staff the Mission Bay Open Space portfolio. If any outside contracting is utilized in the future, both entities will adhere to their respective City public contracting and workforce goals and requirements.

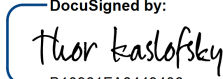
CALIFORNIA ENVIRONMENTAL QUALITY ACT

Approval of the Agreement is categorically exempt from the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines Section 15301 and 15304 because it authorizes the operation, repair, maintenance or minor alteration of existing open space facilities or features with negligible or no expansion of existing uses and minor alterations to land.

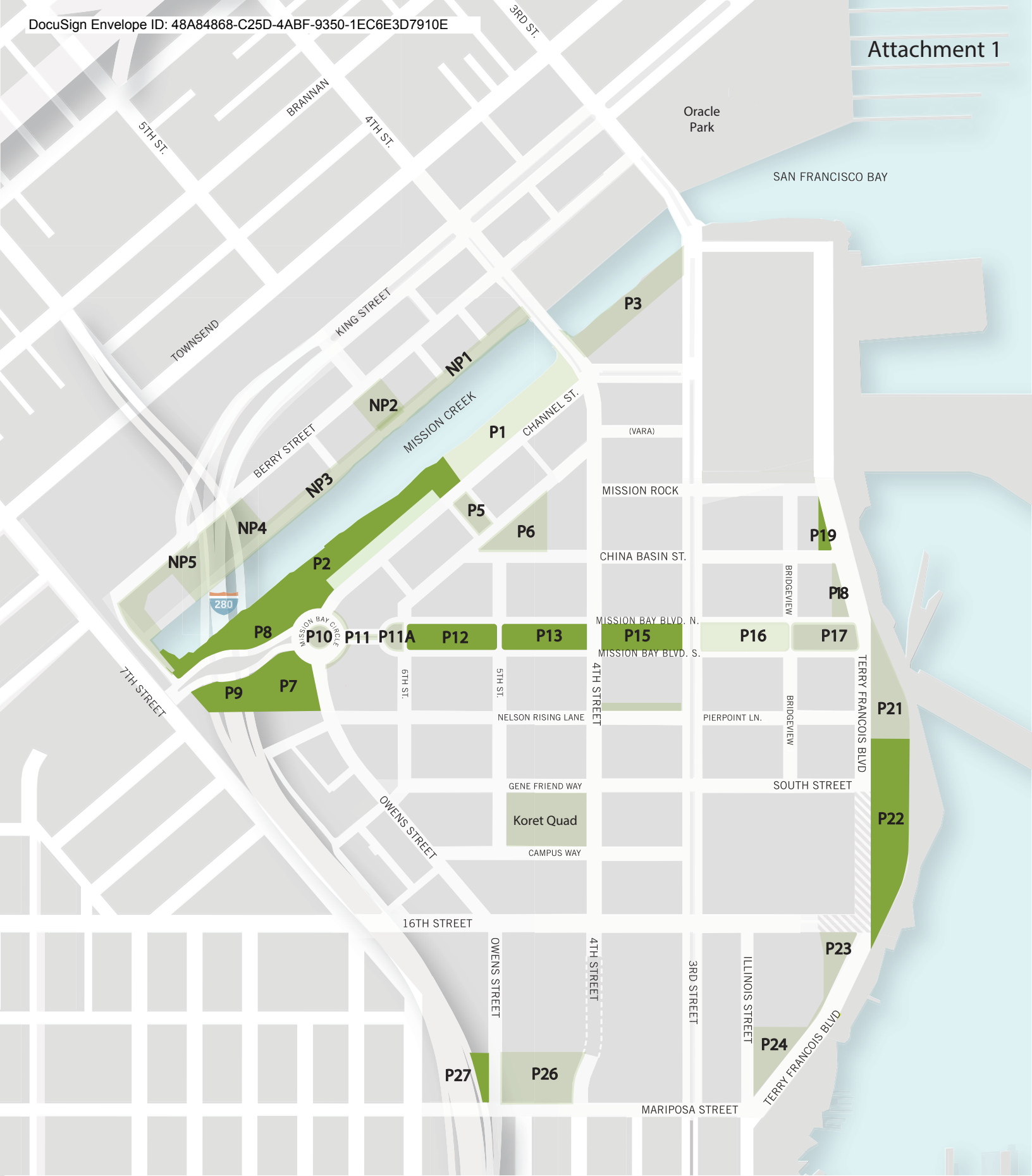
NEXT STEPS

OCII staff will continue to work with the City on the necessary legislative and legal actions needed to remove the public right of ways designation and terminate the Agency Lease. During the continued wind-down, OCII will remain the administrator of CFD No.5 through the end of FY 2043-44 when the CFD terminates. Also, OCII will remain the design, programming and permitting lead in working with FOCIL to build the remaining parks. Future park designs will be brought to both the MBCAC and the Commission for review and approval.

(Originated by Marc Slutzkin, Deputy Director and Gretchen Heckman, Senior Development Specialist)

DocuSigned by:

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Thor Kaslofsky
Executive Director

Attachment 1:	Mission Bay Open Space System Map
Attachment 2:	Mission Bay Open Space to be managed by RPD Map
Attachment 3:	Mission Bay Open Space to be managed by the Port Map

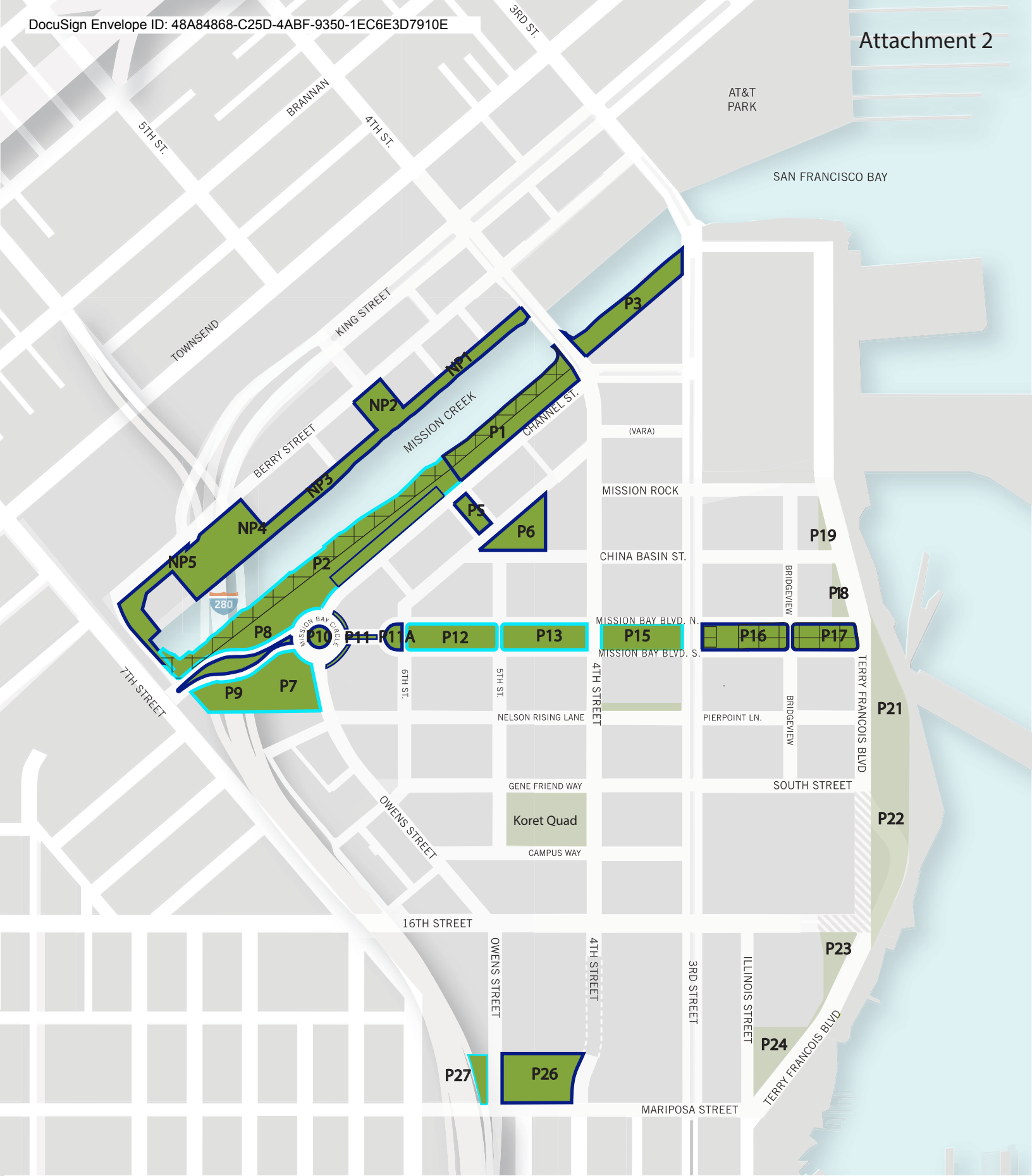


Undeveloped Parks

MISSION BAY UNDEVELOPED PARKS

OCTOBER 2023





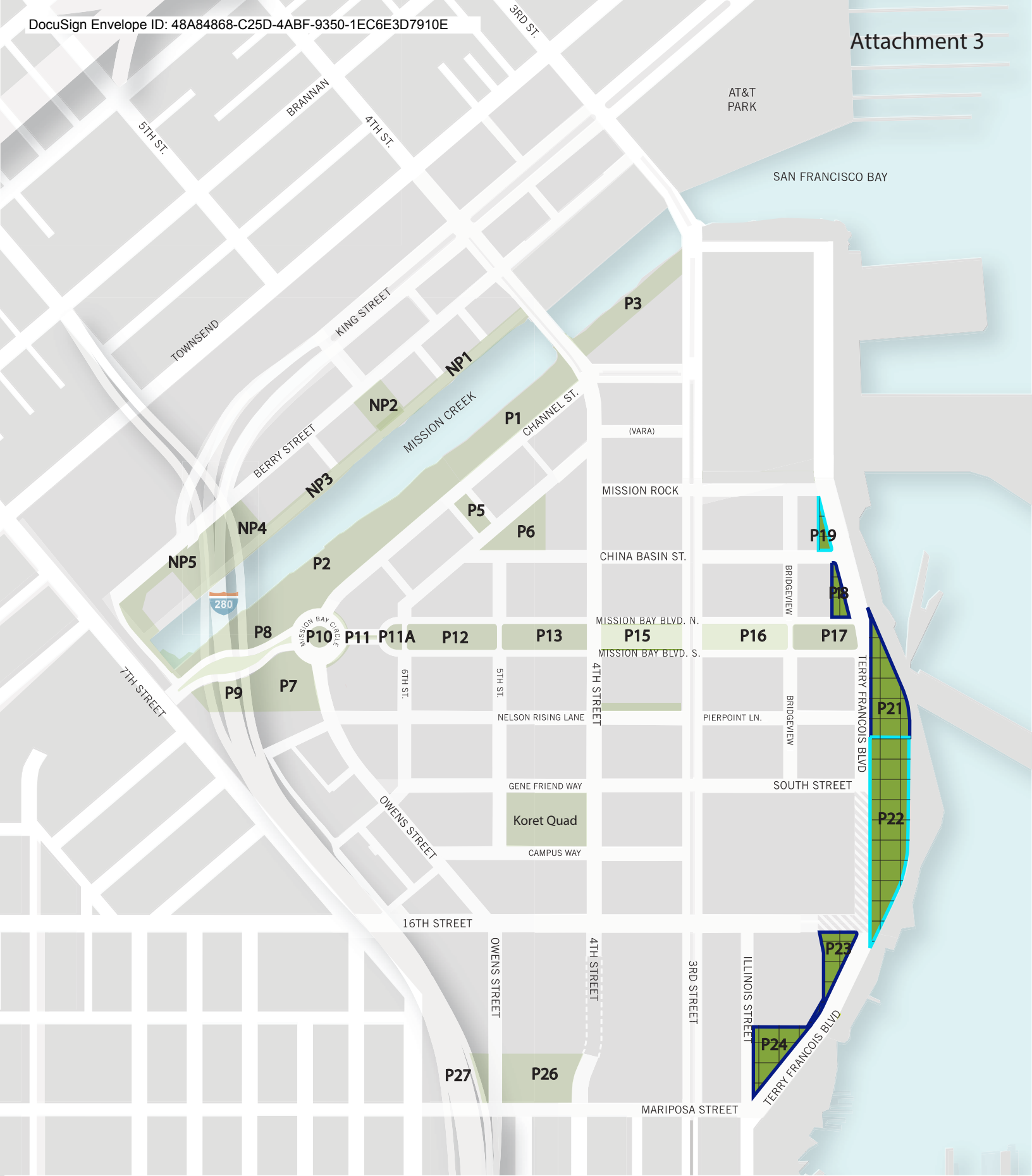
 Future
 Complete

 RPD Maintained
 Burton Act

MISSION BAY PARKS RPD

SEPTEMBER 2023





Future / Under Construction

Complete

Port Maintained

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