

Brandt-Hawley Law Group

Chauvet House • PO Box 1659
Glen Ellen, California 95442
707.938.3900 • fax 707.938.3200
preservationlawyers.com

November 2, 2015

Tiffany Bohee, OCII Executive Director
c/o Brett Bollinger, San Francisco Planning Department
via email warriors@sfgov.org

Subject: Warriors Event Center & Mixed Use Development
Inconsistency with Mission Bay South Redevelopment Plan
'Secondary Use' Classification

Dear Director Bohee and Mr. Bollinger:

The Mission Bay Alliance (the Alliance) contends that the Warriors' Event Center is unlawfully inconsistent with every use allowed by the Mission Bay South Redevelopment Plan (the Plan). Although the Alliance raised this issue in comments on the Draft Subsequent EIR (DSEIR), both the Responses to Comments in the Final SEIR and OCII's findings of project consistency remain materially inadequate.

The Plan designates uses allowed at a 'Commercial Industrial/Retail' site. The Alliance notes that while OCII now concedes that a sports arena is not within the scope of allowed 'principal uses' in that zoning, OCII contends that an arena is consistent with 'secondary uses.' As this letter will explain, all such secondary uses are similarly and demonstrably insufficient to permit the Warriors' sports arena.

Nighttime Entertainment. The Initial Study concluded, in error, that the DSEIR did not need to address land use issues — at all. It asserted that the entire Event Center, including the sports arena use, somehow met the secondary 'Nighttime Entertainment' use analyzed in the 1998 Plan EIR. Secondary uses were then generally referenced in the DSEIR (*e.g.*, pp. 3-8, 3-51, 4-5, 5.2-115), but there was no discussion of which category of secondary use would be allocated to the Event Center, inferring acceptance of the Nighttime Entertainment category.

The Plan describes Nighttime Entertainment in terms of small-scale local uses like dance halls, bars, nightclubs, discotheques, nightclubs, private clubs, and

restaurants. (Plan, p. 50.) At the time of the 1998 EIR, several small neighborhood bars occasionally offered nighttime entertainment, consistent with the secondary use category. Such minor uses were compatible with the 3rd Street Corridor and the waterfront. Clearly, no mammoth regional entertainment venue was anticipated in Mission Bay South and no such use was considered in the 1998 Plan EIR.

And while professional basketball games are held at night, the Event Center also projects 31 annual events “related to conventions, conferences, civic events, corporate events and other gatherings,” with an estimated attendance of between 9,000 and 18,500 patrons. “[T]he majority of events are expected to occur during day time hours.” Such events are not ‘Nighttime Entertainment.’

The Director’s currently-proposed findings that the sports arena is ‘Nighttime Entertainment’ contemplated as a secondary use in the Plan are unsupported. The findings fail to match the scope and impacts of a professional sports venue with the analysis or description of uses in the Plan or in the 1998 EIR. The findings are fatally conclusory; that somehow a professional sports venue would be “similar” to a nightclub or bar use in the ‘Nighttime Entertainment’ category “because” it will serve alcohol, provide amplified live entertainment, and provide a venue for evening gatherings. The findings fail to address the core inconsistency of a regional sports arena with the intent of the adopted Plan and the Design for Development, which focus on commercial entertainment uses in Mission Bay North to complement the Giants’ ballpark.

OCII’s reliance on the negative; to wit, that the ‘Nighttime Entertainment’ secondary use has no specific size limitations, is not enough. The Plan provides for the continued development of Mission Bay South as a walkable urban community intended to facilitate world-class medical and biotechnology development. The Event Center project violates the Plan Area Map carefully designed in classic, walkable Vara Blocks. (Plan, Attachment 2, p. 40.) Neither the Plan nor the Design for Development contemplate any uses comparable in scope or impact to the Event Center as ‘Nighttime Entertainment.’

That being said, in fact in the Final SEIR and as reflected in the proposed Plan consistency findings, OCII now implicitly agrees with the Alliance that the ‘Nighttime Entertainment’ secondary use standing alone does not encompass a sports arena. Now, OCII additionally relies on the Plan’s alternate ‘secondary uses.’ No such uses are consistent with the Plan, as explained below.

Recreation Building. One of the Plan's secondary use categories is for an undefined 'Recreation building.' (Plan, p. 15.) The Plan describes 'Outdoor Recreation' as "an area, not within a building, which is provided *for the recreational uses of patrons* of a commercial establishment." (Plan, p. 50, italics added.)

OCII's proposed findings as to the 'Recreation building' category stretch the regional sports arena use not only beyond what was contemplated by the Plan or studied in the 1998 EIR, but beyond logic. To state the obvious: there is a difference between 'recreation' and 'entertainment.' Both involve enjoyment and leisure, and may involve ancillary eating and drinking, and the Alliance has no quarrel with the Director's reference to recreation as "something people do to relax or have fun; activities done for enjoyment." (OCII Proposed Secondary Use Determination, p. 6.) But myriad dictionary definitions confirm and it cannot readily be denied that 'recreation' is commonly understood to involve one's personal physical activities while 'entertainment' refers to events or performances designed to entertain others.

None of the Plan's various references to 'entertainment' include athletic activities normally considered 'recreation:' Adult Entertainment [bookstore or theater], Amusement Enterprise [video games], Bar [drinking and theater], Theater [movies and performance]. (Plan, Attachment 5, pp. 44-51.) Consistently, the 1998 EIR's discussion of 'recreational' land uses focused in turn on open space, bicycles, parks, and water-based activities. (Mission Bay EIR, Volume IIB, pp. V.M. 15-28.).

In context, the Plan's reference to 'Recreation building' as a secondary use contemplates participatory recreational uses like the 'recreation facilities' referenced in the 1998 Plan EIR for the existing golf driving range and in-line hockey rink, with the expressed expectation that the size of recreational 'facilities' would decrease as redevelopment of the Plan area progressed. (OCII Proposed Secondary Use Determination, p. 6.)

Reliance on the secondary use of 'Recreation building' is unsupported.

Public Structure or Use of a Nonindustrial Character. As presented in the Plan, the category of "other secondary uses" labeled 'Public structure or use of a nonindustrial character' references *one* secondary use, not *two*. (Plan, p. 13.) The use is required to be public, and either a structure *or* a use.

The interpretation urged by the Director is, again, strained beyond the plain words of the Plan. 'Public' is not defined in the Plan and so its common meaning is assumed. But as proposed in the consistency findings, OCII interprets a 'public' use as simply requiring that the public be somehow 'served.' That would encompass every kind of principal and secondary use listed in the Plan, from child care to animal care to hotel, *etc.*, and renders the category meaningless: *i.e.*, "Any use is ok."

Instead, a public structure or use is commonly understood to be under the control and management of a public agency for the benefit of its constituency — such as the University of California¹ or the City of San Francisco. The Plan provides a description of a range of anticipated public improvements in Attachment 4. This list includes both public buildings and public uses. None of the public improvements listed in Attachment 4 include anything like a private professional sports arena.

The Event Center is a private project and is not within the scope of the secondary use category for a public structure or use of a nonindustrial character.

Director's Findings. As explained, the sports arena uses that are the impetus for the Event Center project are not allowed by the Plan's allowed principal or secondary uses. An allowed use is prerequisite for a finding of Plan consistency. The Alliance will not belabor the myriad other inconsistencies with the Plan's objectives, design, incompatibility with UCSF, and creation of significant environmental impacts, as those have been described in the DSEIR comments and throughout the administrative record, but hereby objects to their insufficiencies and lack of supporting substantial evidence for the Plan consistency finding.

Consideration of the Event Center project must be preceded by amendment of the Plan to be consistent with the delineated principal and secondary uses and the adopted Plan Area Map of the Mission Bay South Redevelopment Plan.

Thank you.

Sincerely yours,


Susan Brandt-Hawley
Attorney for Mission Bay Alliance

¹ See attached 2005 Resolution and Secondary Use finding regarding the "UCSF hospital" as a "public structure or use of a non-industrial character" for "a public body specifically created by the California Constitution."

RESOLUTION NO. 176-2005

Adopted November 1, 2005

APPROVING A MEMORANDUM OF UNDERSTANDING WITH THE REGENTS OF THE UNIVERSITY OF CALIFORNIA, A CALIFORNIA PUBLIC CORPORATION, AND ACKNOWLEDGING THE EXECUTIVE DIRECTOR'S FINDINGS OF CONSISTENCY WITH THE MISSION BAY SOUTH REDEVELOPMENT PLAN, FOR THE EXPANSION OF UCSF FACILITIES IN THE MISSION BAY SOUTH REDEVELOPMENT PROJECT AREA; MISSION BAY SOUTH REDEVELOPMENT PROJECT AREA

BASIS FOR RESOLUTION

1. On September 17, 1998, by Resolution No. 193-98, the Redevelopment Agency of the City and County of San Francisco's (the "Agency") Commission (the "Agency Commission") conditionally approved the Mission Bay South Owner Participation Agreement (the "South OPA") and related documents between Catellus Development Corporation (the "Owner") and the Agency for development in the Mission Bay South Redevelopment Project Area (the "Project Area").
2. On November 2, 1998, the Board of Supervisors of the City and County of San Francisco (the "Board") by Ordinance No. 335-98 approved and adopted the Redevelopment Plan for the Mission Bay South Redevelopment Project Area (the "Plan"). The Board's adoption of the Plan satisfied the conditions to the effectiveness of Agency Resolution No. 193-98.
3. On November 16, 1998, the Agency entered into the South OPA with the Owner. The South OPA sets forth phasing principles that govern the development of property in the Project Area. Those principles include the Owner's obligations to deliver to the Agency affordable housing sites as market rate housing is built in the Project Area. They also include the Owner's commitments to construct public open space and other public infrastructure adjacent to – or otherwise triggered by – development on any of the private parcels governed by the South OPA.
4. Under the South OPA and the related Mission Bay South Tax Increment Allocation Pledge Agreement (the "Pledge Agreement"), dated as of November 16, 1998, between the Agency and the City and County of San Francisco (the "City"), approximately 20% of the total property tax increment (plus certain excess tax increment) generated by development in the Project Area is contractually dedicated to develop affordable housing units on parcels that the Owner will contribute to the Agency, to achieve the affordable housing program contemplated by the Plan.

5. The South OPA requires the Owner to construct the public infrastructure directly related to each of the major phases in accordance with the incremental build-out of each project. Under the South OPA and the Pledge Agreement, the Agency is obligated to fund, repay or reimburse the Owner, subject to certain conditions, for the direct and indirect costs of constructing the infrastructure. The Agency has established a Community Facilities District ("CFD") for infrastructure in the Project Area. The Agency has also established a separate CFD to pay the costs of maintaining the public open space in the Project Area.
6. The South OPA provides that as a condition to any transfer of property in the Project Area, the Owner must obtain the agreement of the transferee to assume all of Owner's obligations under the South OPA with respect to the transferred parcels.
7. The Project Area includes an approximately 43-acre biomedical research and educational campus site (the "Campus Site") for the University of California, San Francisco ("UCSF"). UCSF has already invested about \$675 million on projects completed or underway on the Campus Site within the Plan Area and has plans to invest another \$225 million on projects in design.
8. The Regents of the University of California, a California public corporation ("The Regents") wishes to lease or acquire, and the Owner wishes to transfer Parcels 36, 37, 38 and 39 in the Project Area, comprising approximately 9.65 acres of land for the possible expansion of UCSF in Mission Bay (the "Expansion Parcels"). These parcels are not part of the 43 acres that the Plan originally designated as the Campus Site.
9. On November 30, 2004, The Regents released proposed amendments in draft form to its long range development plan, as LRDP Amendment #2. Those amendments contemplate an expansion of UCSF facilities onto the Expansion Parcels, including the possibility of developing by 2012 new integrated specialty Children's, Women's and Cancer hospitals containing about 210 beds, together with ambulatory and research facilities. In March 2005, The Regents approved LRDP Amendment #2 (the "Project") and certified a related final environmental impact report (the "LRDP #2 FEIR") which analyzed the environmental effects of the proposed UCSF development on the Expansion Parcels. Copies of the LRDP #2 FEIR are on file with the Agency Secretary.
10. The Owner and The Regents have entered into an Option Agreement and Grant of Option to Lease, dated as of January 1, 2005 (the "Option to Lease"), which provides that upon the satisfaction of certain conditions and the exercise by The Regents of its option (i) Catellus, as landlord, and The Regents, as tenant, will enter into a long-term ground lease of the Expansion Parcels (the "Lease") and (ii) the Owner and The Regents will at the same time enter into an Option Agreement and Grant of Option to Purchase (the

"Option to Purchase") under which The Regents will have an option to purchase the Expansion Parcels.

11. If The Regents exercises the Option to Lease within the option term, the Lease would allow for The Regents to develop up to 1,020,000 leasable square feet on the Expansion Parcels, provided that (a) any development of those parcels is the subject of further environmental review under the California Environmental Quality Act ("CEQA"), and (b) the Owner does not lose any of its entitled development potential for the balance of its land nor lose any of its other rights and privileges under the South OPA.
12. Pursuant to Section 302 of the Plan, the development of the contemplated UCSF facilities on the Expansion Parcels is permitted as a subset of "Other Uses" as a secondary use. Such secondary uses are permitted provided that such use generally conforms with redevelopment objectives and planning and design controls established pursuant to the Plan and based on certain findings of consistency by the Agency's Executive Director (the "Consistency Findings"). The Executive Director has made the Consistency Findings, and such findings are hereby incorporated herein by this reference as if fully set forth.
13. The City must make substantial improvements to San Francisco General Hospital ("SFGH") by 2013 and is evaluating a number of alternatives, including rebuilding on site and co-locating a new SFGH with new UCSF medical facilities in Mission Bay.
14. As a State agency, The Regents is exempt under the State Constitution from local land use regulation and property taxes to the extent it uses property exclusively in furtherance of its educational mission.
15. The Agency, City and The Regents negotiated a non-binding term sheet to guide the preparation of final transactional and related documents, such as a Disposition and Development Agreement ("DDA") for The Regents to acquire property for, and to construct and subsidize, affordable housing for low-income workers of UCSF, which DDA is being considered by the Agency Commission concurrently with this Resolution, pursuant to Resolution No. 160-2005, and provided terms for a Memorandum of Understanding regarding design standards and cooperation on the development of the Expansion Parcels (the "MOU"). The Agency Commission approved the non-binding term sheet on May 17, 2005 by Resolution No. 81-2005.
16. The proposed MOU addresses, among other things: the potential loss of tax increment from the transfer of the Expansion Parcels to a tax-exempt entity; the obligations to build infrastructure associated with development on the Expansion Parcels; the potential assistance of UCSF in the planning of the co-location, if any, of SFGH with the new UCSF facilities; the standards for design review for construction on the Expansion Parcels; local hiring and

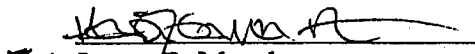
equal opportunity for jobs associated with the development on the Expansion Parcels; and other matters designed to provide the Agency and City with significant public benefits.

17. Agency staff is recommending that the Agency Commission approve the MOU, and the associated Consistency Findings.
18. The Agency Commission has reviewed and considered the information contained in the LRDP #2 FEIR.
19. The Agency Commission hereby finds that the MOU is an action in furtherance of the implementation of the Project for purposes of compliance with CEQA.
20. By Resolution 175-2005, the Agency Commission adopted environmental findings related to the LRDP #2 FEIR, pursuant to CEQA and the CEQA Guidelines (the "Findings"). Such Findings are made pursuant to the Agency's role as the responsible agency under CEQA for the Project. The Findings are hereby incorporated herein by this reference as if fully set forth.

RESOLUTION

ACCORDINGLY, IT IS RESOLVED by the Redevelopment Agency of the City and County of San Francisco that the findings of consistency with the Mission Bay South Redevelopment Plan are approved and the Executive Director is authorized to execute the "Expansion of UCSF Facilities in Mission Bay South Redevelopment Project Area (Blocks 36-39) Memorandum of Understanding", substantially in the form lodged with the Agency General Counsel; Mission Bay South Redevelopment Project Area.

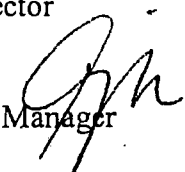
APPROVED AS TO FORM:


James B. Morales
Agency General Counsel

MEMORANDUM

126-03405-001
October 12, 2005

To: Marcia Rosen
Executive Director

From: Amy Neches 
Senior Project Manager

Re: Secondary Use Finding Recommendation for UCSF Hospital in Mission Bay South Redevelopment Area

Pursuant to a Term Sheet dated as of August 1, 2005 between the City, the Agency and The Regents of the University of California, which was endorsed by the Commission on May 17, 2005 (Resolution No. 81-2005), the Agency is considering agreements, including a Memorandum of Understanding ("MOU"), under which the University of California at San Francisco ("UCSF") may develop a hospital in the Mission Bay South Redevelopment Area ("Redevelopment Area").

The UCSF hospital would be located on Blocks 36-39 within the Commercial Industrial land use district of the Redevelopment Area, as described in the Mission Bay South Redevelopment Plan (the "Plan"). The UCSF hospital development may also include all or portions of Block X3 within the Commercial Industrial/Retail land use district. In both of these land use districts "public structure or use of a non-industrial character" is permitted as a subset of "Other Uses" as a secondary use.

The University of California, of which UCSF is a component, is a public body specifically created by the California Constitution. A hospital or medical center is described in §790.44 of the San Francisco Planning Code as a "public or private institutional use which provides medical facilities for inpatient care, medical offices, clinics, and laboratories." The proposed UCSF hospital development will include these components. The hospital will not including manufacturing, warehousing, or distribution of goods, and can reasonably be considered a "non-industrial use." This interpretation is supported by the San Francisco Planning Code, under which hospitals are permitted as a conditional use in all C districts and NC-3 districts.

Section 302 of the Plan provides as follows:

"Secondary uses shall be permitted in a particular land use district...provided that such use generally conforms with redevelopment objectives and planning and design controls established pursuant to this Plan and is determined by the Executive Director to make a positive contribution to the character of the Plan Area, based on

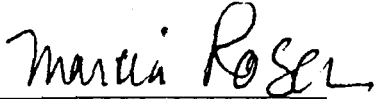
a finding of consistency with the following criteria: the secondary use, at the size and intensity contemplated and at the proposed location, will provide a development that is necessary or desirable for, and compatible with, the neighborhood or the community.”

Staff believes that the UCSF hospital is appropriate as a secondary use, based on the following:

- 1) The proposed hospital will be located on approximately 10 to 14 acres of land adjacent to the Mission Bay UCSF research campus that have been determined to be blighted and are affected by environmental contamination. UCSF plans close integration of its basic academic research activities with the teaching, research and patient care activities within the planned hospital. The plan for development of the UCSF hospital generally conforms to the Redevelopment Project Objectives as described in §103 of the Plan, particularly with objective A of eliminating blight and correcting environmental deficiencies, and objective B of retaining and promoting UCSF's research and academic activities within the City and County of San Francisco.
- 2) Under the MOU, the UCSF hospital development will generally conform to the planning and design controls established pursuant to the Plan, including the street layout, setbacks, and streetscape plan. To accommodate the needs of the hospital, the MOU will include specific adjustments to the existing height and bulk standards of the Commercial Industrial and Commercial Industrial/Retail land use zones of the Mission Bay South Design for Development. These changes will lower the maximum height of a hospital to 105 feet, compared to the existing 160 foot limit, but would allow for somewhat greater bulk in the mid-rise area. These changes have been studied and presented to the public at two well-noticed public meetings. In staff's opinion, the proposed adjustments represent reasonable variation from the existing standards, which will have little if any negative effect on the surrounding community in the context of overall Mission Bay development.
- 3) The hospital will contain no more development, as calculated under the Plan in leasable square feet, than would have been permitted under the principal uses permitted in these land use districts, and there will be no net increase in the overall size of development within the Redevelopment Area. The hospital will be developed on parcels that would otherwise likely have been developed with commercial office or life science/biotechnology uses. These uses would have been constructed in buildings of reasonably similar size and appearance as the proposed hospital use.
- 4) The proposed hospital will allow UCSF to continue to provide needed tertiary health care to the residents of San Francisco in a modern seismically safe hospital, and will assist UCSF in furthering its research and academic mission.

Based on these factors, staff believes that it is appropriate to make the finding of consistency cited above, and recommends that the Executive Director permit the development of the UCSF hospital as a secondary use in Mission Bay, subject to the approval of the MOU by the Commission.

Approved on October 12, 2005:

A handwritten signature in cursive script that reads "Marcia Rosen". The signature is written in dark ink and is positioned above a horizontal line.

Marcia Rosen
Executive Director