

**SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY**

DIVISION: Sustainable Streets

BRIEF DESCRIPTION:

Consenting to the proposed Development Agreement between the City and County of San Francisco and 5M Project, LLC, a Delaware limited liability company, for the approximately 4-acre site located at Fifth Street between Mission and Howard Streets, as it relates to matters under the SFMTA's jurisdiction, including the Transportation Program (Exhibit G to the Development Agreement) and the transportation-related mitigation measures, authorizing the Director of Transportation to execute the SFMTA Consent to the Development Agreement, and adopting findings under the California Environmental Quality Act (CEQA).

SUMMARY:

- 5M Project, LLC proposes a mixed use development for a 4-acre site at Fifth Street between Mission and Howard Streets that would create residential and office uses as well as open space.
- The City of San Francisco has negotiated a Development Agreement that includes payment of a Transit Fee and an additional Transportation Sustainability Program (TSP) Contribution for pedestrian safety improvements in the project area as part of the Community Benefit Fee.
- Initial development impact fees, including TIDF, would first be applied for the creation of affordable housing. Subsequent development impact fees, including amounts payable for affordable housing, would then be applied to transit and other benefits. The amount of the Transit Fee payable to SFMTA is based on the full TIDF amount – so that there is no overall decrease in the total transportation dollars associated with the initial investment in affordable housing.
- The SFMTA has the right to expend these funds in accordance with customary practice for TIDF.
- The TSP will provide funds to the SFMTA for pedestrian safety improvements including the Mission Street Mid-Block Crossing and the SoMa Street Streetscape, Pedestrian Safety and Related Improvements.

ENCLOSURES:

1. SFMTAB Resolution
2. Environmental Impact Report (available at: http://sfmea.sfplanning.org/2011.0409E_DEIR.pdf)
3. 5M Development Agreement including Exhibits D and G
4. 5M CEQA Findings
5. 5M Mitigation Monitoring and Reporting Program

APPROVALS:

DATE

DIRECTOR _____ 10/13/15

SECRETARY _____ 10/13/15

ASSIGNED SFMTAB CALENDAR DATE: October 20, 2015

PURPOSE

This calendar item seeks SFMTA Board consent to the Development Agreement between the City and County of San Francisco and 5M Project, LLC, a Delaware limited liability company, for the mixed-use development of the approximately 4-acre site located at Fifth Street between Mission and Howard Streets, for matters under the SFMTA's jurisdiction, including the Transportation Program and the transportation-related mitigation measures and the adoption of CEQA findings.

GOAL

This proposed Development Agreement shall assist the SFMTA in achieving the following of its strategic goals:

- Goal 2: Make transit, walking, cycling, taxi, ridesharing and car sharing the preferred means of travel
Objective 2.3 – Increase use of all non-private auto modes.
- Goal 3: Improve the environment and quality of life in San Francisco
Objective 3.3 – Allocate capital resources effectively

DESCRIPTION

California Government Code section 65864 *et seq.* (the Development Agreement Statute) and San Francisco Administrative Code Chapter 56 authorize the City to enter into a development agreement regarding the development of real property.

The City and County of San Francisco has negotiated a Development Agreement with 5M Project, LLC, a Delaware limited liability company (Developer) for the development of a nearly 4-acre site located between Mission, Fifth and Howard Streets. The site encompasses 22 parcels, including surface parking lots, light industrial buildings that will be demolished, and several buildings (Dempster, Chronicle, Camelline, and a portion of the Examiner building) that will remain and be incorporated into the project. The proposed project would include heights that exceed those allowed by the zoning code. Upzoning these parcels would enable new residential and office uses on a transit corridor, in support of City policies to focus new development near transit. The Development Agreement would allow for the proposed heights and provide a series of community benefits.

Under the Development Agreement, the Developer will attain the vested right to develop the proposed project. The proposed project is a mixed-use development of new construction and renovated existing buildings, with three new buildings and four retained buildings, containing up to 1,697,600 gross square feet (gsf) of building space. The project includes up to:

- 821,300 gsf of residential uses (approximately 690 units)
- 807,600 gsf of office uses
- 59,500 square feet of open space
- Approximately 463 vehicle parking spaces
- 429 Class 1 bicycle spaces
- 66 Class 2 bicycle spaces

The term of the Development Agreement is 15 years.

Under the terms of the Development Agreement, the Developer would pay a Transit Fee (based on the current Transit Impact Development Fee) of approximately \$8.8 million, assuming full build-out of the Project, as well as an additional Transportation Sustainability Program (TSP) Contribution in the amount of \$3.4 million as part of a larger Community Benefit Fee, funding a range of community purposes from youth development to affordable housing and open space -- all of which is outlined in Exhibit D of the Development Agreement, to the SFMTA. The TSP Contribution would be prioritized for two SFMTA pedestrian safety projects that are underfunded:

1. Mission Street Mid-Block Crossing. Mid-block signalized crosswalk extending north across Mission Street between the North Mary Pedestrian Alley and the San Francisco Mint building, which is estimated to be \$400,000; and
2. SoMa Street Streetscape, Pedestrian Safety and Related Improvements. SFMTA shall use the remaining TSP Contributions for the purpose of designing and constructing streetscape, pedestrian safety, pedestrian realm, and related improvements.

By consenting to the Development Agreement, the SFMTA Board of Directors would agree to the transportation program set forth as Exhibit G in the Development Agreement and transportation-related mitigation measures, including the use of the impact fees and exactions for the transportation program, and would waive any provision in Planning Code Article 4 (relating to Impact Fees and payment of In-Lieu Fees) and Administrative Code Article 10 (relating to finance, taxing, and other fiscal matters) that would conflict with the uses of funds as set forth in the Development Agreement. As a result, the initial development impact fees paid by Developer for the first building at the site (including the Transit Fee amounts calculated based on the current TIDF) would be applied by the City for the creation of affordable housing, while subsequent payment of development impact fees made by the Developer (including amounts payable for housing) would be applied toward transportation and other benefits, including recovery by SFMTA of the amount due under the TIDF. As a result, the SFMTA would essentially be agreeing to later receipt of transportation dollars. But the total amount of the transportation dollars payable for the entire project, as calculated per current TIDF amounts, would not decrease. And the SFMTA will receive the additional \$3.4 million TSP Contribution, which is beyond current code requirements.

PUBLIC OUTREACH

The Developer conducted community outreach including over 120 community meetings over the past six years. The Developer has used the following outreach tools: SOMA neighborhood mixers, postcards and flyers, local door to door canvassing, meetings with local businesses, residents, neighborhood organization leaders and members, attendance and presentations at meetings of community organizations and interested parties, guided walking tours of the project site, community office hours, email notices, and project website. The Developer met with individuals and groups with an interest in transportation, transit, bicycle and pedestrian-related issues, and many of the improvements that are part of the project or are proposed as priorities for the TSP Contribution were identified based on this consultation.

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At the Planning Commission hearing, members of the public expressed concern about gentrification and expressed support for a cultural heritage district. A few members of the public expressed concern about congestion. No members of the public at the Planning Commission meeting expressed concern about the transportation program for the 5M project. The Supervisor from this district and project staff are continuing to meet with the community regarding this project.

ALTERNATIVES CONSIDERED

The project is a mixed-use development project and not specifically a transportation project, although it includes mitigation measures and public benefits that are transportation-related. Alternatives to the project that were considered and rejected are summarized in the Environmental Impact Report.

FUNDING IMPACT

Under the Development Agreement, the Developer would pay the following fees to the SFMTA:

- A Transit Fee (based on the current Transit Impact Development Fee) payment of approximately \$8.8 million, assuming full buildout of the Project, for use and allocation as described in the Community Benefits Schedule, Exhibit D to the Agreement. Upon the SFMTA's receipt of those payments, the SFMTA shall have the right to expend the Transit Fee in its sole discretion.
- A TSP Contribution of approximately \$3.4 million, assuming full build-out of the Project, from the \$11.8 million Community Benefit Fee payable by the Developer, to be used by the SFMTA for pedestrian safety improvements, including but not limited to sidewalks, cross-walks, signal timing and left/right turn pockets. SFMTA's use of the TSP Contribution and the timing of its construction of the TSP Improvements would be prioritized for the Mission Street Mid-Block Crossing and SoMa Streetscape, Pedestrian Safety and Related Improvements, as described above.

The SFMTA would use the remaining TSP Contributions for the purpose of designing and constructing streetscape, pedestrian safety, pedestrian realm and related improvements that are not fully funded within the impact area surrounding the project site as identified in Exhibit G, Schedule 2. The SFMTA would be responsible for securing additional funds to design, permit, construct, install, maintain, and operate the TSP Improvements beyond the amount of the TSP Contribution, but nothing would require the SFMTA to make TSP Improvements that cost more than the TSP Contribution.

ENVIRONMENTAL REVIEW

The San Francisco Planning Commission certified a final environmental impact report (FEIR) for the 5M, LLC project (Planning Department File No. 2011.0409E) on September 17, 2015, and in approving the project, adopted CEQA findings, including a statement of overriding considerations, and adopted a Mitigation Monitoring and Reporting Program (MMRP).

These case numbers represent the certification of the EIR, adoption of the CEQA findings, and the General Plan amendment:

- M-19458 2011.0409E 925 Mission Street Certified

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- M-19459 2011.0409ENV 925 Mission Street Adopted CEQA Findings
- M-1946 2011.0409ENV 925 Mission Street Adopted GP Consistency Findings

OTHER APPROVALS RECEIVED OR STILL REQUIRED

The San Francisco Planning Commission approved the following items on September 17, 2015: various entitlements for the project, including the Development Agreement, General Plan amendments, a Special Use District, Zoning Map amendments, Design for Development, office allocation, conditional use approval, a determination that net new shadow on Boeddeker Park would not be adverse, and allocation of cumulative shadow limit to the project.

The San Francisco Planning Commission and the San Francisco Recreation and Park Commission approved raising the Shadow Allowance on Boeddeker Park at the joint commission hearing held on September 15, 2015.

The Development Agreement, the Special Use District, Height Map Amendments, and General Plan Amendments require consideration by the Board of Supervisors' Land Use and Economic Development Committee and approval by the Board of Supervisors.

The City Attorney's Office has reviewed this item.

RECOMMENDATION

Staff recommends that the SFMTA Board of Directors consent to the proposed Development Agreement between the City and County of San Francisco and 5M Project, for the approximately 4-acre site located at Fifth Street between Mission and Howard Streets, as it relates to matters under the SFMTA's jurisdiction, including the Transportation Program (Exhibit G to the Agreement) and the transportation-related mitigation measures, authorize the Director of Transportation to execute the SFMTA's Consent to the Agreement, and adopt findings under the California Environmental Quality Act (CEQA).

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. _____

WHEREAS, 5M Project, LLC (Developer) filed an application with the City's Planning Department for approval of a development agreement relating a mixed use project (the Project) on the nearly 4-acre site located between Mission, Fifth and Howard Streets under San Francisco Administrative Code Chapter 56, and the City and Developer negotiated a development agreement with a term of 15 years, a copy of which is on file with the Secretary to the Board of Directors (the Development Agreement); and

WHEREAS, The proposed project is a mixed-use development of new construction and renovated existing buildings, with three new buildings and four retained buildings, containing up to 1,697,600 gross square feet (gsf) of building space including up to 821,300 gsf of residential uses, 807,600 gsf of office uses, 59,500 square feet of open space and approximately 463 vehicle parking spaces, 429 Class 1 bicycle spaces and 66 Class 2 bicycle spaces; and

WHEREAS, Under the terms of the Development Agreement, the Developer shall pay a Transit Fee (based upon the current Transit Impact Development Fee) of approximately \$8.8 million, assuming full build-out of the Project, for SFMTA's use in its sole discretion, as set forth in the Transportation Program (Exhibit G to the Development Agreement); and

WHEREAS, The Developer shall also pay a Transportation Sustainability Program (TSP) Contribution of approximately \$3.4 million, assuming full build-out of the Project, as described in the Transportation Program (Exhibit G), for the SFMTA to construct and install pedestrian safety improvements, as further described in Section 2 of the Transportation Program; and,

WHEREAS, The Agreement does not require the SFMTA to incur costs for pedestrian or safety improvements above the TSP contribution; and

WHEREAS, The SFMTA's use of the TSP Contributions shall first be prioritized for the Mission Street Mid-Block Crossing, a mid-block signalized crosswalk extending north across Mission Street between the North Mary Pedestrian Alley and the San Francisco Mint building, estimated to cost \$400,000; and second, for the SoMa Street Streetscape, Pedestrian Safety and Related Improvements, for which SFMTA shall use the remaining TSP Contributions for the purpose of designing and constructing streetscape, pedestrian safety, pedestrian realm and related improvements within the impact area identified on Transportation Program ; and

WHEREAS, The Community Benefits Schedule (Exhibit D (to the Development Agreement) shows the sources and uses of all of the development impact fee payments, and, as set forth in Exhibit D, the initial development impact fees paid by Developer for the first building at the site (including the Transit Fee amounts calculated based on the current TIDF formula) would be applied by the City for affordable housing, while subsequent payment of other development impact fees made by the Developer (including amounts payable for housing) would be applied toward transportation and other benefits, including recovery by SFMTA of the full Transit Fee amount; and

WHEREAS, The San Francisco Planning Commission certified a Final Environmental Impact Report (FEIR) for the 5M project on September 17, 2015, and found the document to be in compliance with the requirements of the California Environmental Quality Act (CEQA) and Chapter 31 of the San Francisco Administrative Code; and,

WHEREAS, In approving the project, the San Francisco Planning Commission also adopted findings under CEQA, including a statement of overriding consideration, and adopted a Mitigation Monitoring and Reporting Program (MMRP), by Motion No. 19459; now therefore be it

RESOLVED, That the SFMTA Board of Directors has reviewed the Final Environmental Impact Report for the 5M project and does hereby adopt the CEQA Findings set forth in Planning Commission Motion No. 19459, including the statement of overriding consideration, as its own and adopts the Mitigation Monitoring and Reporting Program, which are incorporated into this Resolution by this reference; and be it

FURTHER RESOLVED, That subject to approval from the Board of Supervisors, the SFMTA Board of Directors does hereby consent to the Agreement between the City and the Developer substantially in the form and terms as outlined in the Development Agreement with respect to the items under the SFMTA's jurisdiction, and authorizes the SFMTA Director of Transportation to execute the SFMTA's Consent to the Development Agreement on behalf of this Board; and, be it

FURTHER RESOLVED, That subject to any approval of this Board or the SFMTA Director of Transportation or his designee that may be required in accordance with the Agreement in connection with amendments that affect the infrastructure or mitigation measures for which the SFMTA has responsibility, the Board consents that any of the Mayor, the City Administrator and the Director of Public Works (or any successor City officer designated by law) may enter into and approve any additions, amendments or other modifications to the Agreement (including, without limitation, any exhibits) that they determine, in consultation with the City Attorney and any affected City agencies, are in the best interests of the City, provided that any such additions, amendments or modifications do not materially increase the costs or liabilities of the City and are necessary or advisable to effectuate the implementation of Agreement, and this Resolution and legislation by the Board of Supervisors; and, be it

FURTHER RESOLVED, That, subject to appropriation of any necessary funds, the Board authorizes the Director of Transportation to take any and all steps (including, but not limited to, the execution and delivery of any and all agreements, notices, consents and other instruments or documents) necessary, in consultation with the City Attorney, in order to consummate and perform its obligations under the Development Agreement in accordance with this Resolution and legislation by the Board of Supervisors, or otherwise to effectuate the purpose and intent of this Resolution and such legislation; and, be it

FURTHER RESOLVED, That, by consenting to the SFMTA matters in the Development Agreement between the City and the Developer, the SFMTA Board does not intend to in any way limit, waive or delegate the exclusive authority of the SFMTA; and be it

FURTHER RESOLVED, That the approval under this Resolution shall take effect upon the effective date of the Board of Supervisors legislation approving the Development Agreement.

I certify that the foregoing resolution was adopted by the San Francisco Municipal Transportation Agency Board of Directors at its meeting of October 20, 2015.

Secretary to the Board of Directors
San Francisco Municipal Transportation Agency