



09 MAY -7 PM 2:17

ONE FRANK H. OGAWA PLAZA • 6TH FLOOR • OAKLAND, CALIFORNIA 94612

Office of the City Attorney
John A. Russo
City Attorney

(510) 238-3601
FAX: (510) 238-6500
TTY/TDD: (510) 238-3254

May 19, 2009

Honorable City Council
Oakland, California

Re: Resolutions, In Accordance with the Alameda County Superior Court's Judgment and Writ in EBMUD v. City of Oakland, Rescinding City and Agency Resolution Nos. 81004 C.M.S., 80301 C.M.S., 2006-84 and 2007-86 that (1) Certified Supplemental Environmental Impact Report (SEIR) and Addendum to SEIR and (2) Approved 2006 and 2007 Amendments to Oakland Army Base Final Reuse Plan, to the Extent that These Prior Certifications and Approvals Apply to the Auto Mall Project and/or Relate to (a) any Discharges from New Development into the 15-Inch Sewer Line and/or (b) Vacation and/or Relocation of Wake Avenue

Dear City Council President Jane Brunner and Members of the City Council:

I. SUMMARY

In 2002, the City and Agency certified an Environmental Impact Report for the Oakland Army Base Redevelopment Plan (the "EIR") and adopted a Final Reuse Plan for the Army Base. The EIR and Final Reuse Plan did not consider the potential development of an auto mall. In 2006 the City and Agency pursued plans for the Auto Mall Project in the North Gateway of the Oakland Army Base. Because the Auto Mall Project was not considered in the EIR, a Supplemental Environmental Impact Report ("SEIR") was prepared and the Final Reuse Plan was amended. In 2007 East Bay Municipal Utility District ("EBMUD") filed a lawsuit against the City and the Redevelopment Agency ("Agency") challenging the SEIR and the Auto Mall Project.

On March 23, 2009, the Alameda County Superior Court issued a Judgment favor of EBMUD and a writ ordering the City and Agency to take the following actions:

- Rescind approval of the 2006 Amendment to the Final Reuse Plan for the Oakland Army Base ("OARB") concerning the Auto Mall Project in the North Gateway Area, per Agency Resolution No. 2006-0084;
- Rescind approval of the superseding 2007 Amendment to the Final Reuse Plan, per Agency Resolution No. 2007-0086 and City Council Resolution No. 81004 C.M.S., *only to the extent* the Amended Reuse Plan applies to the Auto Mall Project;

- Rescind the certification of the 2006 OARB Auto Mall Supplemental Environmental Impact Report ("SEIR"), per City Council Resolution No. 80301 C.M.S., *only to the extent* the SEIR applies to the Auto Mall Project, discharge into the 15-inch sewer line, and the vacation or relocation of Wake Avenue; and
- Rescind the certification of the 2007 Addendum to the SEIR, per City Council Resolution No. 81004 C.M.S., *only to the extent* the Addendum applies to the Auto Mall Project, discharge into the 15-inch sanitary sewer line, and the vacation or relocation of Wake Avenue.

The City and Agency must comply with the Judgment and writ unless they file an appeal by the May 29, 2009 filing deadline. We understand that the City and Agency are no longer pursuing the development of the Auto Mall Project in the North Gateway and that current planning efforts do not envision modifications to Wake Avenue or new connections to the 15-inch sewer line; therefore, an appeal is not necessary. Further, pursuant to a stipulation between counsel for the City and EBMUD, EBMUD has agreed to waive any right it may have to seek attorney's fees if City and Agency comply with the Judgment and Writ and do not file an appeal. Accordingly, the City Attorney has prepared the resolutions that are necessary to comply with the Judgment and Writ.

Once the Council/Agency passes the resolutions, the City Attorney will advise the Superior Court of compliance with the writ and judgment. Counsel must return to the court no later than June 22, 2009.

II. DISCUSSION

In 2002, the City and Agency certified an Environmental Impact Report for the Oakland Army Base Redevelopment Plan (the "EIR") and adopted a Final Reuse Plan for the OARB. The EIR and Final Reuse Plan did not consider the potential development of an auto mall.

In 2006, the City and Agency pursued plans for the Auto Mall Project within the North Gateway of the Oakland Army Base. This previously unconsidered use required additional environmental analysis, which was performed through the preparation of the SEIR and an amendment to the Final Reuse Plan. On December 5, 2006, the City certified the SEIR and, through Agency Resolution No. 2006-0084 and City Council Resolution No. 80301 C.M.S., approved the 2006 Amended Final Reuse Plan to incorporate the Project and other conceptual reuse strategies.

On May 17, 2007, EBMUD, which operates a wastewater treatment plant adjacent to the proposed Project site, filed a lawsuit challenging the SEIR and the Auto Mall Project (Alameda Superior Court Case No. RG07326552). EBMUD's principal, substantive allegations were (1) the Project would negatively impact access to the treatment plant (by modifying Wake Avenue) and (2) unacceptably add new wastewater flows to a non-conforming 15-inch sewer lines which feeds directly into the plant (rather than into an interceptor) and which sometimes surcharges (i.e., backflows).

While EBMUD's lawsuit was pending, the City considered an alternative layout for the Project. The City prepared an Addendum to the SEIR to assess how changes to the Project layout would affect access to the neighboring EBMUD property, and to provide additional information related to traffic and wastewater. On December 18, 2007, the City adopted the Addendum to the SEIR and, through Agency Resolution 2007-0086 and City Council Resolution 81004 C.M.S., approved the 2007 Amended Final Reuse Plan (which supersedes the 2006 Amended Final Reuse Plan), which includes the revised layout of the Project and other reuse plans.

EBMUD amended its complaint to incorporate challenges to the validity of the 2007 Addendum and 2007 Amended Final Reuse Plan. EBMUD claimed that the preparation of the Addendum in lieu of another supplemental or subsequent EIR was illegal (e.g., because an addendum is for minor additions to an EIR and need not include a formal Responses to Comments section as is included in a Final EIR). EBMUD continued to press the same substantive issues (i.e., the City did not adequately study traffic and wastewater impacts).

On January 23, 2009, the Court issued its Statement of Decision, ruling (1) the SEIR and the Addendum did not adequately analyze traffic and wastewater impacts and (2) the City violated CEQA by preparing an Addendum in lieu of another supplemental or subsequent EIR because the changes were not minor.

However, the Judgment and Writ are narrow. EBMUD agreed, following communication and negotiations between the parties' staff and counsel, to propose that the Court enter a narrowly tailored judgment and writ. The Court did not order *full* decertifications of the SEIR and Addendum and *full* rescissions of the Amended Final Reuse Plan. Instead the Court ultimately entered and issued a Judgment and Writ that order (1) the City to decertify the SEIR and Addendum *only to the extent* they concern the proposal to develop the Auto Mall at the North Gateway site, the reconfiguration of Wake Avenue, and any new discharges into the 15-inch wastewater line and (2) the City and Agency to rescind the Amended Final Reuse Plan to the extent it applies to the Auto Mall Project.

EBMUD also agreed not to pursue an order for attorney's fees in exchange for the City's and Agency compliance with the Judgment and Writ and decision not to file an appeal.

The limited actions required by the Judgment and Writ should not interfere with any future development plans. Indeed, the City and Agency may pursue any project in the North Gateway or elsewhere in the OARB. The City and Agency would be able to rely upon the environmental review in the 2002 EIR, as well as the 2006 SEIR and the 2007 Addendum, all of which were challenged by EBMUD, except as to the issues identified in the Judgment and Writ.

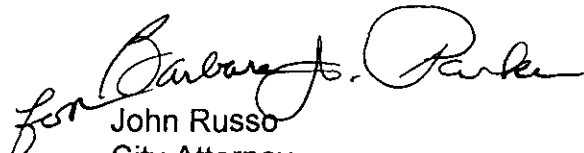
Accordingly, the City and Agency may continue to apply these CEQA documents to any non-Auto Mall Project that does not require connections to the 15-inch sewer line or reconfiguration of Wake Avenue. (As always, if the potential impacts of any project were not sufficiently considered in the 2002, 2006 and 2007 CEQA documents, further

environmental review would be required.) Moreover, even if the City and Agency decided to reconsider an auto mall project, the Judgment and Writ would not bar the consideration; they would require further environmental review of any auto mall plans.

II. CONCLUSION

For the reasons discussed in this report, the City Attorney's Office recommends that the City Council and Redevelopment Agency Board comply with the Judgment and Writ by adopting the resolutions that rescind the certifications of the SEIR and Addendum and the approval of Amendments to the Army Base Final Reuse Plan only to the extent that they apply to the Auto Mall Project and relate to (a) any discharges from new development into the 15-Inch sewer line and/or (b) vacation and/or relocation of Wake Avenue.

Very truly yours,


John Russo
City Attorney

Enclosures:

Proposed City and Agency Resolutions
Judgment and Writ in Case No. RG07326552

Attorneys Assigned:

Kevin Siegel
Mark Wald

RECEIVED

MAR 27 2009

GENERAL COUNSEL'S OFFICE

1 JYLANA COLLINS, General Counsel, State Bar No. 107949
2 CRAIG S. SPENCER, Chief Trial Attorney, State Bar No. 78277
3 DEREK MCDONALD, State Bar No. 238477
4 Office of General Counsel
5 East Bay Municipal Utility District
6 375 Eleventh Street (MS 904)
7 P.O. Box 24055
8 Oakland, CA 94623-1055
9 Telephone: (510) 287-0174
10 Fax: (510) 287-0162

ENDORSED
FILED
ALAMEDA COUNTY

MAR 23 2009

EXEMPT FROM FILING FEES
(GOVERNMENT CODE §6103)

Attorneys for Petitioner CLERK OF THE SUPERIOR COURT
By VICKI DAYBELL
Deputy

SUPERIOR COURT OF CALIFORNIA

COUNTY OF ALAMEDA

10 EAST BAY MUNICIPAL UTILITY DISTRICT,
11 a public entity,

12 Petitioner,

13 vs.

14 CITY OF OAKLAND; OAKLAND CITY
15 COUNCIL; REDEVELOPMENT AGENCY OF
16 THE CITY OF OAKLAND; BOARD OF
17 DIRECTORS OF THE REDEVELOPMENT
18 AGENCY OF THE CITY OF OAKLAND; and
19 Does 1-50, inclusive,

20 Respondents.

Case No.: RG07-326552
(CEQA Action)

~~PROPOSED~~
FINAL JUDGMENT GRANTING
PETITION FOR WRIT OF MANDATE

Assigned to the Hon. Frank Roesch for
all Purposes.

19 The Petition for Writ of Mandate brought by Petitioner EAST BAY MUNICIPAL
20 UTILITY DISTRICT ("EBMUD") came on for hearing on July 8, 2008, in Department 31 of
21 this Court, the Honorable Frank Roesch presiding. Craig Spencer and Derek McDonald of the
22 EBMUD Office of General Counsel appeared on behalf of Petitioner. Kevin Siegel, Deputy City
23 Attorney, appeared on behalf of Respondents CITY OF OAKLAND, OAKLAND CITY
24 COUNCIL, REDEVELOPMENT AGENCY OF THE CITY OF OAKLAND, and BOARD OF
25 DIRECTORS OF THE REDEVELOPMENT AGENCY OF THE CITY OF OAKLAND.

26 After considering the administrative record, all pleadings on file in this action, the briefs
27 submitted and oral arguments made by counsel, the Court issued a Tentative Statement of
28

1 Decision on November 6, 2008, and a final Statement of Decision on January 23, 2009, granting
2 in part Petitioner's Petition for Writ of Mandate.

3 The Court having made its ruling as set forth above and good cause appearing therefrom:
4 IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

5 1. Final judgment granting a peremptory writ of mandate shall be entered for Petitioner.

6 2. A peremptory writ of mandate shall issue under the seal of this Court commanding
7 Respondents, including all agencies, departments, subdivisions, officers, employees, agents, and
8 all others acting on Respondents' behalf, in concert with Respondents, or pursuant to
9 Respondents' authority, within the time specified for a return to the writ, to:

10 (a) Vacate, set aside or revoke Respondents' December 5, 2006, adoption of
11 Resolution No. 2006-0084 ("A Resolution Amending the Oakland Army Base
12 Final Reuse Plan") regarding an Auto-Mall project as described in Resolution
13 No. 2006-0084 (the "Project").

14 (b) Vacate, set aside or revoke Respondents' December 5, 2006, certification of
15 the Supplemental Environmental Impact Report for the Oakland Army Base
16 Auto Mall Project ("SEIR"), per City Council Resolution No. 80301 C.M.S.,
17 only to the extent the SEIR is applicable to Respondents' Auto Mall Project
18 (the "Project") and/or purports to provide environmental review and/or
19 clearance under the California Environmental Quality Act ("CEQA") for
20 (1) any discharges from new development into the 15-inch sewer line and/or
21 (2) vacation and/or relocation of Wake Avenue which presently provides
22 ingress to and egress from EBMUD's Main Wastewater Treatment Plant.

23 (c) Vacate, set aside or revoke Respondents' December 18, 2007, certification of
24 the First Addendum to the SEIR for the Oakland Army Base Auto Mall
25 Project ("Addendum"), per City Council Resolution No. 81004 C.M.S. only to
26 the extent the Addendum is applicable to the Project and/or purports to
27 provide environmental review and/or clearance under CEQA for (1) any
28 discharges from new development into the 15-inch sewer line and/or

1 (2) vacation and/or relocation of Wake Avenue which presently provides
2 ingress to and egress from EBMUD's Main Wastewater Treatment Plant; and
3 vacate, set aside and revoke Respondents' approval of the 2007 Amendment
4 to the Oakland Army Base Final Reuse Plan ("Amended Reuse Plan"), per
5 City Council Resolution No. 81004 C.M.S. and Redevelopment Agency of the
6 City of Oakland Resolution No. 2007-0086 only to the extent the Amended
7 Reuse Plan refers, relates or applies to the Project and/or relates to (1) any
8 discharges from new development into the 15-inch sewer line and/or
9 (2) vacation and/or relocation of Wake Avenue which presently provides
10 ingress to and egress from EBMUD's Main Wastewater Treatment Plant.

11 (d) Comply with this Court's January 23, 2009, final Statement of Decision
12 Granting Petition for Writ of Mandate and with the California Environmental
13 Quality Act ("CEQA") in connection with any further actions relating to the
14 Project; and

15 (e) File and serve a return to the writ of mandate in this court within 90 days from
16 the issuance of the writ detailing what actions have been taken to comply with
17 the Writ, Judgment and CEQA prior to any subsequent project approval.

18 3. Petitioner shall recover its costs from Respondents related to the preparation of
19 the Administrative Record.

20 4. The Court retains jurisdiction pursuant to Public Resources Code section 21168.9 to
21 enforce the peremptory writ of mandate and judgment issued in this action. This Court further
22 retains jurisdiction over Respondents' proceedings by way of a return to the peremptory writ
23 until the Court has determined that Respondents have fully complied with all of the terms of the
24 peremptory writ of mandate issued pursuant to this judgment, and to take such further actions as
25 may be appropriate consistent with the Court's ruling.

26 5. Under Public Resources Code section 21168.9 (c), the Court specifically does not
27 direct Respondents to exercise their lawful discretion in any particular way.
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

6. In light of the foregoing, Petitioner's remaining causes of action for Declaratory Relief, Inverse Condemnation, and Injunctive Relief relating to the Project are not justiciable and are therefore dismissed.

Dated: March 29, 2009

FRANK ROESCH

Frank Roesch
Judge of the Superior Court

Approved as to Form

Dated: March 18, 2009

Kevin D. Siegel
Kevin D. Siegel, Deputy City Attorney

W:\300 LITIGATION\310 Court Cases\Wake Ave\Pleadings\Judgment.doc

The foregoing instrument is a true and correct copy of the original on file in this office.

ATTEST:



MAR 23 2009

Clerk of the Superior Court of California, County of Alameda.

By *Vicki Daybell* Deputy

RECEIVED

MAR 27 2009

GENERAL COUNSEL'S OFFICE

1 JYLANA COLLINS, General Counsel, State Bar No. 107949
2 CRAIG S. SPENCER, Chief Trial Attorney, State Bar No. 78277
3 DEREK MCDONALD, State Bar No. 238477
4 Office of General Counsel
5 East Bay Municipal Utility District
6 375 Eleventh Street (MS 904)
7 P.O. Box 24055
8 Oakland, CA 94623-1055
9 Telephone: (510) 287-0174
10 Fax: (510) 287-0162

EXEMPT FROM FILING FEES
(GOVERNMENT CODE §6103)

Attorneys for Petitioner

SUPERIOR COURT OF CALIFORNIA

COUNTY OF ALAMEDA

10 EAST BAY MUNICIPAL UTILITY DISTRICT,)
11 a public entity,)

Case No.: RG07-326552
(CEQA Action)

12 Petitioner,

13 vs.

~~PROPOSED~~

PEREMPTORY WRIT OF MANDATE

14 CITY OF OAKLAND; OAKLAND CITY
15 COUNCIL; REDEVELOPMENT AGENCY OF
16 THE CITY OF OAKLAND; BOARD OF
17 DIRECTORS OF THE REDEVELOPMENT
18 AGENCY OF THE CITY OF OAKLAND; and
19 Does 1-50, inclusive,

Assigned to the Hon. Frank Roesch for
all Purposes.

Respondents.

20 To Respondents City of Oakland et al.:

21 Judgment having been entered in this proceeding ordering that a peremptory writ of
22 mandate be issued from this Court,

23 1. You are hereby commanded to:

- 24 a. Vacate, set aside or revoke Respondents' December 5, 2006, adoption of
25 Resolution No. 2006-0084 ("A Resolution Amending the Oakland Army
26 Base Final Reuse Plan") regarding an Auto-Mall project as described in
27 Resolution No. 2006-0084 (the "Project").
28 b. Vacate, set aside or revoke Respondents' December 5, 2006, certification
of the Supplemental Environmental Impact Report for the Oakland Army

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Base Auto Mall Project ("SEIR"), per City Council Resolution No. 80301 C.M.S., only to the extent the SEIR is applicable to Respondents' Auto Mall Project (the "Project") and/or purports to provide environmental review and/or clearance under the California Environmental Quality Act ("CEQA") for (1) any discharges from new development into the 15-inch sewer line and/or (2) vacation and/or relocation of Wake Avenue which presently provides ingress to and egress from EBMUD's Main Wastewater Treatment Plant.

c. Vacate, set aside or revoke Respondents' December 18, 2007, certification of the First Addendum to the SEIR for the Oakland Army Base Auto Mall Project ("Addendum"), per City Council Resolution No. 81004 C.M.S. only to the extent the Addendum is applicable to the Project and/or purports to provide environmental review and/or clearance under CEQA for (1) any discharges from new development into the 15-inch sewer line and/or (2) vacation and/or relocation of Wake Avenue which presently provides ingress to and egress from EBMUD's Main Wastewater Treatment Plant; and vacate, set aside and revoke Respondents' approval of the 2007 Amendment to the Oakland Army Base Final Reuse Plan ("Amended Reuse Plan"), per City Council Resolution No. 81004 C.M.S. and Redevelopment Agency of the City of Oakland Resolution No. 2007-0086 only to the extent the Amended Reuse Plan refers, relates or applies to the Project and/or relates to (1) any discharges from new development into the 15-inch sewer line and/or (2) vacation and/or relocation of Wake Avenue which presently provides ingress to and egress from EBMUD's Main Wastewater Treatment Plant.

d. Comply with this Court's January 23, 2009, final Statement of Decision Granting Petition for Writ of Mandate and with the California

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Environmental Quality Act ("CEQA") in connection with any further actions relating to the Project; and

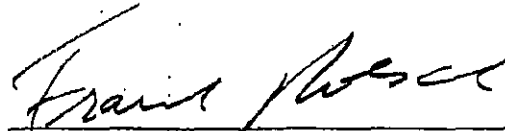
e. File and serve a return to the writ of mandate in this court within 90 days from the issuance of the writ detailing what actions have been taken to comply with the Writ, Judgment and CEQA prior to any subsequent project approval.

2. The Court retains jurisdiction pursuant to Public Resources Code Section 21168.9 to enforce the peremptory writ of mandate and judgment issued in this action. This Court further retains jurisdiction over Respondents' proceedings by way of a return to the writ until the Court has determined that Respondents have fully complied with the terms of this Writ.

3. Under Public Resources Code §21168.9 (c), the Court specifically does not direct Respondents to exercise their lawful discretion in any particular way.

Let the Foregoing Writ Issue:

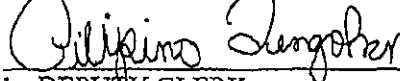
Dated: March 23, 2009



Frank Roesch
Judge of the Superior Court

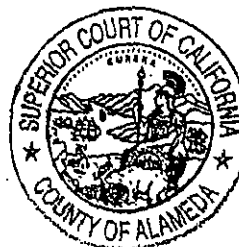
Dated: March 23, 2009
P.T.

CLERK OF THE COURT



by DEPUTY CLERK

W:\300\310\Wake Ave\Pleadings\Peremptory Writ of Mandate.doc



FILED
OFFICE OF THE CITY CLERK
OAKLAND

[Signature]
ORA Agency Counsel

**REDEVELOPMENT AGENCY
OF THE CITY OF OAKLAND**

Resolution No. _____ C.M.S.

AGENCY RESOLUTION RESCINDING, PER COURT ORDER:

(1) AGENCY RESOLUTION NO. 2006-0084 (“A RESOLUTION AMENDING THE OAKLAND ARMY BASE FINAL REUSE PLAN”) REGARDING AN AUTO MALL PROJECT AS DESCRIBED IN RESOLUTION NO. 2006-0084

(2) APPROVAL OF THE 2007 AMENDMENT TO THE OAKLAND ARMY BASE FINAL REUSE PLAN (AMENDED REUSE PLAN) PER AGENCY RESOLUTION NO. 2007-0086 ONLY TO THE EXTENT THE AMENDED REUSE PLAN REFERS, RELATES OR APPLIES TO THE AUTO MALL PROJECT AND/OR RELATES TO (A) ANY DISCHARGES FROM NEW DEVELOPMENT INTO THE 15-INCH SEWER LINE AND/OR (B) VACATION AND/OR RELOCATION OF WAKE AVENUE

WHEREAS, on July 31, 2002, the Oakland City Planning Commission certified the Oakland Army Base Redevelopment Plan Environmental Impact Report (“EIR”) and the Oakland City Council, Oakland Base Reuse Authority (“OBRA”) and Oakland Redevelopment Agency adopted all appropriate California Environmental Quality Act (“CEQA”) findings; and

WHEREAS, the OBRA Governing Body, at its meeting of July 31, 2002, passed Resolution No. 2002-17 adopting the Final Reuse Plan for the Oakland Army Base (“Reuse Plan”), thereby endorsing a conceptual reuse scenario entitled “Flexible Alternative,” which included a mix of land uses for the area, including waterfront, light industrial, maritime support, research and development, “flex-office”, selected retail and possibly a hotel; and

WHEREAS, the Agency wished to amend the Reuse Plan to include an auto mall as a reuse strategy and to relocate the AMS uses from the North Gateway to either the East Gateway or Central Gateway; and

WHEREAS, it was determined necessary to prepare a Supplemental EIR for the Project; and

WHEREAS, on December 5, 2006 the Oakland City Council certified the Supplemental Environmental Impact Report for the Oakland Army Base Auto Mall Project

(the "SEIR"), which analyzed the environmental impacts associated with the development of an auto mall and the relocation of ancillary maritime support services, and adopted all appropriate CEQA findings; and

WHEREAS, the Reuse Plan was amended by the Agency on December 5, 2006 by Resolution No. 2006-0084 to include an auto mall as an additional conceptual strategy for the North Gateway area of the Oakland Army Base (OARB) and to relocate 15 acres of ancillary maritime support uses to the East Gateway or Central Gateway; and

WHEREAS, East Bay Municipal Utility District (EBMUD), which operates a wastewater treatment plant adjacent to the proposed Auto Mall site, filed suit to challenge the adequacy of the SEIR and the authority of the City and Agency to proceed with the Project (Alameda Superior Court Case No. RG07326552); and

WHEREAS, while the suit was pending, the Agency wished to further amend the Reuse Plan to revise the layout and refine the proposed traffic circulation patterns for the Project; and

WHEREAS, a First Addendum to the SEIR analyzed changes to the site layout of the Project and provided additional information for traffic and wastewater; and

WHEREAS, on December 18, 2007 the Oakland City Council, by Resolution 81004 C.M.S., approved the Addendum to the SEIR; and

WHEREAS, on December 18, 2007, by Resolution No. 2007-0086, the Agency approved a superseding amendment to the Reuse Plan which includes a revised layout for the Auto Mall as well as AMS uses; and

WHEREAS, EBMUD amended its lawsuit to add a challenge to the validity of the Addendum and the 2007 Amendment to the Reuse Plan; and

WHEREAS, the Superior Court of California, hearing the suit, found in favor of EBMUD; and

WHEREAS, on March 23, 2009, the Superior Court of California entered a Judgment and issued a Peremptory Writ of Mandate in Case No. RG07326552 commanding the City of Oakland, the Oakland City Council, the Redevelopment Agency of the City of Oakland, and the Board of Directors of the Redevelopment Agency of the City of Oakland (1) to vacate and set aside the approval of the 2006 Amendment to the Final Reuse Plan and to (2) to vacate and set aside its approval of the 2007 Amendment to the Final Reuse Plan (the "Amended Reuse Plan") *only to the extent* the Amended Reuse Plan applies to the Project or relate to (a) any discharges from new development into the 15-inch sewer line and/or (b) vacation or relocation of Wake Avenue; now, therefore, be it

RESOLVED: That in compliance with the Judgment and the Peremptory Writ of Mandate the Agency Board rescinds approval of the 2006 Amendment to the OARB Final Reuse Plan by Resolution No. 2006-0084; and be it

FURTHER RESOLVED: That in compliance with the Judgment and the Peremptory Writ of Mandate the Agency Board rescinds approval of the 2007 Amendment to the OARB Final Reuse Plan by Resolution No. 2007-0086, *only to the extent* the Amended Reuse Plan is applicable to the Project and/or relates to (a) any discharges from new development into the 15-inch sewer line and/or (b) vacation and/or relocation of Wake Avenue.

IN AGENCY, OAKLAND, CALIFORNIA, _____

PASSED BY THE FOLLOWING VOTE:

AYES - KERNIGHAN, NADEL, QUAN, DE LA FUENTE, BROOKS, REID, KAPLAN, AND
CHAIRPERSON BRUNNER

NOES -

ABSENT -

ABSTENTION -

ATTEST:

LATONDA SIMMONS
Secretary of the Redevelopment Agency
of the City of Oakland, California


City Attorney

OAKLAND CITY COUNCIL

Resolution No. _____ C.M.S.

CITY RESOLUTION RESCINDING, PER COURT ORDER:

(1) APPROVAL OF THE 2007 AMENDMENT TO THE OAKLAND ARMY BASE FINAL REUSE PLAN (AMENDED REUSE PLAN) PER CITY COUNCIL RESOLUTION NO. 81004 C.M.S. ONLY TO THE EXTENT THE AMENDED REUSE PLAN REFERS, RELATES OR APPLIES TO THE AUTO MALL PROJECT AND/OR RELATES TO (A) ANY DISCHARGES FROM NEW DEVELOPMENT INTO THE 15-INCH SEWER LINE AND/OR (B) VACATION AND/OR RELOCATION OF WAKE AVENUE

(2) CERTIFICATION OF THE SUPPLEMENTAL ENVIRONMENTAL IMPACT REPORT FOR THE OAKLAND ARMY BASE AUTO MALL PROJECT (SEIR) PER CITY COUNCIL RESOLUTION NO. 80301 C.M.S., ONLY TO THE EXTENT THE SEIR IS APPLICABLE TO THE AUTO MALL PROJECT AND PURPORTS TO PROVIDE ENVIRONMENTAL REVIEW AND/OR CLEARANCE UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) FOR (A) ANY DISCHARGES FROM NEW DEVELOPMENT INTO THE 15-INCH SEWER LINE AND/OR (B) VACATION AND/OR RELOCATION OF WAKE AVENUE

(3) CERTIFICATION OF THE FIRST ADDENDUM TO THE SEIR FOR THE OAKLAND ARMY BASE AUTO MALL PROJECT (ADDENDUM) PER CITY COUNCIL RESOLUTION NO. 81004 C.M.S., ONLY TO THE EXTENT THE ADDENDUM IS APPLICABLE TO THE PROJECT AND/OR PURPORTS TO PROVIDE ENVIRONMENTAL REVIEW AND/OR CLEARANCE UNDER CEQA FOR (A) ANY DISCHARGES FROM NEW DEVELOPMENT INTO THE 15-INCH SEWER LINE AND/OR (B) VACATION AND/OR RELOCATION OF WAKE AVENUE

WHEREAS, on July 31, 2002, the Oakland City Planning Commission certified the Oakland Army Base Redevelopment Plan Environmental Impact Report ("EIR") and the Oakland City Council, Oakland Base Reuse Authority ("OBRA") and Oakland Redevelopment Agency adopted all appropriate California Environmental Quality Act ("CEQA") findings; and

WHEREAS, the OBRA Governing Body, at its meeting of July 31, 2002, passed Resolution No. 2002-17 adopting the Final Reuse Plan for the Oakland Army Base (“Reuse Plan”), thereby endorsing a conceptual reuse scenario entitled “Flexible Alternative,” which included a mix of land uses for the area, including waterfront, light industrial, maritime support, research and development, “flex-office”, selected retail and possibly a hotel; and

WHEREAS, an auto mall concept was not envisioned for the Oakland Army Base (“OARB”) site in 2002 and it was not reflected in the 2002 Reuse Plan as an additional conceptual strategy; and

WHEREAS, the City Council wished to amend the Reuse Plan to include an auto mall as a reuse strategy and to relocate the AMS uses from the North Gateway to either the East Gateway or Central Gateway; and

WHEREAS, it was determined necessary to prepare a Supplemental EIR for the Project; and

WHEREAS, on December 5, 2006 the Oakland City Council (a) certified, by Resolution No. 80301 C.M.S., the Supplemental Environmental Impact Report for the Oakland Army Base Auto Mall Project (the “SEIR”), which analyzed the environmental impacts associated with the development of an auto mall and the relocation of ancillary maritime support services, and adopted all appropriate CEQA findings; and (b) amended the Reuse Plan to include an auto mall as an additional conceptual strategy for the North Gateway area of the Oakland Army Base (OARB) and to relocate 15 acres of ancillary maritime support uses to the East Gateway or Central Gateway; and

WHEREAS, East Bay Municipal Utility District (EBMUD), which operates a wastewater treatment plant adjacent to the proposed Auto Mall site, filed suit to challenge the adequacy of the SEIR and the authority of the City and Agency to proceed with the Project (Alameda Superior Court Case No. RG07326552); and

WHEREAS, while the suit was pending, the City Council wished to further amend the Reuse Plan to revise the layout and refine the proposed traffic circulation patterns for the Project; and

WHEREAS, a First Addendum to the SEIR analyzed changes to the site layout of the Project and provided additional information for traffic and wastewater; and

WHEREAS, on December 18, 2007 the Oakland City Council, by Resolution No. 81004 C.M.S., certified the Addendum to the SEIR and a superseding amendment to the Reuse Plan, which includes a revised layout for the Auto Mall as well as AMS uses; and

WHEREAS, EBMUD amended its lawsuit to add a challenge to the validity of the Addendum and the 2007 Amendment to the Reuse Plan; and

WHEREAS, the Superior Court of California, hearing the suit, found in favor of EBMUD; and

WHEREAS, on March 23, 2009, the Superior Court of California entered a Judgment and issued a Peremptory Writ of Mandate in Case No. RG07326552 commanding the City of Oakland, the Oakland City Council, the Redevelopment Agency of the City of Oakland, and the Board of Directors of the Redevelopment Agency of the City of Oakland (1) to vacate and set aside the approval of the 2006 Amendment to the Final Reuse Plan and to (2) to vacate and set aside the approval of the 2007 Amendment to the Final Reuse Plan (the "Amended Reuse Plan") and its certification of the SEIR and Addendum to the SEIR *only to the extent* the Amended Reuse Plan, the SEIR and the Addendum apply to the Project or relate to (a) any discharges from new development into the 15-inch sewer line and/or (b) vacation or relocation of Wake Avenue; now, therefore, be it

RESOLVED: that in compliance with the Judgment and the Peremptory Writ of Mandate the City Council rescinds approval of the 2007 Amendment to the OARB Final Reuse Plan by Resolution No. 81004 C.M.S. *only to the extent* that the Amended Reuse Plan applies to the Project and/or relates to (a) any discharges from new development into the 15-inch sewer line and/or (b) vacation or relocation of Wake Avenue; and be it

FURTHER RESOLVED: that in compliance with the Judgment and the Peremptory Writ of Mandate the City Council rescinds certification of the SEIR for the OARB Auto Mall Project per City Council Resolution No. 80301 C.M.S., *only to the extent* the SEIR is applicable to the Project and purports to provide environmental review or clearance under CEQA for (a) any discharges from new development into the 15-inch sewer line and/or (b) vacation and/or relocation of Wake Avenue; and be it

FURTHER RESOLVED: that in compliance with the Judgment and the Peremptory Writ of Mandate the City Council rescinds certification of the First Addendum to the SEIR for the OARB Auto Mall Project (Addendum) per City Council Resolution No. 81004 C.M.S., *only to the extent* the Addendum is applicable to the Project and/or purports to provide environmental review and/or clearance under CEQA for (a) any discharges from new development into the 15-inch sewer line and/or (b) vacation and/or relocation of Wake Avenue.

IN COUNCIL, OAKLAND, CALIFORNIA, _____

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, DE LA FUENTE, KAPLAN, KERNIGHAN, NADEL, QUAN, REID, AND
PRESIDENT BRUNNER
NOES -
ABSENT -
ABSTENTION -

ATTEST: _____
LATONDA SIMMONS
City Clerk and Clerk of the Council
of the City of Oakland, California