

CITY OF OAKLAND
REDEVELOPMENT AGENCY AGENCY AGENDA REPORT

OFFICE OF THE CITY CLERK
OAKLAND
2004 MAR 11 PM 12:38

TO: Office of the Agency Administrator
ATTN: Deborah Edgerly
FROM: Community and Economic Development Agency
DATE: March 23, 2004

RE: RESOLUTION AUTHORIZING THE AGENCY ADMINSTRATOR TO NEGOTIATE AND EXECUTE A THIRD AMENDMENT TO THE EXCLUSIVE NEGOTIATING AGREEMENT BETWEEN THE REDEVELOPMENT AGENCY AND FOREST CITY RESIDENTIAL WEST, INC. REGARDING DEVELOPMENT OF THE UPTOWN PROJECT IN DOWNTOWN OAKLAND EXTENDING THE EXCLUSIVE NEGOTIATING AGREEMENT FOR AN ADDITIONAL TERM OF SIXTY (60) DAYS


SUMMARY

This report recommends authorization of a third amendment to an Exclusive Negotiating Agreement (ENA) between the Oakland Redevelopment Agency (Agency) and Forest City Residential West, Inc. (Forest City). The proposed amendment will extend the ENA for an additional term of sixty (60) days to provide sufficient time to schedule a public hearing by the Agency Board to consider whether to approve a lease disposition and development agreement (LDDA) between the Agency and Uptown Partners, LLC, (Uptown Partners) for the development of a mixed-use project (the "Uptown Project") in the Uptown Area, and to allow for completion of legal documentation required to effect the transaction. Forest City is forming Uptown Partners, a limited liability company, with California Urban Investment Partners (CUIP) to bring an equity investor to the project.

The California Environmental Quality Act (CEQA) requires environmental review of the Uptown Project prior to discretionary approval of the LDDA by the Agency. At this time, all required steps under the CEQA project approval process have been completed and the Planning Commission certified the Environmental Impact Report (EIR) for the Uptown Project on February 18, 2004. Final approval of the LDDA and all related agreements will be presented to the Agency for consideration prior to July of 2004.

FISCAL IMPACT

This proposed legislation does not commit the Redevelopment Agency to any expenditure of funds.

Item: 
Community and Economic Development Committee
March 23, 2004

BACKGROUND

On July 23, 2002, the Agency approved Resolution 02-57 C.M.S., authorizing the Agency Administrator to enter into an ENA with Forest City, which was executed on August 7, 2002. During the initial ENA period, which carried a term of one year and three months, the Agency and Forest City evaluated the design and financial feasibility of the Uptown Project and negotiated the preliminary business terms for the proposed transaction. At the same time Forest City and the Agency completed many of the steps necessary under the CEQA project approvals process. On December 17, 2002, the Agency authorized the use of the preliminary design plan for the Uptown Project for the purpose of public outreach under the CEQA process. A Notice of Preparation of Environmental Impact Report (EIR) for the Uptown Project was issued on February 26, 2003. Forest City conducted a community workshop to present the preliminary project design and the proposed scope of the EIR for public review and the Oakland Planning Commission held a scoping session public hearing about the content of the EIR in March of 2003. On May 6, 2003, the Council reviewed and accepted a non-binding informational report on the proposed business terms between the Agency and Uptown Partners (the new limited liability company that will be established by Forest City for the development of the Uptown Project), and the Agency's preliminary financing plan for the project.

On June 30,2003, the Agency and Forest City, pursuant to Section 1.5(a)(i) of the ENA, executed a first amendment to the ENA providing a 90-day extension of the ENA term because of unavoidable delays in completing all of the necessary studies and other documentation to obtain EIR certification as required by CEQA. On September 30, 2003, the Agency, pursuant to Resolution 2003-71, authorized the Agency Administrator to enter into a Second Amendment to the ENA extending the negotiation period for 180 days. The Oakland Planning Commission certified the EIR for the Uptown Project during this last ENA extension period, on February 18, 2004. However, the Agency and Forest City have not yet completed negotiations and finalized the legal agreements that are necessary for the implementation of the Uptown Project. The current extension will expire on May 2,2004 and an additional 60-day extension is needed.

PROJECT DESCRIPTION

Under the proposed business terms, Forest City has committed to develop a large mixed-use, primarily residential project in the downtown area generally bounded by Thomas L. Berkley Way (20th Street) in the north, Telegraph Avenue in the east, 18th Street in the south and San Pablo Avenue in the west. (collectively referred to as the "Project Area", as identified on Exhibit A). The Fox Theater, which is located to the east of Parcel 6, is not part of the Project Area. Forest City's development proposal for the Project Area includes the following highlights:

- A transit-oriented development with at least 700 rental apartments;
- 20 percent (140 units) of the 700 units will be affordable to households earning 50% or less of the AMI for a period of 55 years;
- Five percent (35 units) of the 700 units will be affordable to households earning incomes not exceeding 120 percent of AMI for a period of 55 years;
- Five percent (35 units) of the 700 units will have 3 bedrooms, proportionately distributed between affordable and market rents;
- At least 14,500 square feet of neighborhood-serving retail along Telegraph Avenue, which will be integrated with the Uptown Retail and Entertainment District;
- A 25,000 square foot public park, to be owned by the City of Oakland, that borders on Thomas L. Berkley Way, which will be constructed with Agency funds and maintained by Uptown Partners;
- Uptown Partners will be granted an option, to run for three (3) years from the date of execution of the LDDA, to purchase from the Agency at fair market value a portion of the property behind the Fox Theater and start construction on a 270-unit market-rate condominium tower along San Pablo Avenue. Uptown Partners will attempt to recruit an associate developer for this project component.
- Forest City will also work with the Agency to select a developer for a 100 percent affordable housing project to be developed on Parcel 6 behind the Fox Theater.

KEY IMPACTS

ENA Extension

The ENA between the Agency and Forest City will expire on May 2, 2004. While the EIR for this complex project has been certified, the LDDA negotiations and completion of all required legal documents are taking significantly longer than originally anticipated. Two project-related issues have contributed to this delay. First, staff, in cooperation with the developer, has worked with the East Bay Housing Organizations and the Coalition for Workforce Housing to reach agreement on the development of a 100 percent affordable housing project on Parcel 6. Second, staff and Forest City, with the assistance of the City Attorney's Office, are resolving liability issues related to existing groundwater contamination in the Project Area by developing a comprehensive ground lease arrangement for incorporation into the LDDA that will involve a horizontal subdivision of the Project Area, environmental contamination insurance coverage, various construction techniques and management controls to avoid or reduce disturbance of any contamination, and a legal agreement with the State Regional Water Quality Control Board to limit the potential liability of all parties involved. The recommended 60-day extension of the ENA term should provide adequate time to conclude all LDDA negotiations, finalize the legal agreements necessary to effect the transaction, prepare all reports required by redevelopment law and schedule a public hearing by the Agency's governing board to consider approval of the LDDA.

SUSTAINABLE OPPORTUNITIES

Economic

This redevelopment infill project will take blighted, underutilized and contaminated sites and turn them into an economically productive use by building a large-scale housing project that includes a retail component. The development of approximately 1,000 housing units in the Project Area should attract over 2,000 new residents to downtown Oakland, which will contribute to the revitalization of vacant retail sites and stimulate job creation through increased demand for local services and shopping opportunities. A local real estate and urban economics consultant has estimated that these new residents will generate up to \$19 million in potential direct spending, which will support up to 48,000 square feet of new commercial and retail space and create more than 110 new jobs, if Oakland captures all of this spending. If Oakland captures only 50 percent (\$9.5 million) of the projected new spending capacity, the Central District will still gain 24,000 square feet of new retail space and 55 new jobs.

Environmental

By developing in already built-up areas, this project reduces the pressure to construct on agricultural and other undeveloped land, and thereby contributes to the prevention of urban sprawl.

The location of the Uptown Project in proximity to major public transportation nodes will likely encourage project residents and retail customers to use BART and AC Transit. Forest City will incorporate environmental sustainability measures into the Uptown Project design to the extent that such features are equivalent or lower in cost than comparable non-sustainable alternatives, when measured over their respective life-cycles.

Equity

The Uptown Project will expand the supply of affordable housing in Oakland by including 140 rental units that will be affordable to households earning 50 percent or less of the area's median income. The proposed 100 percent affordable housing project on Parcel 6 will provide large family-sized units, as well as small studio apartments with a wider range of affordability. Uptown Partners will comply with the City's contracting programs, including the Small/Local Business Construction Program, the Small/Local Business Professional Services Program (L/SLBE) and the Local Employment Program. **All** of the workers performing construction work for Agency funded projects must be paid prevailing wage rates. Uptown Partners will also be subject to the Living Wage Ordinance.

DISABILITY AND SENIOR CITIZEN ACCESS

Forest City's project design must comply with the requirements of the Americans with Disabilities Act.

RECOMMENDATIONS AND RATIONALE

It is recommended that the Agency Board authorize a third amendment to the ENA between the Agency and Forest City to extend the term by **an** additional sixty (60) days. This extra time is needed in order to complete all negotiations, finalize the legal documentation required by Redevelopment law and provide sufficient time to schedule a public hearing during which the Agency Board will consider whether to approve a LDDA between the Agency and Uptown Partners, LLC, for the Uptown Project.

ACTION REQUESTED OF THE AGENCY

It is recommended that the Agency Board authorize a third amendment to the ENA between the Agency and Forest City to extend the term of the agreement by an additional sixty (60) days.

Respectfully submitted,



Dan Vanderprien
Director of Redevelopment, Economic
Development and Housing

Prepared by:
Jens Hillmer
Urban Economic Analyst IV
Redevelopment Division

APPROVED AND FORWARDED TO
THE COMMUNITY AND ECONOMIC
DEVELOPMENT COMMITTEE



Deborah Edgerly
Agency Administrator

OFFICE OF THE CITY CLERK

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Approved as to form and legality:



Agency Counsel

REDEVELOPMENT AGENCY OF THE CITY OF OAKLAND

RESOLUTION No. _____ C.M.S.

RESOLUTION AUTHORIZING THE AGENCY ADMINISTRATOR TO NEGOTIATE AND EXECUTE A THIRD AMENDMENT TO THE EXCLUSIVE NEGOTIATING AGREEMENT BETWEEN THE REDEVELOPMENT AGENCY AND FOREST CITY RESIDENTIAL WEST, INC. REGARDING DEVELOPMENT OF THE UPTOWN PROJECT IN DOWNTOWN OAKLAND EXTENDING THE EXCLUSIVE NEGOTIATING AGREEMENT FOR AN ADDITIONAL TERM OF SIXTY (60) DAYS

WHEREAS, on July 23, 2002, the Redevelopment Agency (Agency) approved Resolution 02-57 C.M.S., authorizing the Agency Administrator to enter into an Exclusive Negotiating Agreement (ENA) with Forest City Residential West, Inc. (Forest City), for purposes of studying and evaluating the feasibility of, and negotiating terms and conditions for the development of a mixed-use project including retail and housing in the Uptown Area; and

WHEREAS, the ENA, which was executed on August 7, 2002, had an initial term of one (1) year: and

WHEREAS, Forest City is required to complete and certify documentation required pursuant to the California Environmental Quality Act (CEQA) of 1970 during the ENA term: and

WHEREAS, on June 30, 2003, pursuant to Section 1.5(a)(i), the ENA was amended to extend the negotiation period by ninety (90) days to November 4, 2003, and on September 30, 2003, the ENA was amended a second time to extend the negotiation period by 180 days, in both cases to allow Forest City to complete and certify the Environmental Impact Report (EIR) for the project required pursuant to CEQA: and

WHEREAS, there have been unavoidable delays in the negotiations and completion of all required legal documents; and

WHEREAS, the ENA, as previously amended, expires on May 2, 2004; and

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WHEREAS, the Agency desires to provide Forest City with sufficient time to complete negotiations of all legal documents related to the development of a mixed-use project; now, therefore, be it

RESOLVED: That the Agency Administrator is authorized to negotiate and enter into a Third Amendment to the ENA with Forest City to extend the negotiation period for a term of sixty (60) days; and be it

FURTHER RESOLVED: That the Third Amendment to the Exclusive Negotiating Agreement shall be reviewed and approved as to form and legality by Agency Counsel prior to execution, and copies will be placed on file with the Agency Secretary; and be it

FURTHER RESOLVED: That the Agency has independently reviewed and considered this environmental determination, and the Agency finds and determines that this action complies with CEQA because this action on the part of the Agency is exempt from CEQA pursuant to Section 15262 (feasibility and planning studies), Section 15306 (information collection) and Section 15061(b)(3) (general rule) of the CEQA Guidelines; and be it

FURTHER RESOLVED: That the Agency Administrator or her designee shall cause to be filed with the County of Alameda a Notice of Exemption for this action: and be it

FURTHER RESOLVED: That the Agency Administrator is further authorized to take whatever action is necessary with respect to the ENA, as amended, and the project consistent with this Resolution and its basic purposes.

IN AGENCY, OAKLAND, CALIFORNIA, _____, 2004

PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, BRUNNER, CHANG, NADEL, QUAN, REID, WAN, AND
CHAIRPERSON DE LA FUENTE,

NOES-

ABSENT-

ABSTENTION-

ATTEST: _____
CEDA FLOYD
Secretary of the Redevelopment Agency
of the City of Oakland

6-1

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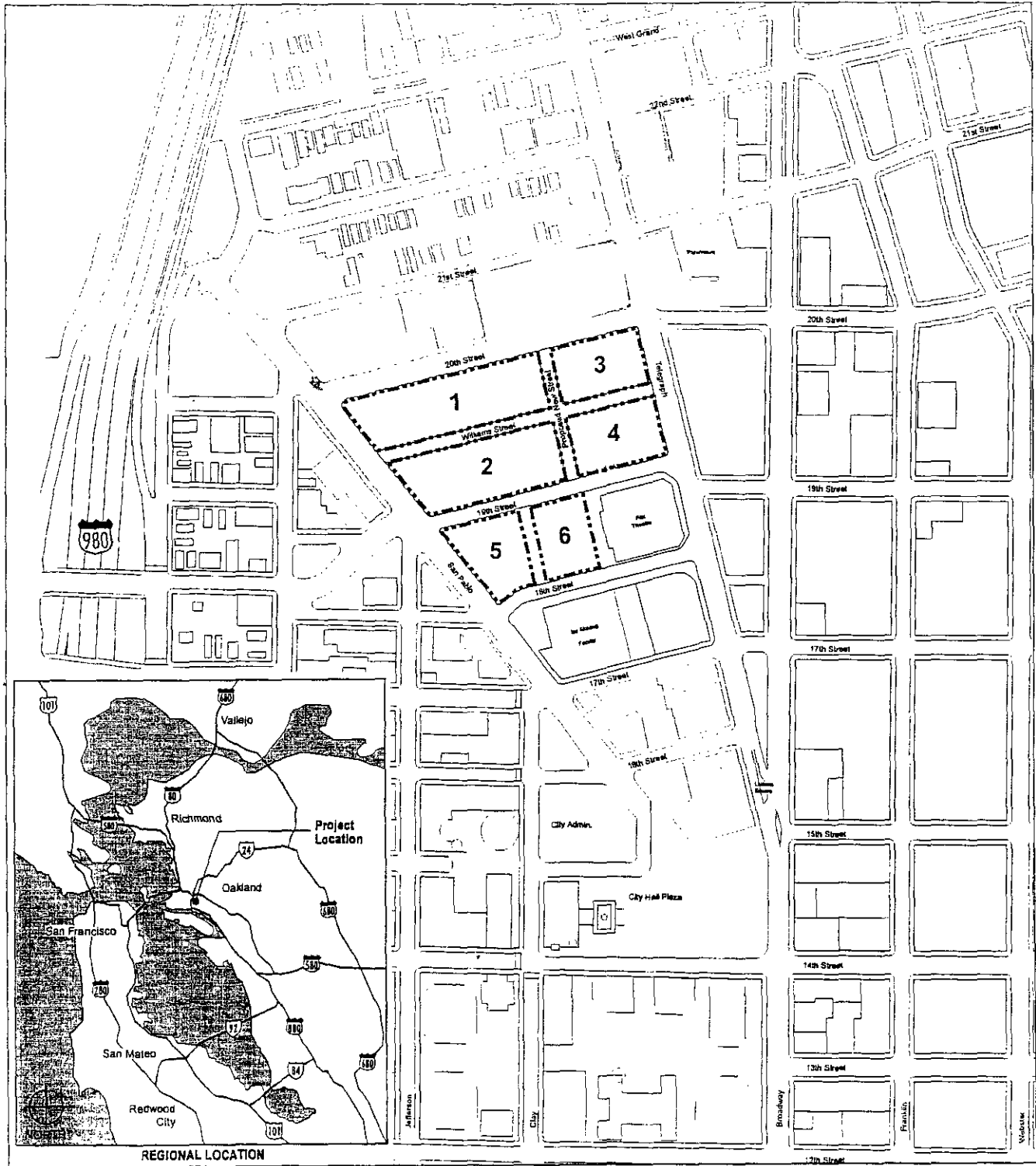


EXHIBIT A

Project Location and Regional Location

6-1

SOURCE: MCLARAND, VASQUEZ & PARTNERS, INC., 2002.
 (I:\IMAGES\GRAPHICS\JOBS\FCR230 UPTOWN\FIGURES\FIG _ AT (10/21/02)

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