

**REDEVELOPMENT AGENCY
OF THE CITY OF OAKLAND**
AGENDA REPORT

FILED
OFFICE OF THE CITY CLERK
OAKLAND

2008 JUN 12 PM 6:06

TO: Office of the City/Agency Administrator
ATTN: Deborah Edgerly
FROM: Community and Economic Development Agency
DATE: June 24, 2008

SUBJECT: An Agency Resolution Authorizing the Agency Administrator to Negotiate and Execute a Time Extension of Six to Twelve Months to the Three-Party Exclusive Negotiating Agreement with MacArthur Transit Community Partners, LLC and the San Francisco Bay Area Rapid Transit District for the Development of the MacArthur Transit Village Project.

SUMMARY

This item is a request for Redevelopment Agency approval of a resolution authorizing the Agency Administrator to extend the three-party Exclusive Negotiating Agreement (ENA) between the Agency, BART, and the MacArthur Transit Community Partners, LLC (MTCP) for an additional six months for the purpose of negotiating an Owner Participation Agreement (OPA) between the Agency and MTCP for the development of the MacArthur Transit Village Project. The resolution also allows for a further six month extension, to be approved by the City Administrator, if necessary to allow for the completion of OPA negotiations.

FISCAL IMPACT

Authorization to extend the three-party ENA with MTCP and BART does not commit any expenditure of City or the Redevelopment Agency funds. There will be no adverse impact on the General Fund or to the funds of the Redevelopment Agency as a result of entering into this agreement.

BACKGROUND

Since 1993, the City has been working with BART and the MacArthur BART Citizens Planning Committee ("CPC"), comprised of community residents and representatives of neighborhood organizations, in a planning process for the development of the MacArthur Transit Village. The Agency selected a development team for this project in April 2004 through a competitive Request for Proposals process. The development team, MacArthur Transit Community Partners, LLC (MTCP), is a limited liability company that consists of a partnership between McGrath Properties (formerly known as Aegis Equity Partners) and BUILD (BRIDGE Urban Infill Land Development, LLC).

On June 1, 2004, the Agency Board authorized the Agency Administrator to negotiate a three-party ENA between the Agency, BART, and MTCP. Since that date, the Agency has been actively

Item: _____
CED Committee
June 24, 2008

negotiating with the development team and BART and working to refine the project proposal. The Agency and MTCP executed a term sheet that was reviewed and approved by City Council on December 19, 2006. The term sheet outlined key deal points for the prospective OPA that were included in a Letter of Intent for the project.

The development team started the environmental review process in February 2006. The Draft EIR for the project was published on January 31, 2008 and the Response to Comments/Final EIR was published on May 23, 2008. MTCP submitted their application for Preliminary Development Plan Entitlements to the City's Planning Department in October 2007. MTCP anticipates going before the Community and Economic Development Committee of the City Council and the Agency for a recommendation on the certification of the Final EIR and approval of the Preliminary Development Plan Entitlements at the June 24, 2008 meeting. Staff anticipates bringing forward the draft Owner Participation Agreement for consideration by City Council in September 2008.

The current site plan for the MacArthur Transit Village project includes five new buildings containing 624 units, of which 104 are affordable, 42,500 square feet of neighborhood serving commercial space, and 5,000 square feet of community space (currently anticipated to be a childcare facility). In addition, the project proposal includes a replacement BART parking structure with 300 parking spaces, which represents 50% replacement of the existing parking spaces, renovation of the existing BART plaza and inter-modal facilities at the BART station, a new public plaza, and two new internal streets.

KEY ISSUES AND IMPACTS

In 2004, the Agency staff requested permission from the City Council to extend the ENA for this project administratively, as long as the development team was performing, until the certification of the EIR. Following the certification of the EIR, Agency approval is required for any subsequent extensions. MTCP has completed all of the required tasks under the ENA with the exception of the execution of a Project Labor Agreement and the certification of the project EIR. The EIR is anticipated to be certified at the July 15, 2008 City Council/Redevelopment Agency meeting at which time the current ENA extension will expire. MTCP plans to negotiate and execute the Project Labor Agreement this Fall.

Staff is still in the process of negotiating the terms and language for the OPA and does not anticipate being able to bring it forward to the Agency for consideration until after the summer recess, in September 2008. As a result, Agency staff is requesting permission to extend the ENA for an additional six months to cover this period of negotiations. It is critical for the development team to remain under the ENA with the Agency and BART since it enhances their ability to procure grant funds for the project. Staff is including in the resolution an option to extend the ENA one more time administratively for an additional six months in case negotiations take longer than anticipated. Any further extensions will be at the sole discretion of the Agency.

MTCP is also currently in the process of negotiating an Option Agreement with BART that will

govern the terms of the transfer of the BART-owned property to the development team for the purpose of constructing the project. The Option Agreement with BART will likely go before the BART Board for approval in July or August 2008.

SUSTAINABLE OPPORTUNITIES

Economic:

Potential benefits if the transit village project goes forward include increased housing stock, new permanent jobs from net new commercial development, and increased tax revenue to the City and Agency.

Environmental:

Potential benefits if the transit village project goes forward include redevelopment of transit-node located land at a higher density, creating a more sustainable urban land use pattern and increased transit ridership. MTCP is seeking LEED Neighborhood Development (ND) Gold certification for the project. The use of sustainable design features in the individual project buildings will be addressed in the Owner Participation Agreement.

Social Equity:

The Agency is requiring that the development team provides affordable housing units as part of the housing that is included in the development proposal. Consequently, potential benefits if the Transit Village project goes forward include the development of affordable housing.

DISABILITY AND SENIOR CITIZEN ACCESS

The authorization of the ENA extension will have no impact on disability and senior citizen access. The MacArthur Transit Village project, when constructed, will be required to comply with state and federal accessibility requirements, including Federal ADA Accessibility Guidelines, the Fair Housing Act and the State of California's Title 24 Accessibility regulations.

RECOMMENDATIONS AND RATIONALE

Staff recommends extending the three-party ENA between the Agency, BART, and MTCP to allow for continued negotiations for an Owner Participation Agreement between the Agency and MTCP for the MacArthur Transit Village project.

The proposed MacArthur Transit Village project meets the following goals and objectives of the Broadway/MacArthur/San Pablo Redevelopment Plan and its Five Year Implementation Plan:

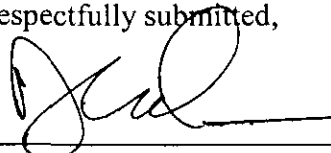
- The MacArthur Transit Village Project will increase the stock of ownership housing and will provide affordable rental housing units in the Broadway/MacArthur/San Pablo Redevelopment Project Area;

- Development on the BART surface parking lot at the MacArthur BART Station will contribute to the Agency's goals to concentrate infill development on underutilized properties within the Broadway/MacArthur/San Pablo Redevelopment Project Area;
- The public improvements that will be included as part of the MacArthur Transit Village Project will improve access to BART and to the other public transportation providers that serve the BART station from the surrounding community; and
- The MacArthur Transit Village Project, once developed, will enhance residential and commercial property values adjacent to the MacArthur BART Station, and will encourage efforts to alleviate economic and physical blight conditions in the area, including high business vacancy rates, vacant lots, and abandoned buildings, by enhancing the development potential and overall economic viability of neighboring properties.

ACTION REQUESTED OF THE REDEVELOPMENT AGENCY

Staff recommends that the Redevelopment Agency approve the attached resolution which authorizes a six month extension to the three-party ENA between the Agency, BART, and MTCP for the development of the proposed MacArthur Transit Village project. The resolution also allows for a further six month extension, to be approved by the City Administrator, if necessary to allow for the completion of OPA negotiations.

Respectfully submitted,

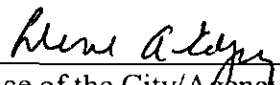


Dan Lindheim, Director
Community and Economic Development Agency

Reviewed by:
Gregory D. Hunter, Deputy Director
Economic Development & Redevelopment

Prepared by:
Kathy Kleinbaum,
Urban Economic Analyst IV

**APPROVED AND FORWARDED TO
THE COMMUNITY AND ECONOMIC
DEVELOPMENT COMMITTEE:**

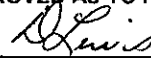


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Item: _____
CED Committee
June 24, 2008

2008 JUN 12 PM 6:06

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 TIME EXTENSION OF SIX TO TWELVE MONTHS TO THE THREE-PARTY EXCLUSIVE NEGOTIATING AGREEMENT WITH MACARTHUR TRANSIT COMMUNITY PARTNERS, LLC AND THE SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT FOR THE DEVELOPMENT OF THE MACARTHUR TRANSIT VILLAGE PROJECT

WHEREAS, the Redevelopment Agency of the City of Oakland is working to redevelop the MacArthur Bay Area Rapid Transit District ("BART") Station and the surrounding properties into a transit village; and

WHEREAS, the MacArthur Transit Village project is located within the Broadway/ MacArthur/San Pablo Redevelopment Project Area; and

WHEREAS, the Five Year Implementation Plan for the Broadway/MacArthur/San Pablo Redevelopment Project, adopted on July 25, 2000 (Ordinance No. 12269 C.M.S.), includes the MacArthur Transit Village project; and

WHEREAS, pursuant to a joint Request for Proposals, the Agency and BART reviewed five submissions and selected a development team that consists of a partnership between McGrath Properties (formerly Aegis Equity Partners) and BUILD (BRIDGE Urban Infill Land Development, LLC), organized as MacArthur Transit Community Partners, LLC ("MTCP"); and

WHEREAS, the Agency approved the execution of a three-party Exclusive Negotiating Agreement ("ENA") between the Agency, BART and MTCP on June 1, 2004 (Resolution No. 2004-26 C.M.S.) for the development of a transit village project at the MacArthur BART Station; and

WHEREAS, MTCP is in the process of negotiating an Owner Participation Agreement ("OPA") with the Agency that would outline the terms and conditions of

Agency participation in the proposed development of the MacArthur Transit Village and is in the process of negotiating an Option Agreement with BART for the purchase of BART-owned property at the MacArthur BART Station; and

WHEREAS, MTCP has submitted an application to the City of Oakland for the certification of the Environmental Impact Report for the project and approval of Preliminary Development Plan project entitlements, which is scheduled to go before the City Council for approval in July 2008; and

WHEREAS, the Agency Administrator is not authorized to extend the ENA beyond the date of the certification of the Environmental Impact Report for the project without returning to the Agency for authorization; and

WHEREAS, the Agency and MTCP do not anticipate completing negotiations for the Owner Participation Agreement until Fall 2008 and therefore wish to extend the ENA to cover this period of negotiations; and

WHEREAS, 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; now therefore be it

RESOLVED: That the Agency Administrator is authorized to negotiate and execute a six-month extension to the three-party Exclusive Negotiating Agreement with MTCP and BART for purposes of negotiating an OPA for the potential development of a transit village at the MacArthur BART Station; and be it further

RESOLVED: That the extension of the exclusive negotiating period will be for six months following the certification of the Environmental Impact Report, with the option to extend said period if an OPA has not been executed, with the approval of the Agency Administrator in her sole discretion, for an additional six months; and be it further

RESOLVED: That the agreement extending the ENA shall be reviewed and approved as to form and legality by Agency Counsel prior to execution; 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 hereby authorizes the Agency Administrator or her designee to take all other actions necessary with respect to the extension of the Exclusive Negotiating Agreement and the project consistent with this Resolution and its basic purposes.

IN AGENCY, OAKLAND, CALIFORNIA, _____, 2008

PASSED BY THE FOLLOWING VOTE:

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

NOES-

ABSENT-

ABSTENTION-

ATTEST: _____
LATONDA SIMMONS
Secretary, Redevelopment Agency
of the City of Oakland