

FILED
OFFICE OF THE CITY CLERK
OAKLAND

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

TO: Office of the City/Agency Administrator
ATTN: Dan Lindheim
FROM: Community and Economic Development Agency
DATE: September 14, 2010

RE: **Agency Resolution and City Ordinance Amending the West Oakland
Redevelopment Plan to Modify the Authority of the Agency to Acquire Property
in the Clawson/McClymonds/Bunche Subarea through Eminent Domain**

SUMMARY

This Agency resolution and City Ordinance amends the eminent domain sections for the Clawson/McClymonds/Bunch Subarea of the West Oakland Redevelopment Plan. The action will not affect residential property.

This amendment proposes changes to two specific criteria for property acquisition by eminent domain:

- (1) Revises the maximum size of redevelopment project eligible for property acquisition by eminent domain:** The Plan currently limits the use of eminent domain only to redevelopment projects that are three acres or less in size (the limitation includes all phases of a project). The amendment would revise the three-acre size limitation, applying it only to the acreage of the property acquired through eminent domain.
- (2) Location of property acquisition:** Currently, only parcels that are contiguous to designated commercial corridors in the subarea are eligible for eminent domain. The amendment would revise the map to add additional commercial parcels adjacent to the currently identified commercial corridors, limited to the commercial properties on the blocks bounded by Grand, 24th Street, Market Street and Filbert Street.

FISCAL IMPACT

The proposed action will have no direct impact on the General Fund. If the eminent domain authority were used for a grocery store as proposed, the annual City sales tax revenue for the project is estimated to be \$49,000 based on estimates of other comparable operators in the Oakland market.

Anticipated One Time Revenues: If the proposed project using eminent domain is built, it is estimated that City Building Permit fees, based on a total construction cost of \$12.8 million, would be about \$272,000.

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Anticipated Annual Revenues: When adding the land value to the improvements, the property taxes would be approximately \$243,000 per year of which \$134,000 would go to general redevelopment; \$61,000 would go to the Low and Moderate-Income Housing Fund and \$15,000 to the City General Fund in pass-through payments. The value of gross property tax increment revenue over a 25-year period accruing to the Agency is estimated to be approximately \$6,000,000, including \$375,000 that would go to the City. This is revenue that will help increase the Agency's bonding capacity for project area capital improvements and for affordable housing.

BACKGROUND

The West Oakland Redevelopment Plan was adopted on November 18, 2003. One of the Plan's major goals is "to assist neighborhood commercial revitalization, and attract more uses that serve the local community including neighborhood serving retail". As an example, for many years, West Oakland has been trying to attract a grocery store that serves the community. This goal conforms with the purpose of redevelopment as stated in Community Redevelopment Law, including the elimination of blight, the planning, development, re-planning, redesign, clearance, reconstruction, or rehabilitation, or any combination of these.

In order to eliminate the conditions requiring redevelopment, and assist in realizing the Plan's goals, the Plan allows the Agency to acquire real property by eminent domain in the Clawson/McClymonds/Bunche Subarea of the Project Area *subject to certain limitations*. One of the limitations, and the one in question, is that any redevelopment project under consideration does not exceed three acres in total land area. This limitation has made it difficult for staff to attract neighborhood serving retail to an area in need of these services.

KEY ISSUES AND IMPACTS

Site Control: Staff has been in discussion with a grocery store looking to locate in West Oakland. The project under consideration, FoodsCo, is a full service grocery store of approximately 72,000 sq. ft. with 234 off-street parking spaces. The total project encompasses approximately five acres. The site is presently occupied by industrial warehouses, vacant lots and light industrial uses. The site does not include any residential uses.

The business has been able to option a site in the Clawson/McClymonds/Bunche Subarea, but the site alone is not large enough for the business, and additional land is needed for the project (the additional land required for the project is not in residential use). The business has negotiated with the property owner, but the requested price is much greater than the estimated fair market value. The business has therefore requested Agency assistance to obtain the remainder of the project site, but because the total size of the project is approximately five acres, and therefore exceeds the Plan's three acre limitation, it precludes the use of eminent domain by the Agency thus making the project infeasible. Amending the Redevelopment Plan to modify the three acre minimum project size in this particular area would allow the Agency to assist the business in

developing the project and meet one of the major goals stated in the West Oakland Redevelopment Plan.

Need: The need for a grocery store in West Oakland is very great. An August 12, 2010, report by National Public Radio sited Oakland, along with Chicago, Los Angeles, and Detroit as cities that have lost grocery stores in the last 15 years. An example is the district's only full service grocery that used to be part of Jack London Gateway but which closed its doors on February 25, 2007. For the past three and a half years, West Oakland has been without a full service grocery store.

Mandela Foods and the 99 Cent Only Store provide some produce and grocery products to the neighborhoods of West Oakland, but the only full service supermarkets that can serve the residents are located outside the neighborhood in the outlying areas of Oakland, Berkeley and Emeryville. Residents must travel long distances to meet their basic food needs. Travelling can be inconvenient and costly; especially since 43% of West Oakland residents do not own a vehicle and must rely on public transit; consequently, residents often buy very limited food goods at high prices at neighborhood convenience markets and liquor stores.

Nutrition: A 2006 survey by the Alameda County Public Health Department concluded that West Oakland residents would buy fresh meat and produce if an affordable supermarket was located in the West Oakland neighborhood. This is a critical need for a community that is in the 67th percentile for diabetes in Alameda County and where 48% of the residents are obese or have unhealthy weight levels due in part to poor nutrition. If successful, the project under discussion by staff in the Clawson/McClymonds/Bunche Subarea of the Project Area will help to meet the food needs of the community.

Design: If the eminent domain power was used by the Agency to assist in site acquisition and assembly, any development, whether a grocery store or other use, would be required to enter into a Disposition and Development Agreement (DDA) or Owner Participation Agreement (OPA) with the Agency. The DDA/OPA, among other things, would contain a section outlining design guidelines and the process for design review as a requirement of approval of the project. The West Oakland Project Area Committee ("WOPAC") would have the opportunity to review project design at that time.

PROGRAM DESCRIPTION

Given the current limits on eminent domain referred to earlier in this report, it can not be used for the proposed grocery store project. The proposed amendment to the West Oakland Redevelopment Plan will make this project possible. The specific amendments will do the following:

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(1) Revise Section §305, “Acquisition by Eminent Domain”. This section outlines the specific criteria for property acquisition by eminent domain; the clause to be amended, Subsection §305.b. (3), currently reads:

“The redevelopment project does not exceed three acres in total land area. For a project that is to be developed in multiple phases, ‘total land area’ means the land area for all phases of the project.”

The amended language for Subsection §305.b (3) will read:

“The property to be acquired through eminent domain for the redevelopment project does not exceed three acres in total land area. For a project that is to be developed in multiple phases,” total land area” means the land area for all property to be acquired through eminent domain for all phases of the project.

(2) Revise the current map in the adopted Redevelopment Plan entitled “Designated Commercial Corridors for Eminent Domain Provisions” Attachment A, to add additional commercial parcels adjacent to the current designated areas and bounded by Grand Avenue, Filbert Street, 24th Street and Market Street. The additions to the map are identified as Attachment B.

These changes as a whole seek to better define eminent domain policy in this subarea of West Oakland in way which would allow for successful planning and development while still maintaining necessary protections. They also, in part, are needed to facilitate discussions and future negotiations between the Agency and a grocery business wishing to locate in the Clawson/McClymonds/Bunche Subarea of West Oakland. The business in question has been able to option a site, but additional land is needed for the project to move forward. This is discussed in greater detail in the Key Issues and Impacts section of this report.

PROJECT AREA COMMITTEE RECOMMENDATION

At its June 9, 2010, meeting, WOPAC voted against amending the West Oakland Redevelopment Plan as it pertains to the use of eminent domain for the FoodsCo grocery store and requested staff to return with additional information about the nature and size of the proposed project and more detail concerning the actual changes to the location boundaries under consideration.

Staff presented the additional information at the July 14, 2010, WOPAC meeting. In a tie vote, the motion to recommend the amendment to the West Oakland Redevelopment Plan to modify the authority of the Agency to acquire property in the Clawson/McClymonds/Bunche Subarea through eminent domain failed to pass. Because the WOPAC has failed to recommend the amendment, it appears that under redevelopment law the Council will need a two-third vote to pass the ordinance.

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Section 33385.3 and 33385.5 of the California Health and Safety Code requires that a proposed plan amendment that grants authority to acquire residential property through eminent domain be submitted to the project area committee for its recommendation. If the PAC opposes the amendment, the amendment can only be adopted by a two-thirds vote of the city council. Although the property being considered for eminent domain here is not in residential use, in theory the proposed amendment could arguably expand the Agency's eminent domain authority over any property in the designated portions of the subarea, including residential property. Because WOPAC is not recommending in favor of the eminent domain amendment (although it should be pointed out that they are also not recommending against the amendment either), approval of the City Ordinance authorizing the amendment arguably will require at least six Council votes to pass.

COMMUNITY INITIATIVE

Following the WOPAC action declining to approve amending the West Oakland Redevelopment Plan as it pertains to the use of eminent domain for the FoodsCo grocery store, members of the community began circulating a petition in support of the grocery store project. As of the date of this report, 703 signatures have been gathered in support of the store.

SUSTAINABLE OPPORTUNITIES

Economic: The proposed project will create approximately 110 new jobs, increase property values and sales tax, and provide additional tax increment to the area which can be used for future capital projects and affordable housing.

Environmental: A new supermarket in West Oakland will help eliminate some of the long trips that residents are required to make by car to markets outside the community to obtain their food and grocery needs. This will result in less air pollution and noise. It could also encourage walking from the surrounding residential neighborhoods, eliminating the use of the car altogether for some residents.

Social Equity: The project will provide new opportunities for West Oakland residents to shop for groceries and food stuffs in a location convenient to their neighborhood.

DISABILITY AND SENIOR CITIZEN ACCESS

The Project will be constructed in compliance with the latest ADA standards and building codes and will provide full access for disabled or senior citizens' access.

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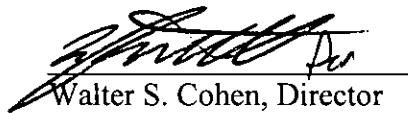
RECOMMENDATION AND RATIONALE

Amending the West Oakland Redevelopment Plan to modify the authority of the Agency to acquire property in the Clawson/McClymonds/Bunche Subarea through eminent domain will better define eminent domain policy, making it a better and more exact tool for successful planning and redevelopment while still maintaining necessary property protections.

ACTION REQUESTED OF THE CITY COUNCIL/REDEVELOPMENT AGENCY

Staff requests approval of the Agency Resolution and City Ordinance amending the West Oakland Redevelopment Plan to modify the authority of the Agency to acquire property in the Clawson/McClymonds/Bunche Subarea through eminent domain.

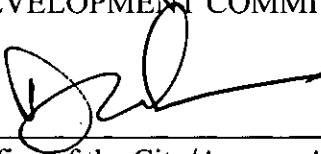
Respectfully submitted,



Walter S. Cohen, Director
Community and Economic Development Agency

Prepared by:
Gregory Hunter, Deputy Director
Economic Development and Redevelopment

APPROVED AND FORWARDED TO THE
COMMUNITY AND ECONOMIC
DEVELOPMENT COMMITTEE:



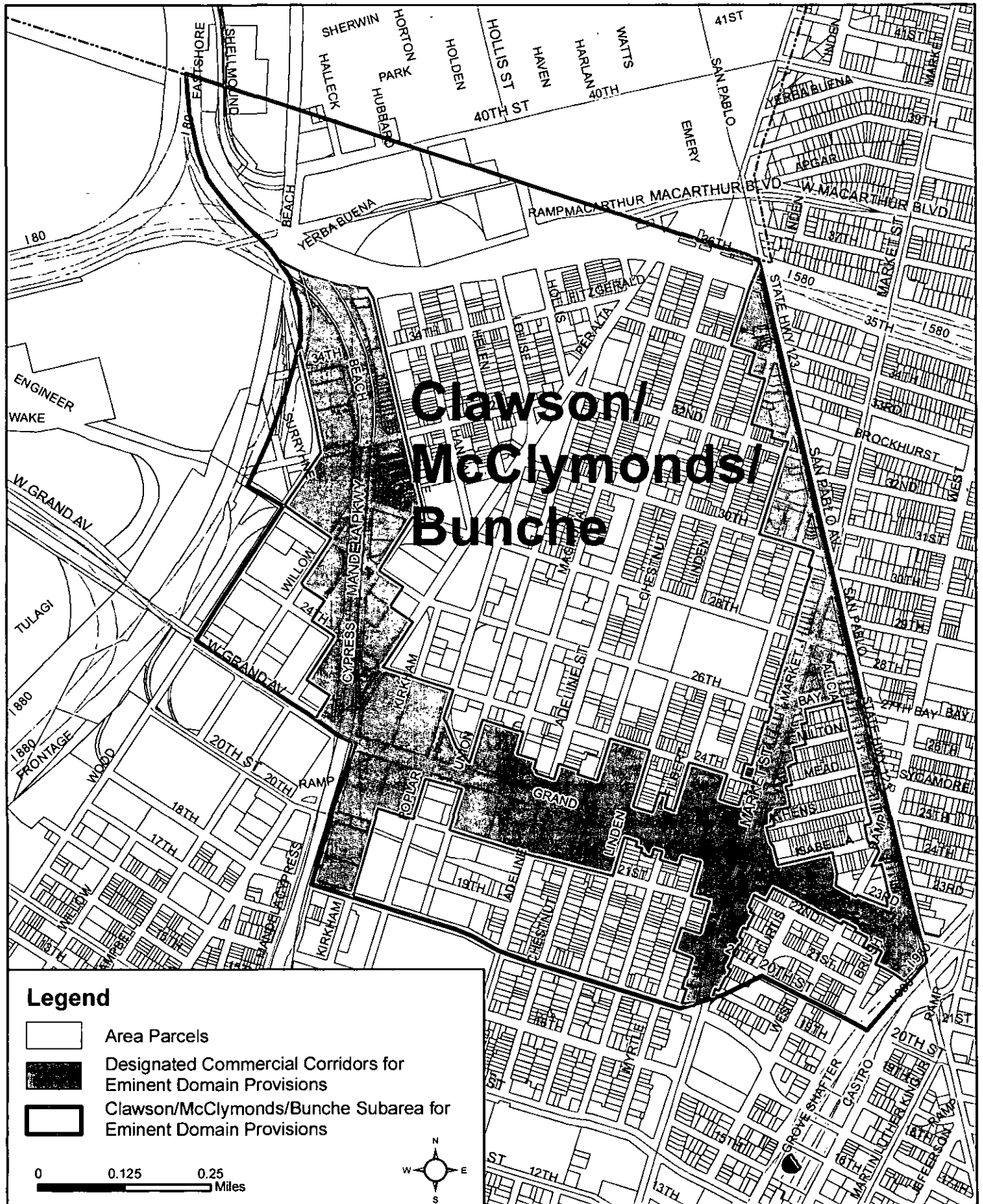
Office of the City/Agency Administrator

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



Attachment A

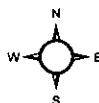
Eminent Domain in the Clawson/McClymonds/Bunche Subarea and Designated Commercial Corridors for Eminent Domain Provisions



Legend

-  Area Parcels
-  Designated Commercial Corridors for Eminent Domain Provisions
-  Clawson/McClymonds/Bunche Subarea for Eminent Domain Provisions

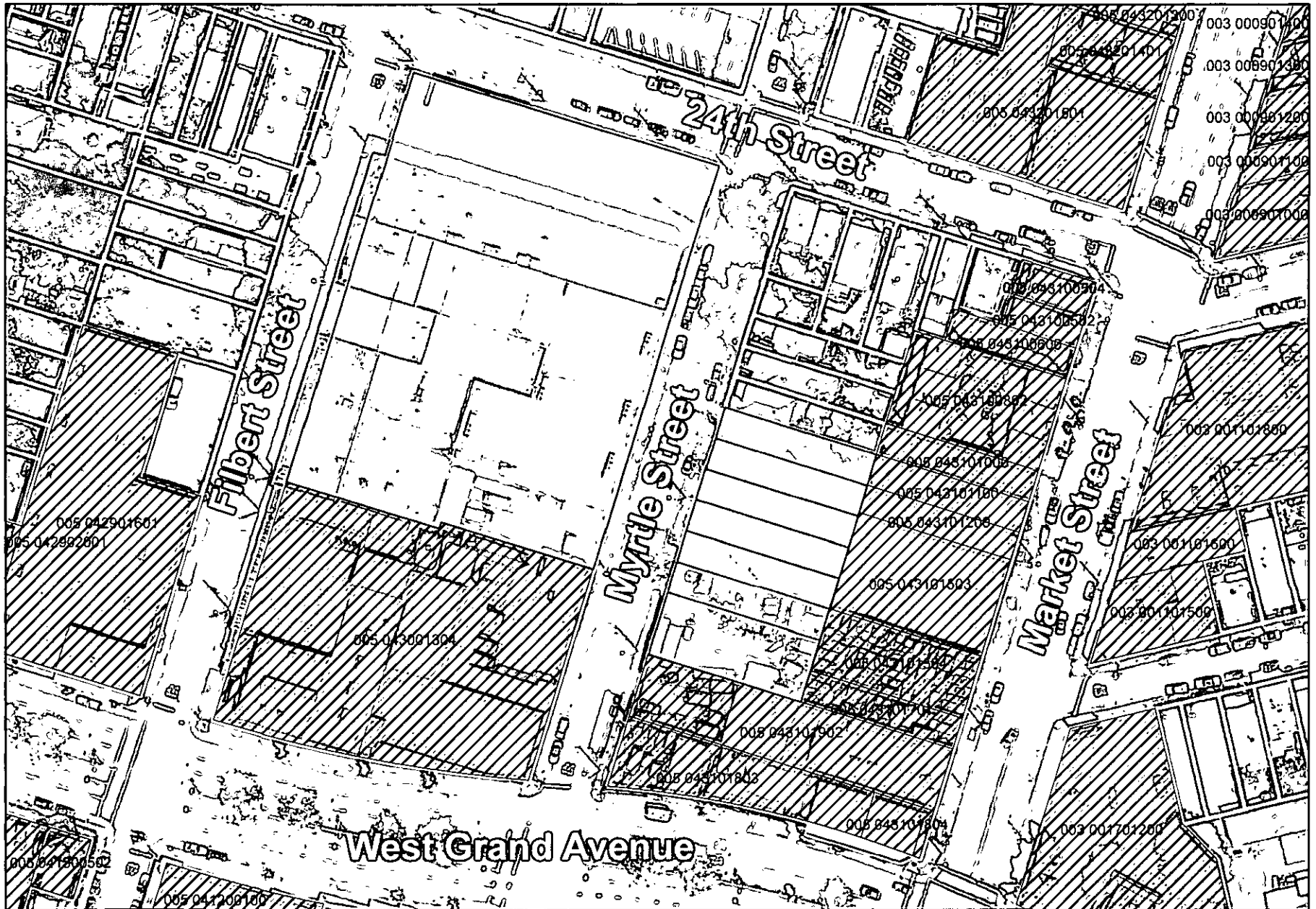
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Attachment B: Amendment to Designated Commercial Corridors for Eminent Domain Provisions

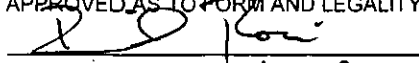
Legend

-  Existing Parcels
-  Added Parcels



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APPROVED AS TO FORM AND LEGALITY

AGENCY COUNSEL

REDEVELOPMENT AGENCY OF THE CITY OF OAKLAND

RESOLUTION NO. _____ C.M.S.

AN AGENCY RESOLUTION APPROVING AND RECOMMENDING ADOPTION OF A FIRST AMENDMENT TO THE WEST OAKLAND REDEVELOPMENT PLAN TO MODIFY THE AUTHORITY OF THE AGENCY TO ACQUIRE PROPERTY IN THE CLAWSON/MCCLYMONDS/BUNCHE SUBAREA THROUGH EMINENT DOMAIN

WHEREAS, the City Council adopted the Redevelopment Plan for the West Oakland Redevelopment Project (the "Redevelopment Plan") on November 18, 2003, as a redevelopment plan for the West Oakland Project Area (the "Project Area") pursuant to the California Community Redevelopment Law (Health and Safety Code Sections 33000, et seq.); and

WHEREAS, Health and Safety Code Section 33450, et seq., authorizes a legislative body to amend a redevelopment plan after holding a public hearing; and

WHEREAS, the Redevelopment Plan includes authority for the Redevelopment Agency to acquire property through eminent domain in the Clawson/McClymonds/Bunche Subarea of the Project Area; and

WHEREAS, the Redevelopment Agency has received a proposed First Amendment to the West Oakland Redevelopment Plan (the "First Amendment" or the "Amendment") modifying the Agency's authority to acquire properties in the Clawson/McClymonds/Bunche Subarea through eminent domain; and

WHEREAS, the proposed Amendment revises the three acre size limitation for projects eligible for the use of eminent domain; and

WHEREAS, the proposed Amendment also revises the map of properties eligible for eminent domain to add additional commercial parcels adjacent to the current areas, including all commercial properties on the blocks bounded by Grand Avenue, Filbert Street, 24th Street and Market Street; and

WHEREAS, the proposed Amendment does not propose any additional property for inclusion in the Project Area, nor does it increase or reduce the Project Area or affect the Redevelopment Agency's authority to claim tax increment revenues; and

WHEREAS, the City has provided the published and mailed notice of the hearing and this Amendment as required by Health and Safety Code Section 33452; and

WHEREAS, the Redevelopment Agency and the City Council held a joint public hearing on the proposed Amendment, as permitted under Health and Safety Code Section 33458; and

WHEREAS, it can be seen with certainty that this proposed Amendment will have no environmental effect, pursuant Section 15063(b) (3) of the California Environmental Quality Act Guidelines, since it merely modifies the authority of the Redevelopment Agency to acquire property through eminent domain; now, therefore, be it

RESOLVED: That the Agency hereby approves and recommends adoption of the First Amendment to the West Oakland Redevelopment Plan to modify the authority of the Agency to acquire property in the Clawson/McClymonds/Bunche Subarea through eminent domain; and be it further

RESOLVED: That the Agency Secretary is directed to transmit a copy of this Resolution to the City Council for its consideration.

IN AGENCY, OAKLAND, CALIFORNIA, _____, 2010

PASSED BY THE FOLLOWING VOTE:

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

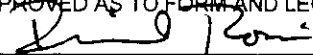
NOES-

ABSENT-

ABSTENTION-

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

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DEPUTY CITY ATTORNEY

OAKLAND CITY COUNCIL
ORDINANCE NO. _____ C.M.S.

**AN ORDINANCE ADOPTING THE FIRST AMENDMENT TO
THE WEST OAKLAND REDEVELOPMENT PLAN TO MODIFY
THE AUTHORITY OF THE AGENCY TO ACQUIRE
PROPERTY IN THE CLAWSON/MCCLYMONDS/BUNCHE
SUBAREA THROUGH EMINENT DOMAIN**

WHEREAS, the City Council adopted the Redevelopment Plan for the West Oakland Redevelopment Project (the "Redevelopment Plan") on November 18, 2003, as a redevelopment plan for the West Oakland Project Area (the "Project Area") pursuant to the California Community Redevelopment Law (Health and Safety Code Sections 33000, et seq.); and

WHEREAS, Health and Safety Code Section 33450, et seq., authorizes a legislative body to amend a redevelopment plan after holding a public hearing; and

WHEREAS, the Redevelopment Plan includes authority for the Redevelopment Agency to acquire property through eminent domain in the Clawson/McClymonds/Bunche Subarea of the Project Area; and

WHEREAS, the City wishes to amend the Redevelopment Plan; and

WHEREAS, the Redevelopment Agency has recommended adoption of a First Amendment to the West Oakland Redevelopment Plan (the "First Amendment" or the "Amendment") to modify the Agency's authority to acquire properties in the Clawson/McClymonds/Bunche Subarea through eminent domain; and

WHEREAS, the proposed Amendment revises the three acre size limitation for projects eligible for the use of eminent domain; and

WHEREAS, the proposed Amendment also revises the map of properties eligible for eminent domain to add additional commercial parcels to the current areas, including all commercial properties on the blocks bounded by Grand Avenue, Filbert Street, 24th Street and Market Street; and

WHEREAS, the proposed Amendment does not propose any additional property for inclusion in the Project Area, nor does it increase or reduce the Project Area or affect the Redevelopment Agency's authority to claim tax increment revenues; and

WHEREAS, the City has provided the published and mailed notice of the hearing and this Amendment as required by Health and Safety Code Section 33452; and

WHEREAS, the Redevelopment Agency and the City Council held a joint public hearing on the proposed Amendment, as permitted under Health and Safety Code Section 33458; and

WHEREAS, it can be seen with certainty that this proposed Amendment will have no environmental effect, pursuant Section 15063(b) (3) of the California Environmental Quality Act Guidelines, since it merely modifies the authority of the Redevelopment Agency to acquire property through eminent domain; now, therefore,

The Council of the City of Oakland does ordain as follows:

SECTION 1. Section 305.b.(3) of the Redevelopment Plan for the West Oakland Redevelopment Project is hereby amended to read in its entirety as follows (text additions are indicated with double underlining, and text deletions are indicated by ~~strikeout text~~):

- (3) The property to be acquired through eminent domain for the redevelopment project does not exceed three acres in total land area. For a project that is to be developed in multiple phases, 'total land area' means the land area for all property to be acquired through eminent domain for all phases of the project.

SECTION 2. The map attached as Attachment No. 3 to the Redevelopment Plan for the West Oakland Redevelopment Project is hereby replaced with the map attached to this Ordinance as Attachment A.

SECTION 3. The City Council finds that it is necessary and desirable to amend the Redevelopment Plan for the reasons set forth herein and in the staff report accompanying this Ordinance.

SECTION 4. The City Administrator or her designee shall cause to be filed with the County of Alameda a Notice of Exemption for this action.

SECTION 5. If any part of this Ordinance is held to be invalid for any reason, such decision shall not affect the validity of the remaining portion of this Ordinance,

and this Council hereby declares that it would have passed the remainder of this Ordinance if such invalid portion thereof had been deleted.

SECTION 6. This Ordinance shall be in full force and effect immediately upon its passage as provided by Section 216 of the City Charter, if adopted by at least six members of Council, or upon the seventh day after final adoption if adopted by fewer votes.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 2010

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

AN ORDINANCE ADOPTING THE FIRST AMENDMENT TO
THE WEST OAKLAND REDEVELOPMENT PLAN TO MODIFY
THE AUTHORITY OF THE AGENCY TO ACQUIRE
PROPERTY IN THE CLAWSON/MCCLYMONDS/BUNCHE
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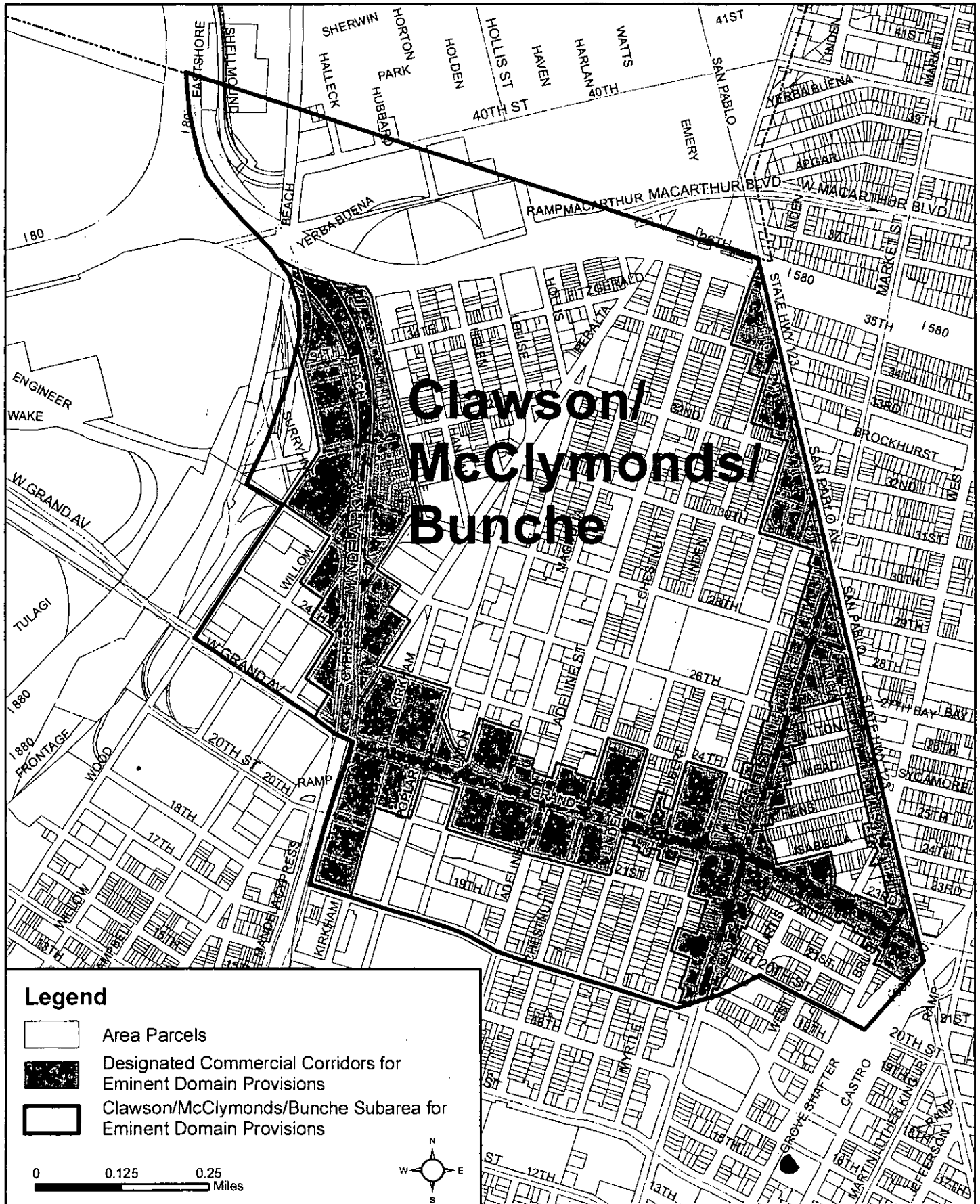
ATTACHMENT A

(attached)



Attachment A

Eminent Domain in the Clawson/McClymonds/Bunche Subarea and Designated Commercial Corridors for Eminent Domain Provisions



**AN ORDINANCE ADOPTING THE FIRST AMENDMENT TO
THE WEST OAKLAND REDEVELOPMENT PLAN TO MODIFY
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SUBAREA THROUGH EMINENT DOMAIN**

NOTICE AND DIGEST

This ordinance amends the West Oakland Redevelopment Plan to modify the Redevelopment Agency's authority to acquire properties in the Clawson/McClymonds/Bunche Subarea of the West Oakland Project Area through eminent domain .