

OFFICE OF THE CITY/AGENCY ADMINISTRATOR

CITY OF OAKLAND/OAKLAND REDEVELOPMENT AGENCY

2007 JUN 29 PM 6:50 **SUPPLEMENTAL AGENDA REPORT**

TO: Office of the City/Agency Administrator
ATTN: Deborah Edgerly
FROM: Community and Economic Development Agency
DATE: July 3, 2007
RE: **A Supplemental Report and Two Resolutions:**

(1) A City Council Resolution Authorizing the City Administrator to Negotiate and Execute Amendments to the July 8, 2003 Memorandum of Agreement for Oakland Army Base including the following provisions: (a) A Three-Year Extension of the deadline to fund the West Oakland Community Fund, (b) Reimbursement from the Port to the Agency of Two Hundred Eighty Thousand Dollars (\$280,000) in Army Base Transaction Costs, and (c) Defining the Terms and Conditions of the Port of Oakland Berth 21 Construction Easement; and

(2) An Agency Resolution:

- A. Authorizing the Agency Administrator to Negotiate and Execute Amendments to the July 8, 2003 Memorandum of Agreement for Oakland Army Base including the following provisions: (a) A Three-Year Extension of the deadline to fund the West Oakland Community Fund, (b) Reimbursement from the Port to the Agency of Two Hundred Eighty Thousand Dollars (\$280,000) in Army Base Transaction Costs, and (c) Defining the Terms and Conditions of the Port of Oakland Berth 21 Construction Easement; and**
- B. Authorizing the Agency Administrator to Negotiate and Execute a Berth 21 Construction Easement in Favor of the Port of Oakland; and**
- C. Authorizing the Agency Administrator to Negotiate and Execute a Construction and Demolition Easement Along the Boundary Between the Oakland Redevelopment Agency and the Port of Oakland.**

SUMMARY

On June 26, 2007, the Community and Economic Development Committee heard a report from staff recommending the approval of amendments to the July 8, 2003 Memorandum of Agreement for Oakland Army Base (“Army Base MOA”) that contained inaccurate information. This supplemental report addresses: corrections to the June 26 Committee report; direction given by the Council/Board regarding a three-year extension in place of a one-year extension to fund the West Oakland Community Fund; and authorization to negotiate and execute a Berth 21 Construction Easement.

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- The report inaccurately implied that the Agency would fund the West Oakland Community Fund (WOCF).
- Pursuant to Agency Resolution No. 2006-0055 C.M.S., funding for the WOCF will come from future developers of the Oakland Army Base.
- This supplemental report revises the two resolutions consistent with Agency Resolution No. 2006-0055 C.M.S., to make it clear that the Agency's \$2 million share of the WOCF will be funded by contributions from the future Army Base developers. No Agency funds will be contributed to the WOCF.
- Pursuant to CED Committee direction, this supplemental report requests authorization to revise the 2003 Army Base MOA to extend the funding deadline by three years instead of one, through August 7, 2010.

Staff requests the City Council and the Oakland Redevelopment Agency ("Agency") Board take the following actions:

- (1) Authorize amendments to the July 8, 2003 Memorandum of Agreement for Oakland Army Base (the "Army Base MOA" or "MOA") Among the City of Oakland, the Oakland Base Reuse Authority ("OBRA"), the Oakland Redevelopment Agency ("Agency") and the Port of Oakland ("Port") including provisions related to: (a) A Three-Year Extension of the deadline for the future Army Base Developer to fund the West Oakland Community Fund, (b) Reimbursement from the Port to the Agency of \$280,000 in Army Base Transaction Costs, (c) Defining the terms and conditions of the Port of Oakland Berth 21 Construction Easement, and (d) to delete OBRA as a party to the Army Base MOA;
- (2) Authorize the Agency Administrator to Negotiate and Execute a Berth 21 Construction Easement in Favor of the Port of Oakland; and
- (3) Authorize the Agency Administrator to Negotiate and Execute a Construction and Demolition Easement Along the Boundary Between the Oakland Redevelopment Agency and the Port of Oakland.

These actions are necessary to adjust the Army Base MOA, and enter into new easements due to changes in circumstances since the MOA was first approved in 2003.

FISCAL IMPACT

The fiscal impact to the Redevelopment Agency is the receipt of approximately \$280,000 as reimbursement for Army Base related transaction costs. The \$280,000 in transaction cost reimbursement will be deposited in the OBRA Leasing and Utilities Fund (9575) fund balance. The City Council and Redevelopment Agency have previously authorized the acceptance and acquisition of the property and all of the costs and obligations associated with ownership. The Agency's \$2 million share of the West Oakland Community Fund will be paid by the future developers selected for the former Army Base ("Developers"). This payment is included as a pass through expenditure in the FY 2007-2009 Agency Budget; no Agency monies will be spent or encumbered.

BACKGROUND

Army Base Property

On August 7, 2006, OBRA transferred approximately 170 acres of former Army Base property to the Redevelopment Agency and approximately 210 acres of former Army Base property to the Port of Oakland. The Agency property has been divided into the West, East, North and Central Gateway Areas, and Agency staff is working to develop the property pursuant to direction from the City Council/Agency Board.

Army Base MOA

The City, the Agency, OBRA and the Port entered into the Army Base MOA on July 8, 2003. The MOA provided for the Agency, OBRA and the Port to convey certain parcels of Army Base property and adjacent Port-owned property to each other. The transfers anticipated in the 2003 MOA were completed on August 7, 2003 and August 7, 2006. The Redevelopment Agency now owns approximately 170 acres of former Army Base property.

Oakland Army Base Public Trust Property

As part of the MOA transfers completed on August 7, 2006, 153 acres of the Agency's property was removed from the state's Tidelands Trust. Trust-impressed lands cannot be alienated into private ownership, and uses of trust lands are generally restricted to maritime-related and other water-related uses. Seventeen (17) acres out of 170 remain within the trust, and must be developed as a shoreline park pursuant to state legislation.

KEY ISSUES AND IMPACTS

1. West Oakland Community Fund Extension

This portion of the June 26 report contained information that inaccurately implied that the Agency would fund the West Oakland Community Fund ("WOCF" or "Fund"). Pursuant to Agency Resolution No. 2006-0055 C.M.S., funding for the WOCF will come from future

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developers of the Oakland Army Base (“Developers”). The Agency will make no contributions to the WOCF on its own behalf.

Additionally, Council directed staff to obtain agreement from the Port of Oakland for a three-year extension, instead of a one-year extension, to the funding deadline. Port of Oakland staff has accepted Council’s request and has verbally agreed to a three-year extension. Port staff will include a three-year extension in its Board report regarding the Oakland Army Base MOA, to be considered in July 2007.

The WOCF is a program that resulted from early planning discussions for the Oakland Army Base. The Fund will provide loans and/or grants to help pay for projects to benefit the West Oakland community, such as public improvements for blight abatement, small business opportunities related to the Port, or relocation of trucking uses. All projects will be reviewed and approved by the Agency Administrator.

Under the terms of the 2003 Army Base MOA, a total of \$4 million will be established for the Fund, with the Developers and the Port each contributing \$2 million. In order to secure the Port’s matching \$2 million, the Developers must fund their \$2 million share by no later than August 7, 2007.

On July 18, 2006, the Agency Board formally established the WOCF, and but it did not commit any funds at that time. Instead, the Agency directed that the Developers would contribute up to \$2 million, and such contribution has been incorporated in the FY 2007-2009 Agency Budget as a pass through expenditure.

Under the proposed amendment to the Army Base MOA, the WOCF funding deadline would be extended by three years, from August 7, 2007 to August 7, 2010. The extension would allow additional time for the funds to be generated through the development of the Oakland Army Base.

2. Transaction Costs Reimbursement

During the pre-acquisition phase of the Army Base project, OBRA paid for the 2002 Oakland Army Base Environmental Impact Report and other associated and necessary documents for the acquisition of the Army Base property. The proposed transaction costs reimbursement amendment would memorialize the Port’s share of the transaction and acquisition costs and would require the Port to pay \$280,000 to the Agency within 60 days after execution of the amendment.

3. Berth 21 Construction Easement

The MOA agreement provides the Port with the right to “necessary construction easements (including easements for staging and placement of fill) to enable the Port to complete the fill and other activities contemplated for the Berth 21” project. The current construction easement provisions in the MOA include and encumber the entire Central Gateway Development Area and the Port Sliver Properties, approximately 70 acres of Agency owned property. The proposed amendment, if approved, would reduce the construction easement area down to approximately two acres of Central Gateway Development Area. The construction easement area would also include approximately three acres of shoreline park property. The shoreline park will not be developed until after Caltrans completes the Bay Bridge construction project and vacates the West Gateway Development Area. The current estimated date for completion of the Bay Bridge is 2015.

4. Demolition and Construction Easement

The Port and Agency share a common boundary line in the Central and East Gateway Development Areas. Staff is requesting authorization to negotiate and execute a reciprocal easement for demolition and construction activities along the boundary line. Under the new MOA, the terms and conditions of the reciprocal demolition and construction easement will be reviewed and approved by the Agency Counsel.

5. Deletion of OBRA from the MOA

OBRA has transferred all of its rights and obligations to the Redevelopment Agency and it has dissolved. The proposed amendment, if approved, would remove OBRA as a party to the MOA.

RECOMMENDATION(S) AND RATIONALE

Staff recommends that the City Council and Agency Board authorize staff to make all amendments necessary to the Army Base MOA to (1) Extend the deadline by three years for the future Army Base developers to contribute the Agency’s \$2 million share of the West Oakland Community Fund, (2) Receive reimbursement from the Port in the amount of \$280,000 for Army Base transaction costs, (3) Define the terms and conditions of a Berth 21 Construction Easement with the Port of Oakland, and (4) Delete OBRA as a party to the Army Base MOA. The proposed MOA amendment will facilitate the Agency’s development of the former Army Base property.

Staff recommends the Agency Board authorize the Agency Administrator to negotiate and execute: (1) a Berth 21 Construction Easement in favor of the Port of Oakland and (2) a Construction and Demolition Easement along the boundary between the Agency’s property and the Port of Oakland’s property.

These actions are necessary to adjust the Army Base MOA, and enter into new easements due to changes in circumstances since the agreement was first approved in 2003.

ACTION REQUESTED OF THE CITY COUNCIL AND REDEVELOPMENT AGENCY

Staff is requesting that the City Council and Agency Board approve the attached resolutions.

Respectfully submitted,



GREGORY HUNTER
Interim Director, Redevelopment,
Economic Development, Housing and
Community Development

Prepared by:
John Monetta
CEDA Real Estate

APPROVED AND FORWARDED TO THE
CITY COUNCIL AND AGENCY BOARD:




OFFICE OF THE CITY/AGENCY ADMINISTRATOR

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OFFICE OF THE CITY CLERK
CITY OF OAKLAND

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APPROVED AS TO FORM AND LEGALITY:


City Attorney

OAKLAND CITY COUNCIL

RESOLUTION No. _____ C.M.S.

RESOLUTION AUTHORIZING THE CITY ADMINISTRATOR TO NEGOTIATE AND EXECUTE AMENDMENTS TO THE JULY 8, 2003 MEMORANDUM OF AGREEMENT FOR OAKLAND ARMY BASE INCLUDING THE FOLLOWING PROVISIONS:

- (A) A THREE-YEAR EXTENSION OF THE DEADLINE TO FUND THE WEST OAKLAND COMMUNITY FUND;**
- (B) REIMBURSEMENT FROM THE PORT OF OAKLAND TO THE OAKLAND REDEVELOPMENT AGENCY OF TWO HUNDRED EIGHTY THOUSAND DOLLARS (\$280,000) IN ARMY BASE TRANSACTION COSTS; AND**
- (C) DEFINING THE TERMS AND CONDITIONS OF THE PORT OF OAKLAND BERTH 21 CONSTRUCTION EASEMENT.**

WHEREAS, in August 2003, the Oakland Base Reuse Authority ("OBRA") acquired 364 acres of the former Oakland Army Base property from the U.S. Army by Economic Development Conveyance; and

WHEREAS, pursuant to Council and Agency authorization, OBRA, the City of Oakland, the Redevelopment Agency ("Agency") and the Port of Oakland ("Port") entered into the Memorandum of Agreement for Oakland Army Base on July 8, 2003 ("Army Base MOA"), providing for the Agency, OBRA and the Port to convey certain parcels of Army Base property and adjacent property owned by the Port to each other, three years after the Economic Development Conveyance, and providing for related transactions among OBRA, the City, the Agency and the Port; and

WHEREAS, On August 7, 2006, OBRA transferred approximately 170 acres of former Army Base property to the Redevelopment Agency and approximately 210 acres of former Army Base property to the Port of Oakland; and

WHEREAS, The Army Base MOA contemplated the establishment of the West Oakland Community Fund ("Fund"), which was intended to provide loans and/or grants to help pay for projects to benefit the West Oakland community; and

WHEREAS, Under the terms of the Army Base MOA, the Fund must be established by August 7, 2006, and the \$2 million share of the fund attributable to the Agency's Gateway Development Area must be contributed on or before August 7, 2007; and

WHEREAS, the Fund was created on July 18, 2006, though the parties to the Army Base MOA would like to amend the MOA to delay the contributions to the Fund until August 7, 2010, to allow the time required for the funds to be generated through the development of the Oakland Army Base; and

WHEREAS, The Army Base MOA provides the Port with construction easements to complete their Berth 21 project, adjacent to the Redevelopment Agency's Central Gateway Area of the former Army Base;

WHEREAS, The current construction easement provisions in the MOA include and encumber the entire Central Gateway Development Area and the Port Sliver Properties, approximately 70 acres of Agency-owned property;

WHEREAS, The parties to the MOA would like to amend the MOA to reduce the construction easement area down to approximately two acres of Central Gateway Area, and approximately three acres of property intended to be developed in the future as a shoreline park; and

WHEREAS, the parties to the Army Base MOA would like to amend the MOA to require the Port to pay Two Hundred Eighty Thousand Dollars (\$280,000) to the Agency, to reimburse it for the Port's share of transaction and acquisition costs; and

WHEREAS, the parties to the Army Base MOA would like to remove OBRA as a party to the MOA because OBRA has transferred all of its rights and obligations to the Redevelopment Agency and it has dissolved; and

WHEREAS, the Environmental Impact Report for the Oakland Army Base Area Redevelopment Plan (EIR) was certified in July 2002, and it contemplated and analyzed OBRA's dissolution, the property transfer action, and related actions called for in this report; and

WHEREAS: The City hereby finds and determines on the basis of substantial evidence in the record that the EIR fully analyzes the potential environmental effects of the project and incorporates mitigation measures to substantially lessen or avoid any potentially significant impacts in accordance with CEQA. None of the circumstances necessitating preparation of additional CEQA review as specified in CEQA and the CEQA Guidelines, including without limitation Public Resources Code Section 21166 and CEQA Guidelines Section 15162, are present in that (1) there are no substantial changes proposed in the project or the circumstances under which the project is undertaken that would require major revisions of the EIR due to the involvement of new environmental effects or a substantial increase in the severity of previously identified significant effects; and (2) there is no "new information of substantial importance" as described in CEQA Guidelines Section 15162(a)(3); NOW THEREFORE BE IT

RESOLVED: That the City Administrator is hereby authorized to negotiate and execute amendments to the Army Base MOA including provisions related to: (1) A Three-Year Extension of the deadline for the future Army Base developers to fund the West Oakland Community Fund, (2) Reimbursement from the Port to Agency of Two Hundred Eighty Thousand Dollars (\$280,000)

in Army Base Transaction Costs, (3) Defining the terms and conditions of the Port of Oakland Berth 21 Construction Easement, and (4) to delete OBRA as a party to the Army Base MOA; and be it

FURTHER RESOLVED: That the Two Hundred Eighty Thousand Dollars (\$280,000) transaction cost reimbursement will be deposited in the OBRA Leasing and Utilities Fund (9575) fund balance; and be it

FURTHER RESOLVED: That the City has independently reviewed and considered this environmental determination, and the City finds and determines that this action complies with CEQA because the City is relying upon the previously certified EIR and this action on the part of the City does not necessitate preparation of a subsequent or supplemental EIR.

IN SESSION, OAKLAND, CALIFORNIA, _____, 2007

PASSED BY THE FOLLOWING VOTE:

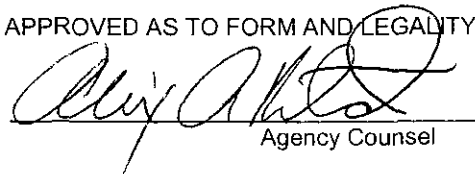
AYES- BROOKS, BRUNNER, CHANG, KERNIGHAN, NADEL, QUAN, REID, AND
PRESIDENT DE LA FUENTE

NOES-

ABSENT-

ABSTENTION-

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


Agency Counsel

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OAKLAND REDEVELOPMENT AGENCY

RESOLUTION No. _____ C.M.S.

RESOLUTION AUTHORIZING THE AGENCY ADMINISTRATOR TO NEGOTIATE AND EXECUTE:

- (1) **AMENDMENTS TO THE JULY 8, 2003 MEMORANDUM OF AGREEMENT FOR OAKLAND ARMY BASE INCLUDING THE FOLLOWING PROVISIONS: (A) A THREE-YEAR EXTENSION OF THE DEADLINE TO FUND THE WEST OAKLAND COMMUNITY FUND, (B) REIMBURSEMENT FROM THE PORT TO AGENCY OF TWO HUNDRED EIGHTY THOUSAND DOLLARS (\$280,000) IN ARMY BASE TRANSACTION COSTS, AND (C) DEFINING THE TERMS AND CONDITIONS OF THE PORT OF OAKLAND BERTH 21 CONSTRUCTION EASEMENT;**
- (2) **A BERTH 21 CONSTRUCTION EASEMENT IN FAVOR OF THE PORT OF OAKLAND; AND**
- (3) **A CONSTRUCTION AND DEMOLITION EASEMENT ALONG THE BOUNDARY BETWEEN THE OAKLAND REDEVELOPMENT AGENCY AND THE PORT OF OAKLAND.**

WHEREAS, in August 2003, the Oakland Base Reuse Authority ("OBRA") acquired 364 acres of the former Oakland Army Base property from the U.S. Army by Economic Development Conveyance; and

WHEREAS, pursuant to Council and Agency authorization, OBRA, the City of Oakland, the Redevelopment Agency ("Agency") and the Port of Oakland ("Port") entered into the Memorandum of Agreement for Oakland Army Base on July 8, 2003 ("Army Base MOA"), providing for the Agency, OBRA and the Port to convey certain parcels of Army Base property and adjacent property owned by the Port to each other, three years after the Economic Development Conveyance, and providing for related transactions among OBRA, the City, the Agency and the Port; and

WHEREAS, On August 7, 2006, OBRA transferred approximately 170 acres of former Army Base property to the Redevelopment Agency and approximately 210 acres of former Army Base property to the Port of Oakland; and

WHEREAS, The Army Base MOA contemplated the establishment of the West Oakland Community Fund ("Fund"), which was intended to provide loans and/or grants to help pay for projects to benefit the West Oakland community; and

WHEREAS, Under the terms of the Army Base MOA, the Fund must be established by August 7, 2006, and the \$2 million share of the fund attributable to the Agency's Gateway Development Area must be contributed on or before August 7, 2007; and

WHEREAS, the Fund was created on July 18, 2006, though the parties to the Army Base MOA would like to amend the MOA to delay the contributions to the Fund until August 7, 2010, to allow the time required for the funds to be generated through the development of the Oakland Army Base; and

WHEREAS, The Army Base MOA provides the Port with construction easements to complete their Berth 21 project, adjacent to the Redevelopment Agency's Central Gateway Area of the former Army Base; and

WHEREAS, The current construction easement provisions in the MOA include and encumber the entire Central Gateway Development Area and the Port Sliver Properties, approximately 70 acres of Agency-owned property; and

WHEREAS, The parties to the MOA would like to amend the MOA to reduce the construction easement area down to approximately two acres of Central Gateway Area, and approximately three acres of property intended to be developed in the future as a shoreline park; and

WHEREAS, staff recommends that the Agency enter into a reciprocal easement for demolition and construction activities along the common boundary line in the Central and East Gateway Development Areas of the former Army Base, with the terms and conditions of such easement to be reviewed and approved by the City Attorney; and

WHEREAS, the parties to the Army Base MOA would like to amend the MOA to require the Port to pay Two Hundred Eighty Thousand Dollars (\$280,000) to the Agency, to reimburse it for the Port's share of transaction and acquisition costs; and

WHEREAS, the parties to the Army Base MOA would like to remove OBRA as a party to the MOA because OBRA has transferred all of its rights and obligations to the Redevelopment Agency and it has dissolved; and

WHEREAS, the Environmental Impact Report for the Oakland Army Base Area Redevelopment Plan (EIR) was certified in July 2002, and it contemplated and analyzed OBRA's dissolution, the property transfer action, and related actions called for in this report; and

WHEREAS: The Agency hereby finds and determines on the basis of substantial evidence in the record that the EIR fully analyzes the potential environmental effects of the project and incorporates mitigation measures to substantially lessen or avoid any potentially significant impacts in accordance with CEQA. None of the circumstances necessitating preparation of additional CEQA review as specified in CEQA and the CEQA Guidelines, including without limitation Public Resources Code Section 21166 and CEQA Guidelines Section 15162, are present in that (1) there are no substantial changes proposed in the project or the circumstances under which the project is undertaken that would require major revisions of the EIR due to the involvement of new environmental effects or a substantial increase in the severity of previously identified significant effects; and (2) there is no "new information of substantial importance" as described in CEQA Guidelines Section 15162(a)(3); NOW THEREFORE BE IT

RESOLVED: That the Agency Administrator is hereby authorized to negotiate and execute amendments to the Army Base MOA including provisions related to: (1) A three-year extension of the deadline for the future Army Base developers to fund the West Oakland Community Fund, (2) Reimbursement from the Port to Agency of Two Hundred Eighty Thousand Dollars (\$280,000) in Army Base Transaction Costs, (3) Defining the terms and conditions of the Port of Oakland Berth 21 Construction Easement, and (4) to delete OBRA as a party to the Army Base MOA; and be it

FURTHER RESOLVED: That the Agency Administrator is hereby authorized to accept Two Hundred Eighty Thousand Dollars (\$280,000) from the Port as reimbursement for the Port's share of transaction and acquisition costs; and be it

FURTHER RESOLVED: That the Two Hundred Eighty Thousand Dollars (\$280,000) transaction cost reimbursement will be deposited in the OBRA Leasing and Utilities Fund (9575) fund balance; and be it

FURTHER RESOLVED: That the Agency Administrator is hereby authorized to negotiate and enter into a Berth 21 Construction Easement in Favor of the Port of Oakland; and

FURTHER RESOLVED: That the Agency Administrator is hereby authorized to negotiate and enter into a Construction and Demolition easement along the boundary between the Oakland Redevelopment Agency and the Port of Oakland; and be it

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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 the Agency is relying upon the previously certified EIR and this action on the part of the Agency does not necessitate preparation of a subsequent or supplemental EIR.

IN AGENCY, OAKLAND, CALIFORNIA, _____, 2007

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 of the Redevelopment Agency
of the City of Oakland