



OFFICE OF THE
CITY CLERK
AND
2016 OCT 13 PM 2:13

AGENDA REPORT

TO: Sabrina B. Landreth
City/Successor Agency Administrator

FROM: Mark Sawicki
Director, EWD

SUBJECT: MacArthur Station – Consent to
Property Conveyance

DATE: October 3, 2016

City/Successor Agency Administrator Approval _____ Date: 10/13/16

RECOMMENDATION

Staff Recommends That Oakland Redevelopment Successor Agency (“ORSA”) And The City Council Adopt:

An ORSA Resolution Authorizing the ORSA Administrator or Designee to (A) Execute a Consent to the Conveyance of Parcels A and C-1 of MacArthur Station By Macarthur Transit Community Partners, LLC (“MTCP”) to Hines, or one of its Affiliates, for Development of Two Rental Residential/Retail Buildings, Pursuant to the Terms of an Owner Participation Agreement (“OPA”) Between ORSA and MTCP; And (B) Amend the OPA to (1) Reduce and Size of the Retail Component for each Parcel and Establish Retail Leasing Requirements for Parcel A, and (2) Extend Certain Development Deadlines; Relying on the Previously Certified 2008 Environmental Impact Report And 2015 California Environmental Quality Act (“CEQA”) Addendum Per CEQA Guidelines Sections 15162-15164, 15183, 15183.3, 15168 And 15180, and Separately and Independently Finding Certain Of The Above Actions Are Not A “Project” Under CEQA, and

A City Resolution Authorizing the City Administrator or Designee to Execute a Consent To the Conveyance of Parcels A and C-1 of MacArthur Station by MTCP to Hines Inc., or One of its Affiliates, for Development of Two Rental Residential/Retail Buildings, Pursuant to the Terms of a Development Agreement between the City of Oakland and MTCP; and Relying on the Previously Certified 2008 Environmental Impact Report and 2015 CEQA Addendum per CEQA Guidelines Sections 15162-15164, 15183, 15183.3, 15168 and 15180, and Separately and Independently Finding the Conveyance is not a “Project” under CEQA

EXECUTIVE SUMMARY

Staff is recommending that the Oakland Redevelopment Successor Agency (“ORSA”) consent to the conveyance of Parcels A and C-1 of MacArthur Station (the “Project”) by MacArthur Transit Community Partners, LLC (“MTCP”) to Hines, an international real estate firm, or one of its affiliates (“Hines”), for development of two rental residential/retail buildings pursuant to the terms of an Owner Participation Requirement (“OPA”) between ORSA and MTCP for the

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Project. **Attachment A** to the staff report shows these parcels in the context of the development site plan.

Staff further recommends that the OPA be amended to (1) reduce the size of the Project's required retail component by up to 11,300 square feet from 42,500 to 31,200 square feet, change the size of the retail component on each parcel and establish retail leasing requirements for Parcel A, and (2) to extend the construction commencement dates for Parcel A and Parcel C-1 from May 2016 to May 2017 and the construction completion dates from May 2018 to November 2019. The reduction of the required retail component of the Project is necessary because MTCP was unable to acquire a key property along Telegraph Avenue that was going to be developed into housing, retail and community space. The reduction of the retail component will also necessitate a change in the size of the retail component for each parcel. In return for the reduction of the retail component, Hines has agreed to establish leasing and marketing guidelines for the various retail spaces to be developed on Parcel A, which, under certain conditions, may be converted to live/work units. The extension of performance deadlines is necessary to give Hines additional time to complete construction drawings and secure building permits from the City, and to allow more time for the construction of the two buildings on Parcels A and C-1.

Staff also recommends that the City Council consent to the partial assignment and assumption of a Development Agreement ("DA") between the City of Oakland ("City") and MTCP relating to Parcels A and C-1 to Hines. As further described herein, Hines' affiliate has the requisite development experience and financial capacity to meet the qualifications required for a transferee as delineated in the OPA and DA (the DA references and incorporates the approval guidelines for transferees included in the OPA). MTCP will remain liable for all obligations under the OPA and DA not expressly assigned to Hines.

BACKGROUND / LEGISLATIVE HISTORY

On July 21, 2009, the City and MTCP entered into a DA, which vested City planning approvals and fees for a 15-year period pursuant to Ordinance No. 12959 C.M.S., dated July 21, 2009. As such, any new City regulations and fees enacted after the execution of the DA do not apply to the Project, except for new health and safety and building code regulations.

On February 24, 2010, the Oakland Redevelopment Agency ("Agency") entered into an OPA with MTCP for the development of MacArthur Station pursuant to Resolution No. 2009-0073 C.M.S., dated July 7, 2009. After dissolution of the Agency, the OPA became an enforceable obligation of ORSA.

On July 29, 2010, MTCP and San Francisco Bay Area Rapid Transit ("BART") entered into a Purchase and Lease Option Agreement to purchase and ground lease certain parcels, including a portion of Parcel A and Parcel C-1, at the Project site.

On May 19, 2015, the City Council, pursuant to Resolution No. 85603 C.M.S., approved the Final Development Plan (FDP) for Parcels A and C-1.

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The Project Site

MacArthur Station is located at the MacArthur BART Station in North Oakland, within the area bounded by 40th Street, Telegraph Avenue, West MacArthur Boulevard, and State Route 24. The Project site includes the BART parking lot, the BART plaza, Frontage Road between West MacArthur Boulevard and 40th Street, the 39th Street and Apgar Street right-of-ways and six privately-owned parcels on Telegraph Avenue and MacArthur Boulevard that were purchased by MTCP.

The Project site was divided into six new development parcels and associated streets and driveways: Parcel A, Parcels B-1 and B-2 (which will be combined into one Parcel B), Parcel C, Parcel D and Parcel E (see ***Attachment A***). As part of the BART Parking Structure/Phase 1 Final Development Plan of 2010, Parcel C was reconfigured and split into two parcels (Parcels C-1 and C-2) because MTCP was unable to acquire the Surgery Center property located on Parcel C-2 at 3875 Telegraph Avenue. The reconfiguration of Parcel C into two parcels ensured that MTCP could proceed with development of a smaller project on Parcel C-1, while Parcel C-2 will not be developed.

BART owns a portion of Parcel A, and Parcels B, C-1, and E. MTCP owns the remaining portion of Parcel A. Parcel D, which is the site of the new Mural Apartments, is under a long-term ground lease between BART and MTCP. Parcel E is the site of the new BART Parking Garage.

MacArthur Station

MacArthur Station, as currently proposed, is a mixed-use, transit-oriented project that is being developed in five phases and includes:

- Approximately 875 residential units (approximately 730 market-rate units and 145 below market-rate units)
- Approximately 31,200 square feet of commercial/neighborhood serving retail space, some of which could be converted into live/work units, under certain conditions
- Approximately 5,000 square feet of community space
- 480 replacement parking spaces for BART in a new public garage
- Two new public roads running through the BART parking lot and the reconfiguration of the existing BART Frontage Road
- A new public plaza located across from the existing BART plaza

Project Status

Parcel A and C-1

On May 19, 2015, the City Council, pursuant to Resolution No. 85603 C.M.S., authorized the adoption of the Final Development Plan ("FDP") for Parcels A and C-1, as recommended by the City Planning Commission. The FDP for Parcel A includes 287 residential units and 22,287

square feet of retail space, while the proposed portion of the FDP for Parcel C-1 includes 96 apartment units and 1,202 square feet of retail.

Hines wants to develop 287 rental housing units, 20,300 square feet of retail space, 3,886 square feet of community space and 173 parking spaces on Parcel A, and 96 rental apartment units, 1,100 square feet of retail and 69 parking spaces on Parcel C-1.

Parcel B

On August 10, 2016, the Planning Commission's Design Review Committee received a report designed to solicit preliminary feedback on proposed design for a 25-story residential tower with up to 402 rental dwelling units, 10,000 square feet of retail space and up to 260 parking spaces proposed for development on Parcel B by a joint venture between Boston Properties LP and McGrath Properties, Inc.

Parcels D

The second phase of the Project, a 90-unit affordable housing development (the "Mural Apartments") and related infrastructure was completed on Parcel D in December of 2015. The Mural Apartments includes approximately 1,100 square feet of community space.

Parcel E

MTCP started construction of the first Project phase in July of 2012 and completed the BART Parking Garage on Parcel E in September of 2014. The garage includes approximately 4,800 square feet of commercial space at the corner of MacArthur Boulevard and Frontage Road.

ANALYSIS

Transfer of the OPA and DA to Hines

Pursuant to the terms of the OPA and DA, MTCP must secure ORSA's and the City Council's consent to a partial assignment of the OPA and DA for the conveyance of Parcels A and C-1 to Hines. Specifically, the OPA requires that the prospective developer meet the following criteria:

- The developer must have successfully developed a major high-quality urban mixed-use project similar to the projects proposed for development on Parcel A and C-1 within the preceding ten-year period.
- The developer has a demonstrated net worth of not less than \$10,000,000 (which is to be adjusted for inflation) per parcel.
- The developer must not be involved or has not been convicted in any litigation or disputes or has been a party adverse to the City or Agency in any lawsuits, claims or other actions within the preceding five years.

Hines Development Experience

Hines is a privately owned global real estate investment firm founded in 1957 with a presence in 182 cities in 20 countries. Since 1963, Hines has developed 4,220 residential units in the U.S. and currently has 12,731 units in design or under development across the world. As of March 31, 2016, Hines had 31 residential projects in its development portfolio in 21 U.S. cities with \$3.1 billion in total capital invested.

Hines has considerable experience in successfully entitling, designing and building quality projects similar to the proposed developments on Parcels A and C-1. **Table 1** below is a brief description of select urban projects currently under construction that demonstrate Hines' residential development experience.

Table 1: Hines' Residential Projects

Project Name	Location	Number of Units	Retail	Constructi on Start	Total Project Cost
41 Tehama	San Francisco, CA	403	N/A	2015	\$262 million
Aris Market Square	Reston, VA	274	9,100 sf	2015	\$119 million
1213 Walnut Street	Washington, DC	322	7,200 sf	2015	\$126 million
The Southmore	Reston, VA	233	N/A	2014	\$93 million

Hines Financial Capacity

The proposed vertical developer for Parcels A and C-1 must have a demonstrated net worth of not less than 10 million dollars per phase to be transferred (these amounts shall be adjusted for inflation every five years starting from the date of the OPA). As the OPA was executed on February 24, 2010, the net worth requirement was adjusted for inflation. According to the Engineering News Record, the San Francisco Bay Area Construction Cost Index increased 14.97 percent from 2010 to 2015. Therefore, the net worth requirement for the proposed vertical developer per parcel is \$11,497,125.

Hines can meet the net worth condition either alone or in combination with its members (or their constituent member partners) or guarantors. ORSA received two consolidated financial statements for Hines Investment Management Holdings Limited Partnership ("HIMH") and Subsidiaries, including an unaudited balance sheet as of June 30, 2015 and an audited balance sheet as of December 31, 2015. The December 31, 2015 balance sheet was audited by Ernst & Young LLP, which rendered an opinion that the financial statements present fairly, in all material respects, the financial position of HIMH.

HIMH is a Texas limited partnership formed between Hines Real Estate Holdings Limited Partnership, as limited partner, and Hines Investment Management Holdings GP LLC, as general partner. HIMH is a partner in numerous partnerships that own interests in real estate investments around the world.

The underlying real estate projects are generally managed by affiliates of HIMH. Parcels A and C-1 will be acquired by HIMH or a subsidiary. Therefore, staff, with the assistance of a consultant, evaluated Hines' ability to meet the net worth requirement solely under this entity.

As of December 31, 2015, Hines reported total assets of \$50.7 million composed of \$43.8 million in net real estate assets, \$6.8 million in cash and cash equivalents and \$9.5 million in other assets. Hines reported \$129,786 in liabilities for the same period resulting in \$50.6 million in net assets or total equity. The net real estate asset value of approximately \$43.8 million represents the fair market value of the investments in real estate partnerships as follows: (1) \$30.1 million using third-party valuations and recent transactions, (2) \$10.6 million based on internal valuations and (3) \$3.1 million based on historical cost. As of December 31, 2015, Hines exceeds the minimum net worth requirement of \$11.5 million per parcel with net assets of \$50.6 million.

Legal Representation

Hines has represented to staff that none of the criteria pertaining to any past criminal or civil liabilities apply to the development team, and that they have not been a party to any legal action adverse to the City or ORSA.

Reduction of the Retail Requirement

The OPA called for development of approximately 42,500 square feet of commercial/retail space at MacArthur Station, which could include live/work space only along the 40th Street side of Parcel A. The OPA further required a certain amount of retail space on Parcels A, B and C, as shown in **Table 2** below. Specifically, Parcel C (now Parcels C-1 and C-2) was to include 5,000 square feet of community space and 14,000 square feet of retail space. The elimination of Parcel C-2 along Telegraph Avenue from the Project site limits the development of retail to the much smaller Parcel C-1, which, per the approved FDP for Parcel C-1, is to provide only 1,200 square feet of retail space.

MTCP made up for some of the loss of retail space on Parcel C by working with BART to develop retail of approximately 5,200 square feet in the BART garage along MacArthur Boulevard. When combined with the current retail components for Parcels A (22,300 square feet) and C-1 (1,200 square feet) per the approved FDP for these properties, and the OPA requirement for Parcel B of 5,000 square feet, the total retail area of the Project amounts to 33,700 square feet as shown on **Table 2**. Hence Hines' request to reduce the retail requirement in the OPA by 9,200 square feet from 42,500 square feet to 33,300 square feet.

In addition, Hines is asking for a revision to the size of the retail space that was approved in the FDP for Parcels A and C-1. Specifically, Hines is requesting that the retail component in the FDP for Parcel A be reduced by 2,000 square feet from 22,300 square feet to 20,300 square feet, and the retail space in Parcel C-1 be decreased by 100 square feet from 1,200 square feet to 1,100 square feet, for a total reduction of 2,100 square feet as shown on table 2. When combined with the aforementioned retail reductions of 9,200 square feet for Parcel A and C-1, the retail component of the Project should be reduced by a total of 11,300 square feet. *Staff recommends that the retail space reduction of 2,100 square feet only be approved upon City Council approval of the revised FDPs for Parcels A and C-1.*

Table 2 - Retail Size and Location

Parcel	OPA Retail	Current Retail, including FDP for Parcels A & C-1	Difference from OPA	Retail with Hines' Revision to Parcels A & C-1	Difference from OPA
Parcel A	23,500 sf	22,300 sf	(1,200 sf)	20,300 sf	(3,200 sf)
Parcel B	5,000 sf	5,000 sf	-	5,000 sf	-
Parcel C-1 & C-2	14,000 sf	1,200 sf	(12,800 sf)	1,100 sf	(12,900 sf)
Parcel D	N/A	N/A	N/A	N/A	N/A
Parcel E	0 sf	4,800 sf	4,800 sf	4,800 sf	4,800 sf
TOTAL	42,500 sf	33,300 sf	9,200 sf	31,200 sf	11,300 sf

Lastly, with regard to the 5,000 square foot community space that was to be developed on Parcel C, MTCP decided to break it up by providing 1,100 square feet at the Mural Apartments on Parcel D and asking Hines to develop another 3,900 square feet on Parcel A along Telegraph Avenue. Hines' request to reduce the retail component on Parcel A by 3,300 square feet is a result of the relocation of 3,900 square feet of community space to Parcel A.

Retail Leasing Guidelines

The OPA allows for the potential development of live/work space along the 40th Street side of Parcel A to partially satisfy the retail requirement. Accordingly, Hines is proposing to develop a portion of the retail space so that it could be converted to live/work space based on certain conditions. This would include approximately 12,200 square feet of space along 40th Street, as well as about 2,200 square feet along the internal mews separating buildings A-1 and A-2 on Parcel A. If converted, this would further reduce the retail space in the project by an aggregate of up to 25,300 square feet, or almost 60 percent of the potential retail space in the original OPA. **Attachment B** illustrates the distribution of retail and/or live/work space on Parcel A. Hines does not believe that there is a strong enough retail/leasing market at the site to absorb all 31,600 square feet of the revised level of retail space. Staff is seeking a good-faith effort by Hines to establish retail opportunities in this active transit corridor and is concerned that, given higher rental rates for residential space versus retail, there will be a strong economic incentive to convert this potential retail space to live/work, if allowed.

In an attempt to preserve these spaces for retail uses, and in exchange for modifying and potentially reducing the overall retail space requirement for the Project, staff negotiated with Hines the following terms for the convertible retail space along 40th Street so that it will be marketed as retail for a certain period of time.

Convertible Retail Space in Building A1 and A2

Approximately 4,600 square feet of convertible retail space on the northern side of Building A1 as shown on Exhibit 1 and all of the 7,600 square feet of retail space in Building A2 along 40th Street may be converted to live/work units subject to the following conditions:

Hines has to market the convertible retail space in Building A1 and Building A2 along 40th Street as retail space during the entire 24-month construction period and for 9 months after the completed building on Parcel A has received a temporary certificate of occupancy from the Office of Planning and Building. In the event Hines is unable to lease all or any portion of this retail space during the retail leasing period, then such unleased space may be converted to live/work units, subject to the written determination by the City Administrator that Hines has presented sufficient evidence demonstrating its inability to lease such retail space to suitable retail tenants on commercially reasonable terms during the leasing period.

Hines shall market the approximately 2,200 square feet of convertible retail space located in the interior of Building A2 along the mews as retail space for a period of 18 months, starting at the commencement of construction of Building A2.

Special Design Requirements for Convertible Retail Space in Building A1

Hines will design and construct the convertible retail space in Building A1 in accordance with the following design criteria: all space will have retail-friendly storefronts inviting to pedestrian traffic (e.g., glass/window exteriors, maintaining at least 50 percent ground-floor transparency at all times, pedestrian scale facades, ventilation, plumbing and gas and electrical power suitable for retail uses, including restaurant use).

Fixed Retail Space in Building A1

The retail space on the southern side of Building A1 as shown on **Attachment B**, comprising approximately 5,920 square feet, shall be marketed for retail use exclusively.

Project Development Schedule

The OPA includes a development schedule for each Project phase. MTCP is seeking an extension of the time to commence and complete construction of the housing development on Parcels A and C-1. MTCP applied for and received FDP approval from the City for Parcels A and C-1 on May 19, 2015. The OPA schedule of performance requires that construction must commence within 12 months after FDP approval. MTCP is requesting a 12-month extension of the date for commencement of construction (i.e. an extension from May 19, 2016 to May 19, 2017), as more time is needed to complete construction drawings and to secure building permits and additional planning approvals from the City. In addition, the schedule of performance requires completion of construction within 24 months after commencement of construction. MTCP is requesting that the completion deadline be extended from 24 months to 30 months because 1) the project on Parcel A involves the development of more units than originally contemplated and 2) Parcels A and C-1 will be developed concurrently and not in sequence, and therefore require more coordination and time for completion. It should be noted that the OPA does not require submission of the FDP for Parcel C-1 until July of 2019. MTCP's early submittal of the FDP application for Parcel C-1 accelerated the deadline for starting construction on the parcel.

FISCAL IMPACT

The actions under consideration by ORSA and the City Council will not result in any direct fiscal impacts to ORSA or the City. The proposed buildings on Parcels A and C-1 will generate property taxes, business license taxes and utility taxes for the City. A potential reduction in retail space would result in a modest reduction in potential sales tax collection.

PUBLIC OUTREACH / INTEREST

The developer's request for revisions to the FDP application will have to be approved by the Planning Commission and the City Council. Staff reports for this action will be available on the website of the City's Planning and Building Division. Moreover, this staff report and the associated legislation will be available on the City website 10 days prior to the scheduled committee meeting.

COORDINATION

The following City departments were consulted during the preparation of this report:

- City Administrator's Office
- Office of the City Attorney;
- Planning and Building Division; and
- City Controller's Bureau.

SUSTAINABLE OPPORTUNITIES

Economic: The proposed conveyance of MTCP's interest in Parcels A and C-1 will result in a mixed-use development that will provide stimulus to the local economy. The Project's mix of residences and ground floor retail opportunities, and location next to MacArthur BART station will promote visits, shopping by businesses and residents alike, and ultimately foster future economic development activities in the neighborhood.

Environmental: The proposed development next to a major regional transportation hub will reduce automobile reliance, and thus decrease the use of fossil fuels and resulting greenhouse gas (GHG) emissions. Additionally, actions to maximize water conservation will be reflected in the project's landscaping practices. The proposed mix of uses would bring residents closer to needed services, while the adjacent BART Station's transit nodes would expand options for non-auto commuting. The developer will ensure that the project will comply with the City's Green Building Ordinance and endeavor to receive Leadership in Energy and Environmental Design ("LEED") certification.

Social Equity: The affordable housing component of the proposed project and in the Mural Apartments provides housing accessible to low and moderate income households. The location of the Project adjacent to a regional transit station and multiple transit nodes will allow for a wide range of access to employment, and also accommodate diverse commuters, including those for

whom extended auto commuting is unaffordable. The developer will also be required to comply with the City's Local Business and Employment programs.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) EVALUATION

On July 1, 2008, the City Council certified an Environmental Impact Report (EIR) for the MacArthur Station Project (SCH No. 2006022075). The City Council also approved an addendum to the 2008 EIR when it approved the Final Development Plan in May 2015.

With regard to the conveyance of Parcels A and C-1, the reduction of the size of the retail component, the change of the size of the retail component for each parcel, the establishment of retail leasing requirements, and the extension of performance deadlines (collectively called "Action"), under CEQA Guidelines Sections 15162-15164, no subsequent or supplemental environmental review is required unless there are new or substantially more severe significant impacts resulting from (1) substantial changes to the project; (2) the circumstances surrounding the project; or (3) new information not known and which could not reasonably have been known at the time of the prior EIR.

In reviewing the currently proposed Action, staff has determined that none of the circumstances necessitating further environmental review are present. Specifically, (1) the Action does not affect the physical development previously reviewed in the EIR and 2015 Addendum and is not a change in the project that involves any new significant effects or a substantial increase in the severity of previously identified significant effects; (2) circumstances under which the project is undertaken have not occurred that will involve new significant environmental effects or a substantial increase in the severity of previously identified significant effects; and (3) no new information has come to light that would involve new or substantially more severe effects or feasible alternatives or mitigation measures. Accordingly, no further environmental review is required for this project at this time. The 2008 EIR and 2015 Addendum identify impacts and require mitigation measures, and the Project will continue to be required to incorporate the mitigation measures.

Separately and independently, both the City and ORSA find and determine, after independent review and consideration, that the Action, except for the reduction in retail and change of the size of the retail components for each parcel, are not "Projects" under CEQA and also comply with CEQA because they are consistent with the development density established by existing general plan policies for which an EIR was previously certified, pursuant to CEQA Guidelines Section 15183, and also comply with CEQA Guidelines Sections 15180, 15183.3, and 15168.

The 2008 EIR and 2015 Addendum were previously distributed to the City Council, are available for review at 250 Frank Ogawa Plaza, Suite 3315, Oakland, CA 94612 during normal business hours and can also be found on the City's website at:

<http://www2.oaklandnet.com/Government/o/PBN/OurOrganization/PlanningZoning/DOWD008406>.

ACTION REQUESTED OF THE CITY COUNCIL

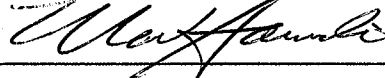
Staff recommends that ORSA and the City adopt the following legislation to approve the conveyance of MTCP's interest in Parcels A and C-1 of MacArthur Station to Hines for development of two rental residential/retail mixed-use buildings, reduce the retail component for Parcels A and C-1, reduce the size of the retail component and extend performance deadlines:

A Resolution Authorizing the ORSA Administrator or Designee to (A) Execute a Consent to the Conveyance of Parcels A and C-1 of MacArthur Station By MTCP to Hines, or One of its Affiliates, for Development of Two Rental Residential/Retail Buildings, Pursuant to the Terms of an OPA Between ORSA and MTCP; And (B) Amend the OPA to (1) Reduce the Size of the Retail Component for each Parcel and Establish Retail Leasing Requirements, and (2) Extend Certain Development Deadlines; Relying on the Previously Certified 2008 Environmental Impact Report and 2015 CEQA Addendum per CEQA Guidelines Sections 15162-15164, 15183, 15183.3, 15168 And 15180, And Separately and Independently Finding Certain of the Above Actions Are Not A "Project" Under CEQA.

A Resolution Authorizing the City Administrator or Designee to Execute a Consent To the Conveyance of Parcels A and C-1 of MacArthur Station by MTCP to Hines, or One of its Affiliates, for Development of Two Rental Residential/Retail Buildings, Pursuant to the Terms of a Development Agreement between the City of Oakland and MTCP; and Relying on the Previously Certified 2008 Environmental Impact Report and 2015 CEQA Addendum per CEQA Guidelines Sections 15162-15164, 15183, 15183.3, 15168 and 15180, and Separately and Independently Finding the Conveyance is not a "Project" under CEQA.

For questions regarding this report, please contact Jens Hillmer, Urban Economic Coordinator, at 238-3317.

Respectfully submitted,



MARK SAWICKI, Director
Economic & Workforce Development
Department

Reviewed by:
Patrick Lane, Redevelopment Manager

Prepared by:
Jens Hillmer, Urban Economic Coordinator
Project Implementation Division

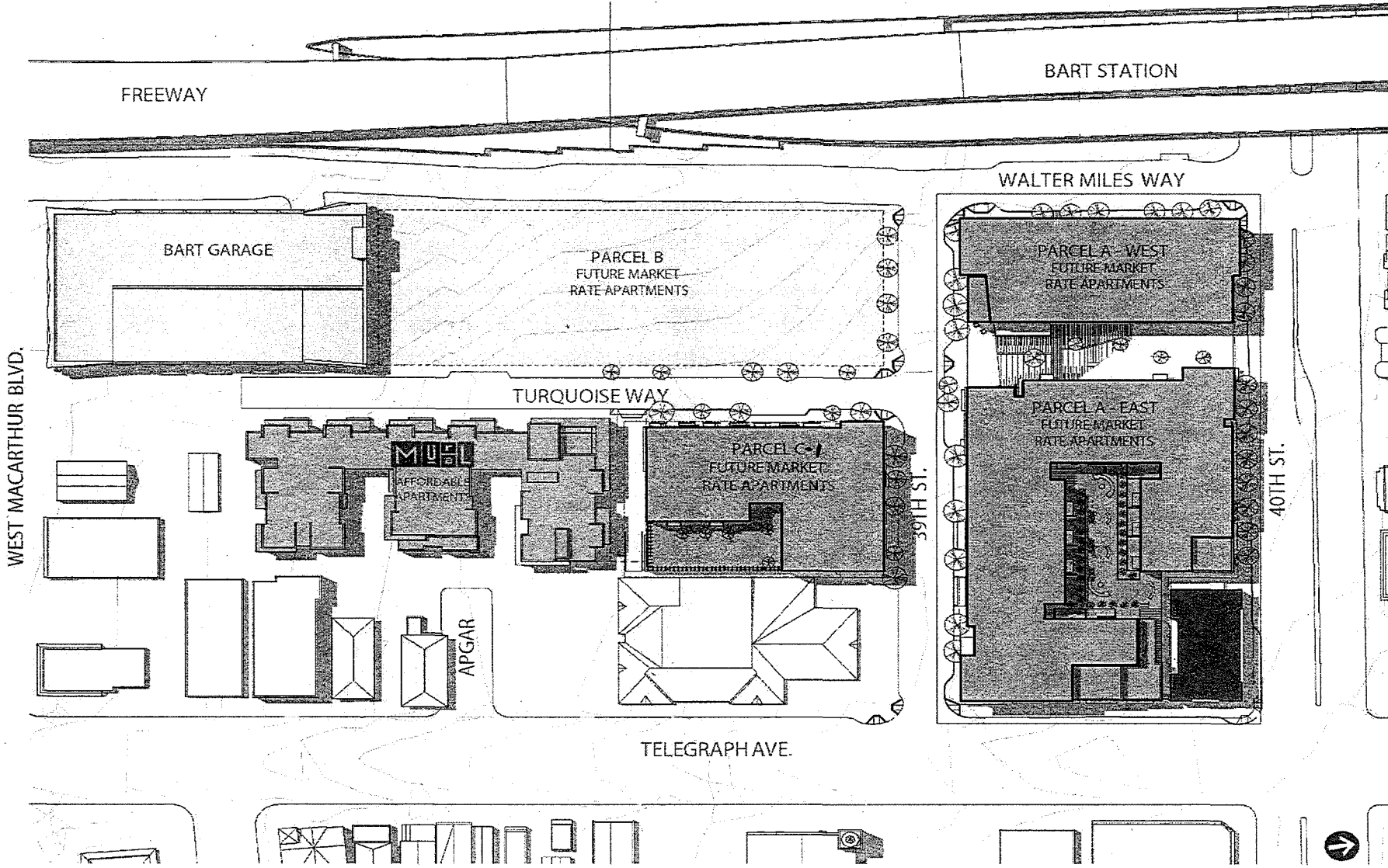
Attachments (2):

- A - Site Plan
- B - Retail Space on Parcel A

Attachment A

Site Plan

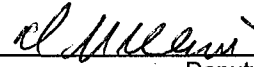
MacArthur Station Site Plan



Attachment B
Retail Space on Parcel A

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APPROVED AS TO FORM AND LEGALITY:



Deputy City Attorney

OAKLAND REDEVELOPMENT SUCCESSOR AGENCY

Resolution No. 2016-_____

A RESOLUTION AUTHORIZING THE OAKLAND REDEVELOPMENT SUCCESSOR AGENCY ADMINISTRATOR OR DESIGNEE TO (A) EXECUTE A CONSENT TO THE CONVEYANCE OF PARCELS A AND C-1 OF MACARTHUR STATION BY MACARTHUR TRANSIT COMMUNITY PARTNERS, LLC ("MTCP") TO HINES, OR ONE OF ITS AFFILIATES, FOR DEVELOPMENT OF TWO RENTAL RESIDENTIAL/RETAIL BUILDINGS, PURSUANT TO THE TERMS OF AN OWNER PARTICIPATION AGREEMENT ("OPA") BETWEEN THE OAKLAND REDEVELOPMENT SUCCESSOR AGENCY AND MTCP; AND (B) AMEND THE OPA TO (1) REDUCE THE SIZE OF THE RETAIL COMPONENT, CHANGE THE SIZE OF THE RETAIL COMPONENT FOR EACH PARCEL AND ESTABLISH RETAIL LEASING REQUIREMENTS FOR PARCEL A, AND (2) EXTEND CERTAIN DEVELOPMENT DEADLINES; RELYING ON THE PREVIOUSLY CERTIFIED 2008 ENVIRONMENTAL IMPACT REPORT AND 2015 CEQA ADDENDUM PER CEQA GUIDELINES SECTIONS 15162-15164, 15183, 15183.3, 15168 AND 15180, AND SEPARATELY AND INDEPENDENTLY FINDING CERTAIN OF THE ABOVE ACTIONS ARE NOT A "PROJECT" UNDER CEQA

WHEREAS, on February 24, 2010, the Redevelopment Agency of the City of Oakland ("Agency"), entered into an Owner Participation Agreement ("OPA") with MacArthur Transit Community Partners, LLC, ("MTCP") for the development of MacArthur Station (the "Project"), pursuant to Agency Resolution No. 2009-0073 C.M.S.; and

WHEREAS, the Agency dissolved on February 1, 2012; and

WHEREAS, the Oakland Redevelopment Successor Agency ("ORSA") was established as the successor agency to the Agency pursuant to Health and Safety Code Sections 34171(j) and 34173; and

WHEREAS, on July 29, 2010, MTCP and San Francisco Bay Area Rapid Transit ("BART") District entered into a Purchase and Lease Option Agreement for the sale or lease of BART-owned Property, including a portion of Parcel A located on the former BART parking lot, and Parcel C-1; and

WHEREAS, MTCP separately acquired other properties along Telegraph Avenue that constitute the remaining portion of Parcel A; and

WHEREAS, the Project site was originally divided into six new development parcels and associated streets and driveways: Parcel A, Parcel B-1 and B-2, Parcel C, Parcel D and Parcel E, subject to MTCP's ability to acquire all properties constituting the Project site; and

WHEREAS, the OPA requires development of approximately 42,500 square feet of commercial and live/work space on the Project site, and Parcel C was to provide 14,000 square feet of said retail; and

WHEREAS, in December of 2010, as part of the BART Parking Structure/Phase 1 Final Development Plan (the "Phase 1 FDP") approval, the Project site plan was modified and Parcel C was split into two parcels ("Parcels C-1" and "C-2"); and

WHEREAS, MTCP was unable to purchase Parcel C-2 located at 3875 Telegraph Avenue; and

WHEREAS, the loss of Parcel C-2 will result in a reduction of the retail component of the Project by up to 11,300 square feet from 42,500 square feet to 31,200 square feet, and will require an adjustment to the size of the retail component to be provided at each Parcel; and

WHEREAS, MTCP submitted a request to convey its option to purchase BART's portion of Parcel A and Parcel C-1, and MTCP's portion of Parcel A to Hines, or one of its affiliates; and

WHEREAS, the OPA requires ORSA's consent to the transfer of any property interest to non-affiliates of MTCP, subject to certain criteria defined in the OPA, which include, among other things, development experience and adequate financial capacity; and

WHEREAS, staff has determined that Hines has the requisite development experience and adequate financial capacity for delivery of the planned development of Parcels A and C-1; and

WHEREAS, MTCP and Hines have agreed to establish certain leasing requirements for the retail to be developed on Parcel A; and

WHEREAS, Hines will market certain retail spaces during project construction for up to 24 months and after project completion for up to 9 months; and

WHEREAS, if such marketing efforts by Hines are unsuccessful within the required time, then such retail space shall be converted to live/work space, subject to approval by the Agency Administrator; and

WHEREAS, MTCP and Hines have requested that the construction commencement dates for Parcel A and Parcel C-1 be extended by 12 months from May 2016 to May 2017 and the construction completion date be moved by 18 months from May 2018 to November of 2019; and

WHEREAS, the requirements of the California Environmental Quality Act (CEQA), the CEQA guidelines as prescribed by the California Secretary of Resources and the provisions of the Environmental Review Regulations of the City of Oakland have been satisfied; now therefore be it

RESOLVED: That, pursuant to the OPA, ORSA consents to partial assignment to and assumption of the OPA and the conveyance of MTCP's option to purchase BART's portion of Parcel A and Parcel C-1, and MTCP's portion of Parcel A to Hines, or one of its affiliates; and be it further

RESOLVED: That the Agency Administrator or designee is hereby authorized to execute a written consent to the partial assignment to and assumption of the OPA and the conveyance of MTCP's option to purchase BART's portion of Parcel A and Parcel C-1, and MTCP's portion of Parcel A to Hines, or one of its affiliates; and be it further

RESOLVED: That the Agency Administrator or designee is hereby authorized to reduce the commercial component by up to 11,300 square feet from 42,500 square feet to 31,200 square feet, and adjust the size of the retail component and the location of the community and commercial space for each parcel; and be it further

RESOLVED: That the Agency Administrator or designee is hereby authorized to establish leasing requirements for the retail to be developed on Parcel A and stipulate that certain retail spaces be marketed during project construction for up to 24 months and after project completion for up to 9 months, and that if such retail marketing efforts by Hines are unsuccessful, then Hines may convert such retail space to live/work space, subject to approval by the Agency Administrator; and be it further

RESOLVED: That the Agency Administrator or designee is hereby authorized to extend construction commencement dates for Parcel A and Parcel C-1 by 12 months from May 2016 to May 2017 and the construction completion date be moved by 18 months from May 2018 to November of 2019; and be it further

RESOLVED: That ORSA finds and determines, after its independent review and consideration, that this action complies with CEQA because the conveyance, extension of deadlines and lease clarifications are not a project under CEQA, and separately and independently ORSA is relying on the previously Certified 2008 EIR and the 2015 CEQA Addendum per CEQA Guidelines Sections 15162-15164, 15180, 15183, 15183.3 and 15168, and that none of the circumstances that require a supplemental or subsequent EIR have occurred; and be it further

RESOLVED: That the Agency Administrator or designee is further authorized to take whatever action is necessary with respect to (A) the consent to the partial assignment to and assumption of the OPA and the consent to the conveyance of MTCP's option to purchase BART's portion of Parcel A and Parcel C-1, and MTCP's portion of Parcel A to Hines, or one of its affiliates, and (B) the amendment of the OPA to (1) reduce the retail component for the Project and adjust the size of the retail component on each parcel, and establish retail leasing requirements for Parcel A, and (2) to extend performance deadlines; and be it further

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

RESOLVED: That all documents necessary to effect (A) the partial assignment to and assumption of the OPA and the consent to the conveyance of MTCP's option to purchase BART's portion of Parcel A and Parcel C-1, and MTCP's portion of Parcel A to Hines, or one of its affiliates, and (B) the amendment of the OPA to (1) reduce the retail component, adjust the size of the retail component on each parcel and establish retail leasing requirements for Parcel A, and (2) to extend performance deadlines, pursuant to this Resolution shall be reviewed and approved by the City Attorney, and copies shall be placed on file with the City Clerk.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 2016

PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, CAMPBELL WASHINGTON, GALLO, GUILLEN, KALB, KAPLAN, REID AND
PRESIDENT GIBSON McELHANEY

NOES-

ABSENT-

ABSTENTION-

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

2010 OCT 13 PM 2:13


Deputy City Attorney

OAKLAND CITY COUNCIL

RESOLUTION No. _____ C.M.S.

A RESOLUTION AUTHORIZING THE CITY ADMINISTRATOR OR DESIGNEE TO EXECUTE A CONSENT TO THE CONVEYANCE BY MACARTHUR TRANSIT COMMUNITY PARTNERS, LLC ("MTCP") TO HINES, OR ONE OF ITS AFFILIATES, OF PARCELS A AND C-1 OF MACARTHUR STATION FOR DEVELOPMENT OF TWO RENTAL RESIDENTIAL/RETAIL BUILDINGS, PURSUANT TO THE TERMS OF A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF OAKLAND AND MTCP AND RELYING ON THE PREVIOUSLY CERTIFIED 2008 ENVIRONMENTAL IMPACT REPORT AND 2015 CEQA ADDENDUM PER CEQA GUIDELINES SECTIONS 15162-15164, 15183, 15183.3, 15168 AND 15180, AND SEPARATELY AND INDEPENDENTLY FINDING THE CONVEYANCE IS NOT A "PROJECT" UNDER CEQA

WHEREAS, on June 4, 2008, the City of Oakland Planning Commission (the "Commission") certified the MacArthur Transit Village Environmental Impact Report ("EIR") and recommended approval of MacArthur Station Planned Unit Development ("PUD"); and

WHEREAS, on July 1, 2008, pursuant to Resolution No. 81422 C.M.S., the Oakland City Council ("City Council") approved the MacArthur Station PUD; and

WHEREAS, pursuant to Ordinance No. 12959 C.M.S., dated July 21, 2009, the City Council adopted a Development Agreement ("DA") by and between City of Oakland ("City") and MTCP Regarding the Property and Project Known as "MacArthur Transit Village;" and

WHEREAS, the DA and the Oakland Planning Code require City Council consent to the transfer of development rights to "Non-Exempt Transferees," as defined in the DA; and

WHEREAS, on July 29, 2010, MTCP and San Francisco Bay Area Rapid Transit ("BART") entered into a Purchase and Lease Option Agreement for the sale or lease of BART-owned Property, including a portion of Parcel A and Parcel C-1, both of which are identified in Exhibit A attached hereto and located on the former BART parking lot; and

WHEREAS, MTCP separately acquired other properties along Telegraph Avenue that constitute the remaining portion of Parcel A; and

WHEREAS, MTCP submitted a request to convey its option to purchase BART's portion of Parcel A and Parcel C-1, and MTCP's portion of Parcel A to a different developer; and

WHEREAS, MTCP identified Hines, or one of its affiliates, as the new developer of Parcels A and C-1, and staff has determined that the joint venture has the financial capacity and development experience to deliver the proposed development on Parcels A and C-1; and

WHEREAS, MTCP desires to assign certain of its rights, interests and obligations relating to Parcels A and C-1 under the DA, to the proposed new developer and the City desires to consent to and approve of such assignment; and

WHEREAS, the requirements of the California Environmental Quality Act ("CEQA") and the CEQA guidelines as prescribed by the Secretary of Resources have been satisfied; now therefore be it

RESOLVED: That, pursuant to the DA, the City consents to the partial assignment and assumption of the DA relating to Parcels A and C-1 and the transfer and assignment of development rights under the DA for Parcels A and C-1 to Hines, or an affiliate; provided that, for a proposed transfer to a Hines' affiliate, Hines provides the City with its organizational documents sufficient for the City to confirm the affiliate's status; and be it further

RESOLVED: That, pursuant to the DA, the City Administrator or designee is hereby authorized to execute a written consent to the partial assignment and assumption of the DA relating to Parcels A and C-1 and the transfer and assignment of development rights under the DA for Parcels A and C-1 to Hines, or an affiliate; and be it further

RESOLVED: That the City Council finds and determines, after its independent review and consideration, that this action complies with CEQA because the conveyance is not a project under CEQA, and separately and independently the City Council is relying on the previously Certified 2008 EIR and the 2015 CEQA Addendum per CEQA Guidelines Sections 15162-15164, 15180, 15183, 15183.3 and 15168, and that none of the circumstances that require a supplemental or subsequent EIR have occurred; and be it further

RESOLVED: That the City Administrator or designee shall cause to be filed with the County of Alameda a Notice of Determination and/or Exemption for this action; and be it further

RESOLVED: That the City Administrator is further authorized to take whatever action is necessary with respect to the consent to the transfer and assignment of

development rights under the DA consistent with this Resolution and its basic purposes; and be it further

RESOLVED: That all documents necessary to effect the consent to the partial assignment and assumption of the DA related to Parcels A and C-1 and the assignment and transfer of the development rights under the DA with regards to Parcels A and C-1 pursuant to this Resolution shall be reviewed and approved by the City Attorney, and copies shall be placed on file with the City Clerk.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 2016

PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, CAMPBELL WASHINGTON, GALLO, GUILLEN, KALB, KAPLAN, REID AND
PRESIDENT GIBSON McELHANEY

NOES-

ABSENT-

ABSTENTION-

ATTEST: _____

LATONDA SIMMONS
City Clerk and Clerk of the Council
of the City of Oakland, California