

CITY OF OAKLAND



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July 17, 2007

**HONORABLE REDEVELOPMENT AGENCY AND CITY COUNCIL**  
Oakland, California

President De La Fuente and Members of the Redevelopment Agency and City Council:

Subject: **Report and Resolution Approving a Conflict of Interest Waiver for Shute Mihaly & Weinberger LLP (“SMW”) Waiving Any Conflict Arising From SMW’s Representation of Clients With Interests Adverse to the Redevelopment Agency or the City of Oakland, Except For Any Client Whose Interests May Be Related to the Closure, Development or Reuse of Properties Within the Boundaries of the Former Oakland Army Base**

**I. INTRODUCTION**

The City Attorney’s Office requests that the Governing Board approve the conflict of interest waiver in the attached resolution on behalf of Shute Mihaly & Weinberger LLP (“SMW”). SMW has represented the Oakland Base Reuse Authority (“OBRA”) since 2001 in the legal work necessary to complete the transfer of property at the former Oakland Army Base from OBRA to the Redevelopment Agency of the City of Oakland (“Agency”) and the Port of Oakland.

On June 25, 2006, the Agency voted to assume all of OBRA’s rights and responsibilities regarding the Army Base. Since OBRA transferred the Army Base to the Agency, OBRA staff has required the assistance of SMW regarding requirements of the State Lands Commission (“SLC”) and the Bay Conservation and Development Commission (“BCDC”) related to the Army Base, including an additional tidelands trust exchange affecting property owned by Caltrans adjacent to the Agency’s North Gateway Development Area.

In the Professional Services Agreement between OBRA and SMW, OBRA waived any conflict of interest that has arisen or could arise from SMW’s prior, current or future

representation of clients with interests adverse to the Agency or the City of Oakland, except for any client whose interests may be adverse to OBRA, the Agency or the City of Oakland related to the closure, development or reuse of the Oakland Army Base. SMW has requested that the Agency adopt an equivalent waiver.

The City Attorney's Office is satisfied that SMW has adequate procedures in place to avoid any ethical breaches. The waivers requested are consistent with the Rules of Professional Conduct.

## **II. SUMMARY OF THE ISSUE**

Should the Agency waive SMW's potential conflicts of interest to allow the firm to continue working on the tidelands trust exchange matters at the Army Base?

## **III. RECOMMENDATION**

The decision ultimately is a policy decision for the body to decide. From a legal standpoint, the City Attorney's Office recommends that the Agency waive any potential conflict because there is no existing legal conflict of interest – SMW is not representing any party adverse to the Agency. While SMW has represented clients with interests adverse to the City in matters unrelated to the Army Base, SMW has not, and will not, represent any party in a matter adverse to OBRA, the Agency or the City of Oakland related to the closure, development or reuse of the Army Base.

## **IV. DISCUSSION**

The tidelands trust doctrine is a highly specialized area of law affecting current and former tide and submerged lands, such as the filled lands comprising the Army Base. The trust doctrine places significant restrictions on the use and redevelopment of such lands. SMW is one of the few firms that have significant experience in handling tidelands trust issues. Because of that experience, OBRA hired SMW in 2001 to assist OBRA with the complicated legal work and regulatory hurdles necessary to complete the tidelands trust exchange at the Army Base.

When OBRA hired the firm, SMW had represented clients with interests potentially adverse to the City or the Agency in matters unrelated to the Army Base. In the Professional Services Agreement between OBRA and SMW, OBRA waived any conflict of interest that has arisen or could arise from SMW's prior, current or future representation of clients with interests adverse to the Agency or the City of Oakland, except for any client whose interests may be adverse to OBRA, the Agency or the City of Oakland related to the closure, development or reuse of the Oakland Army Base. SMW has requested that the Agency adopt an equivalent waiver.

SMW disclosed that its past and present clients with potential or actual adverse interests to the City include: 1) the City of Alameda, the Alameda Community Improvement Commission, and the Alameda Reuse and Redevelopment Agency on various land use matters, including development of the Naval Air Station Alameda and the Fleet Industrial Supply Center; (2) the Oakland Heritage Alliance in connection with historic preservation litigation against the City; (3) the Cities of Livermore and Pleasanton in connection with the Altamont Landfill Environmental

Mitigation Fee; (4) the Jack London Neighborhood Association in connection with various land use and development issues; (5) the East Bay Community Law Center in connection with the City's proposed condominium conversion ordinance; and (6) the Friends of Fruitvale Gardens in connection with the proposed Yu home at Fruitvale and Wrenn. The City Attorney's Office is satisfied that these matters do not conflict with SMW's work at the former Oakland Army Base.

SMW's unique expertise in the area of California tidelands trust law, and its experience with statewide regulatory agencies such as the SLC and the BCDC, were key to achieving a trust land exchange that occurred simultaneously with the Army Base transfer in August 2006. The exchange freed over 120 acres of Army Base land from trust restrictions.

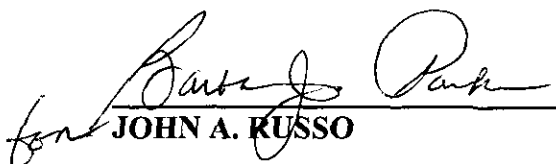
On June 25, 2006, the Agency voted to assume all of OBRA's rights and responsibilities regarding the Army Base. Since the transfer of Army Base property was completed, OBRA staff has required SMW's assistance to complete certain ongoing matters at the Army Base relating to SLC and BCDC requirements. For example, staff needs advice regarding a second phase of the tidelands trust exchange affecting property owned by Caltrans adjacent to the Agency's North Gateway Development Area. Staff also will need SMW's advice regarding the final phase of the exchange after the Port completes its Berth 21 project.

Bill White of SMW is one of the few attorneys in the Bay Area who specialize in tidelands trust exchange matters, and who have significant SLC experience. Mr. White also: (1) negotiated and drafted the Army Base Exchange Agreement and its enabling legislation; (2) prepared portions of the City-Port Memorandum of Agreement that provided for the transfer of the Army Base to OBRA/Agency; and (3) helped draft the purchase and sale agreement that obligates Caltrans to cooperate with the Agency to complete an additional trust exchange on the Army Base. Mr. White's familiarity with the history of Caltrans and SLC negotiations at the Army Base militates in favor of his handling the ongoing Army Base trust exchange work.

## V. CONCLUSION

The City Attorney's Office recommends that the Agency approve a resolution granting a waiver of any conflict of interest that has arisen or could arise from the prior, current or future representation by Shute Mihaly & Weinberger LLP of clients with interests adverse to the Agency or the City of Oakland. This conflict waiver will not allow SMW to represent any client whose interests may be adverse to the Agency or the City of Oakland related to the closure, development or reuse of the Oakland Army Base.

Respectfully submitted,

  
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JOHN A. RUSSO

City Attorney

Assigned Attorney:  
Alix Rosenthal

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Approved as to Form and Legality:

*S. Milner*

Agency Counsel

## OAKLAND REDEVELOPMENT AGENCY

RESOLUTION No. \_\_\_\_\_ C.M.S.

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**A RESOLUTION APPROVING A WAIVER OF ANY CONFLICT OF INTEREST THAT THE LAW FIRM OF SHUTE, MIHALY & WEINBERGER LLP MAY HAVE AS A RESULT OF PROVIDING ADVICE TO OAKLAND REDEVELOPMENT AGENCY IN MATTERS RELATED TO THE DEVELOPMENT OF THE FORMER OAKLAND ARMY BASE**

**WHEREAS**, Shute, Mihaly & Weinberger LLP ("SMW") has represented the Oakland Base Reuse Authority ("OBRA") since 2001, in the legal work necessary to complete the transfer of property at the former Oakland Army Base from OBRA to the Redevelopment Agency of the City of Oakland ("Agency") and the Port of Oakland; and

**WHEREAS**, SMW's unique expertise in the area of the California tidelands trust laws, and its experience with statewide regulatory agencies, were key to ensuring that the Army Base tidelands trust exchange took place simultaneously with the Army Base land transfer in August 2006; and

**WHEREAS**, On June 25, 2006, the Agency voted to assume all of the rights and responsibilities of OBRA as OBRA's successor-in-interest; and

**WHEREAS**, Since the transfer of Army Base property was completed, OBRA staff has required the assistance of SMW to complete certain matters at the Army Base relating to State Lands Commission and Bay Conservation and Development Commission requirements, including an additional tidelands trust exchange affecting property owned by Caltrans, adjacent to the Agency's North Gateway Development Area; and

**WHEREAS**, In the professional services agreement between OBRA and SMW, OBRA waived any conflict of interest that has arisen or could arise from SMW's prior, current or future representation of clients with interests adverse to the Agency or the City of Oakland, except for any client whose interests may be

adverse to OBRA, the Agency or the City of Oakland related to the closure, development or reuse of the Oakland Army Base; and

**WHEREAS**, SMW has requested that the Agency waive any conflict of interest that has arisen or could arise from SMW's prior, current or future representation of clients with interests adverse to the Agency or the City of Oakland, except for any client whose interests may be adverse to the Agency or the City of Oakland related to the closure, development or reuse of the Oakland Army Base; NOW, THEREFORE, BE IT

**RESOLVED**, That the Redevelopment Agency of the City of Oakland hereby waives any conflict of interest that has arisen or could arise from the prior, current or future representation by Shute Mihaly & Weinberger LLP of clients with interests adverse to the Agency or the City of Oakland, except for any client whose interests may be adverse to the Agency or the City of Oakland related to the closure, development or reuse of the Oakland Army Base.

IN SESSION, OAKLAND, CALIFORNIA, July 17, 2007

**PASSED BY THE FOLLOWING VOTE:**

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

**NOES** -

**ABSENT** -

**ABSTENTION** -

ATTEST: \_\_\_\_\_  
LATONDA SIMMONS  
City Clerk and Clerk of the  
Redevelopment Agency of  
the City of Oakland