

**REDEVELOPMENT AGENCY OF THE
CITY OF OAKLAND**

OFFICE OF THE CITY CLERK
2006 APR 21 PM 1:11

Agenda Report

TO: Office of the Agency Administrator
ATTN: Deborah Edgerly
FROM: Community and Economic Development Agency
DATE: April 25, 2006

SUBJECT: Resolution Amending the Exclusive Negotiating Agreement with Oakland West Wind, LLC, for the Development of Approximately 50 Acres within the Former Oakland Army Base, in order to: (1) Reduce the ENA Subject Area to 33 Acres; and (2) Extend the Term of the Agreement from 6 months to 12 months.

SUMMARY

In October 2005, the Agency executed an Exclusive Negotiating Agreement (ENA) with Oakland West Wind, LLC ("OWW"), for the development of approximately 50 acres, to be located in the Central and East Gateway areas of the former Oakland Army Base (see map, Attachment 1). The six-month ENA expires on April 12, 2006. OWW is seeking an extension.

Staff is recommending that the Agency extend the term of the existing ENA with OWW from six months to 12 months. This will allow OWW to incorporate into its planning efforts the current EIR process, and to coordinate with the Fulton Project Development Group ("Fulton"), which has a separate ENA to develop adjacent land within the Army Base. Staff also recommends that the Agency Board agree to remove 17 acres of the East Gateway from OWW's ENA area. The Agency would then be able to negotiate directly for the development of the 17 acres. Meanwhile, OWW would be able to develop their proposal on the remaining 33 acres.

FISCAL IMPACT

No fiscal impact is anticipated as a result of this proposed amendment to the ENA. The Oakland Base Reuse Authority (OBRA) will continue to lease and manage the subject land areas. Any third party project costs incurred during the ENA period will be paid by OWW.

BACKGROUND

On October 12, 2005, the Agency executed an Exclusive Negotiating Agreement (ENA) with Opus West Developer Group, for the development of approximately 50 acres, to be located in the Central and East Gateway areas of the former Oakland Army Base (see map, Attachment 1). The ENA included a provision that OWW relinquish any rights of first proposal on any other Army Base area which had the effect of setting aside prior letters from the former CEDA director indicating there was a right of first proposal on other Army Base property. The ENA expires on April 12, 2006. OWW is seeking an extension.

On January 31, 2006, the City Council/Agency Board held a special workshop to discuss land use and strategic planning issues for the Army Base. An additional policy discussion has been requested. As of the writing of this report, there is no date set for further Council/Agency discussion and direction on land use in the Army Base.

KEY ISSUES AND IMPACTS

As OWW approaches the end of its six-month ENA term, the Agency Board faces three issues:

- Should the Agency extend the ENA term?
- Should the parties reduce or maintain the 50-acre ENA area?
- Should the parties agree to reinstate a right of first proposal over the West and Central Gateway areas, as requested by OWW?

A. ENA Term Extension

Without an ENA extension, OWW likely will be unable to develop a feasible proposal for the Agency to evaluate. Therefore, if the Agency decides *not* to extend the ENA, the ENA will expire and the Agency and OWW could terminate formal negotiations.

The primary arguments for extending the ENA are: (1) delays in the adjacent Fulton project have prevented OWW from planning their project; and (2) the Agency should allow OWW more time to incorporate information that is expected to be gathered during the current Environmental Impact Report (EIR) process for the auto mall.

On June 21, 2005, the Agency approved an ENA with the Fulton Project Development Group for the development of 70 acres on land adjacent to OWW's ENA area. The Fulton ENA requires Fulton to determine within 90 days its project boundaries and identify 17 acres that it would not develop, which would become part of the OWW ENA area. Fulton signed the ENA on February 28, 2006, so Fulton may not be able to define its project boundaries until late May. As a result, OWW indicates it has not been able to determine its own project boundaries, and thus has not been able to plan its own proposal.

In the meantime, the Agency has proceeded with plans for a freeway auto mall on the North Gateway. On January 19, 2006 the Agency issued an Initial Study for an EIR to study the environmental issues associated with the proposed auto mall. The EIR process likely will yield data, particularly about traffic circulation, that could help OWW design a feasible proposal.

Alternatively, if the Agency allows the ENA to expire, it would be able to negotiate deals for the development of the East Gateway directly. In that case, however, the Agency would have to assume direct responsibility for several development obligations that come with the Army Base property. In the current ENA discussions, OWW has agreed to develop 15 acres of port-related ancillary uses (per the requirements of the Bay Conservation and Development Commission), and to accommodate a Joint Apprenticeship Training Center (JATC) within its development area.

In weighing the issues mentioned above, staff is recommending that the Agency extend the ENA for six months, but only on the condition that OWW relinquish a portion of their ENA area. This will facilitate the implementation of land use decisions the Agency Board may make as it continues its study of the Army Base Area.

B. Reduction of ENA Area

Currently, OWW's ENA specifies an area of 50 acres. Under OWW's proposal, the ENA area would be reduced by 17 acres, leaving a total of 33 acres to study for a future development proposal. This 33-acre area would include at least 15 acres for required trucking/port-related uses, and up to 18 acres for other uses (e.g., retail, light industrial, trucking/port-related, etc.), as shown in Table 1 below:

Table 1. Breakdown of Oakland West Wind ENA Area

Current ENA Area		50 acres
Proposed Area to be removed from ENA		- 17 acres
Remaining ENA Area:		
Trucking/Port-Related Uses	15 acres	
Other Uses	18 acres	
<i>Total Remaining ENA area</i>		33 acres

Attachment 2 shows the proposed reduction in the size of the ENA subject area, along with the 17-acre area that would be removed from the ENA. If the Agency agrees to remove the 17 acres from OWW's ENA area, then the Agency could pursue a variety of potential uses for that area.

On December 20, 2005, the Agency Board approved a plan to create a freeway auto mall within the North Gateway of the Army Base. The North Gateway has approximately 23 net acres of land, which is large enough to accommodate four to five dealerships. However, this area is less than the 40-60 acres that would be needed to accommodate all of the Auto Row dealerships that have the most urgent need to relocate and to create a critical mass of auto dealers to insure the success of this new auto mall. Discussions have been conducted as to whether or not an additional 15-20 acres should be identified for auto retail in the Army Base.

The East Gateway would provide a logical site for adding 17 acres of auto retail, since it is adjacent to the North Gateway. Alternately, this 17 acre area could be used for retail, trucking operations, or Port-related uses. However, due to the existing ENA with OWW, Agency staff may not negotiate with any other parties without obtaining OWW's consent unless this area is removed from the ENA.

By reducing the size of the ENA area, the Agency would keep OWW as a potential developer for a smaller portion of the Army Base – and allow OWW to continue assuming responsibility for the development of port-related ancillary uses within the Army Base – while at the same time

allowing the Agency increased flexibility in being able to negotiate directly for a portion of the East Gateway.

B. Right of First Proposal

In 2000, the Agency entered into ENA discussions with the forerunner to OWW, which at that time was called "Opus West Developer Group." However, no proposal was ever developed and discussions were suspended. In 2002, the Agency sent a letter to Opus West Developer Group, indicating that their team would have the right to submit a proposal for the Army Base, which the Agency would consider before entertaining any other offers on the Army Base. In 2005, OWW agreed to relinquish any "right of first proposal" in exchange for a new ENA – which is the current six-month ENA on a 50-acre area.

During the recent ENA discussions, OWW requested that the Agency reinstate a right of first proposal on the Central and West Gateway areas, in the event that the Fulton ENA should not result in development. It should be noted that OWW is interested in these areas because they view them as having great potential for retail.

By granting this request for a right of first proposal, the Agency would be limiting its flexibility to explore other options on the West and Central Gateway areas, if for some reason the Fulton ENA does not lead to development. For this reason, staff is recommending the Agency reject this request.

SUSTAINABLE OPPORTUNITIES

The proposed amendment to the ENA would not create any direct opportunities for economic, environmental, or socially sustainable features to be included in the proposed project. As part of the existing ENA, staff will work with the Developer to incorporate sustainable features into the proposed project. These features would be identified in a Disposition and Development Agreement (DDA) that would be presented to the Agency Board, pending the successful completion of discussions during the ENA period.

DISABILITY AND SENIOR CITIZEN ACCESS

The proposed amendment to the ENA does not involve the approval of any specific projects or programs. Disability and senior access issues would be addressed when specific development plans are submitted to the City by the Developer for review and approval.

RECOMMENDATIONS AND RATIONALE

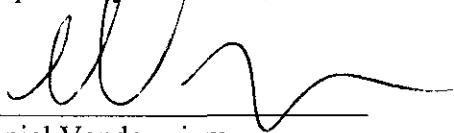
Staff recommends that the Agency extend the OWW ENA term by six months through October 2006. This will allow OWW to incorporate into its planning efforts the current EIR process and to coordinate with the Fulton project.

Staff further recommends that the Agency Board agree to remove 17 acres of the East Gateway from OWW's ENA area in exchange for a right of first proposal on the Central and West Gateway areas. The Agency would then be able to negotiate directly for the development of this area within the East Gateway. The 17 acres, combined with the adjacent North Gateway, could yield a total of 38 net acres of land for auto retail, which would provide enough space for the dealers on Broadway Auto Row that have the most urgent need to relocate. Alternatively, the 17 acres could be used for other land uses, and to implement any further direction of the Council/Agency Board regarding trucking and port-related uses.

ACTION REQUESTED OF THE CITY COUNCIL/REDEVELOPMENT AGENCY

That the Agency Board approve the attached resolution amending the Exclusive Negotiating Agreement with Oakland West Wind, LLC, in order to: (1) Reduce the ENA subject area to 33 acres; and (2) Extend the term of the Agreement from 6 months to 12 months.

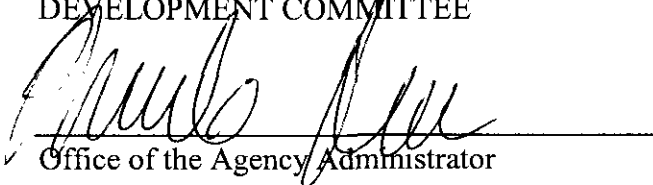
Respectfully submitted,



Daniel Vanderprien
Director of CEDA Redevelopment, Economic
Development, Housing & Community Development

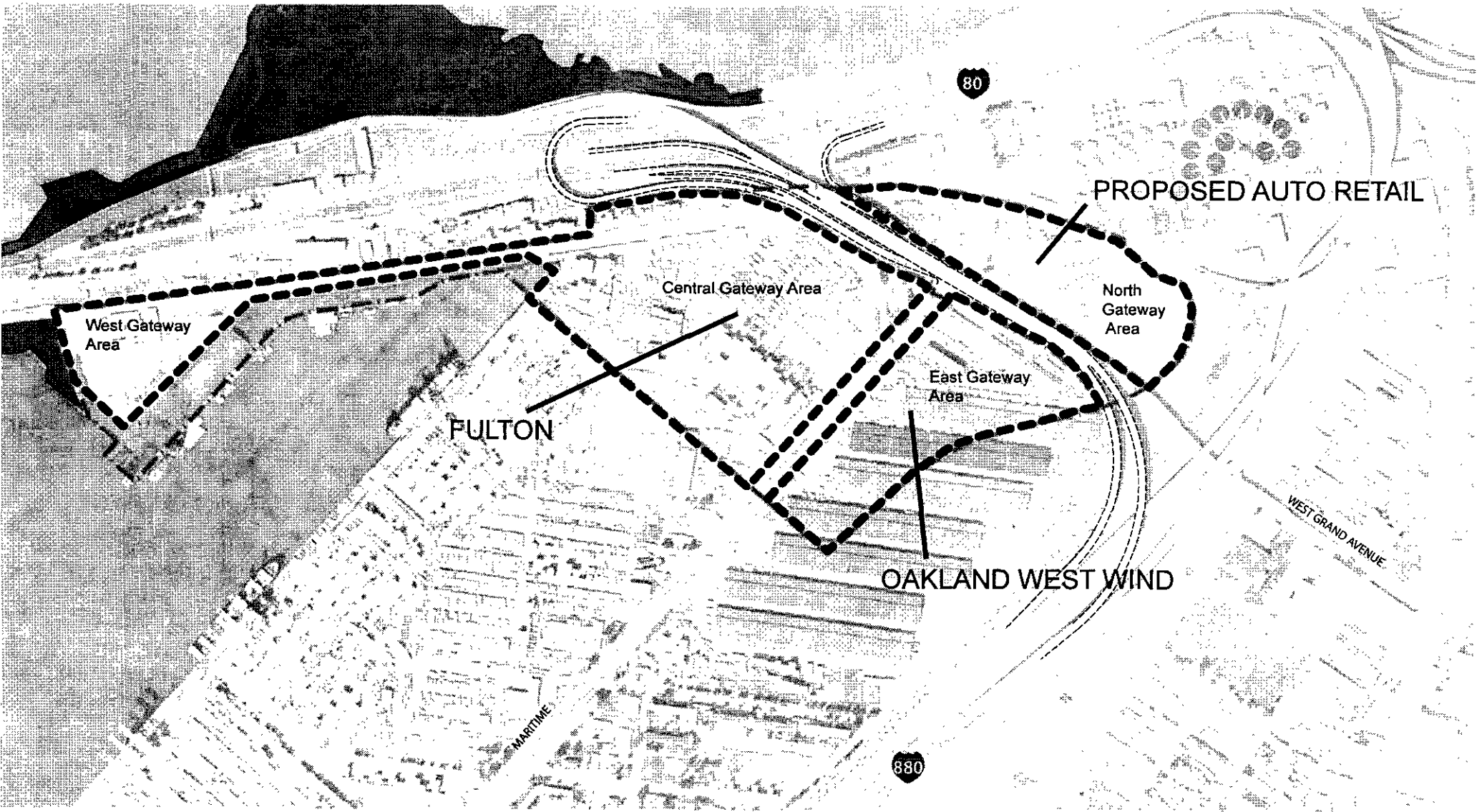
Prepared by:
Alex Greenwood
Urban Economic Coordinator, CEDA,
Redevelopment Division

APPROVED FOR FORWARDING TO
THE COMMUNITY AND ECONOMIC
DEVELOPMENT COMMITTEE

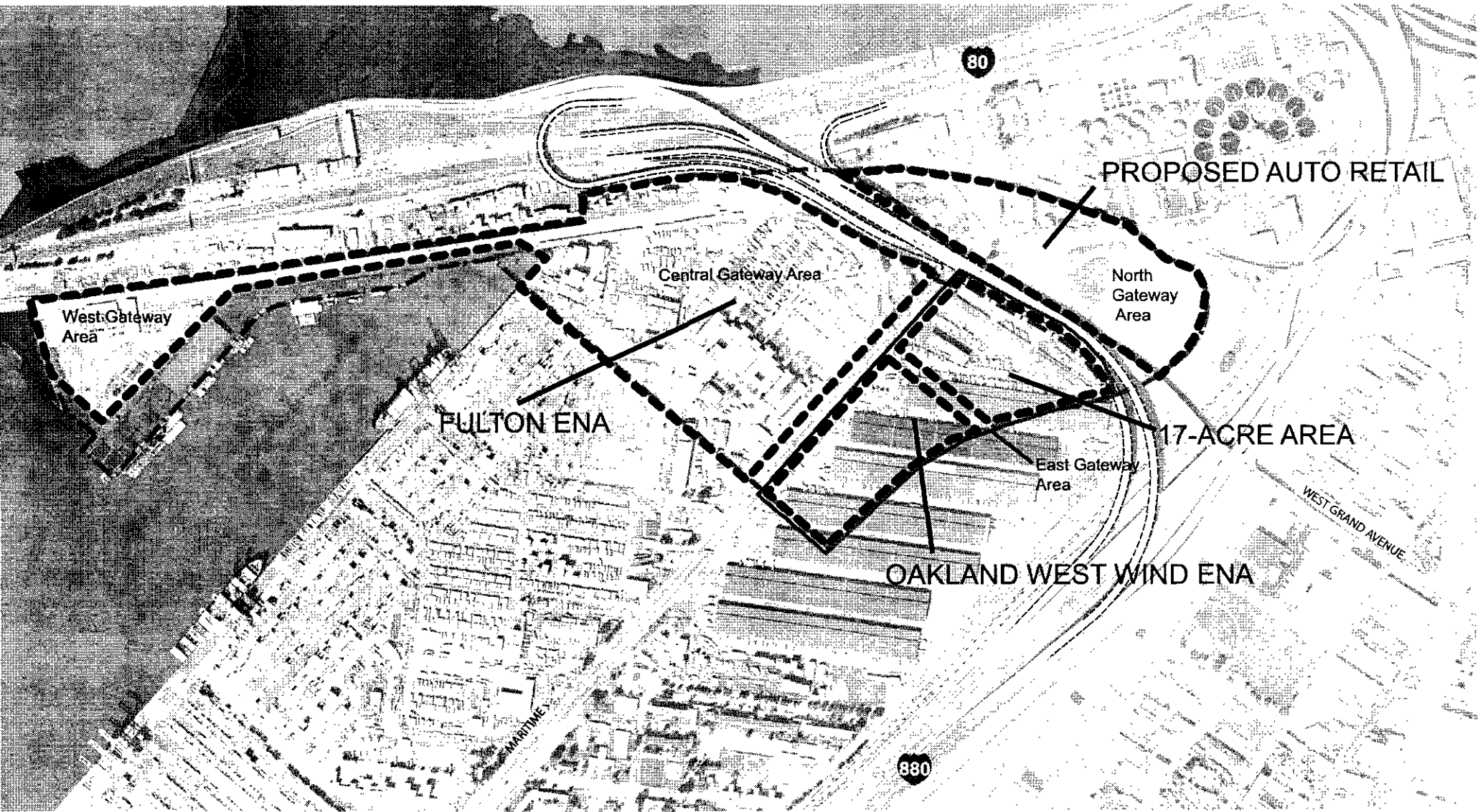


Office of the Agency Administrator

ATTACHMENT 1



ATTACHMENT 2



FILED
OFFICE OF THE CITY CLERK
OAKLAND

2006 APR 11 PM 1:11

APPROVED AS TO FORM AND LEGALITY:

BY:


AGENCY COUNSEL

REDEVELOPMENT AGENCY
OF THE CITY OF OAKLAND

RESOLUTION No. _____ C.M.S.

RESOLUTION AMENDING THE EXCLUSIVE NEGOTIATING AGREEMENT WITH OAKLAND WEST WIND, LLC, FOR THE DEVELOPMENT OF APPROXIMATELY 50 ACRES WITHIN THE FORMER OAKLAND ARMY BASE, IN ORDER TO: (1) REDUCE THE ENA SUBJECT AREA TO 33 ACRES; AND (2) EXTEND THE TERM OF THE AGREEMENT FROM 6 MONTHS TO 12 MONTHS

WHEREAS, the Redevelopment Agency adopted the Redevelopment Plan for the Oakland Army Base Redevelopment Project ("Oakland Army Base Redevelopment Plan") on July 1, 2000; and

WHEREAS, one of the goals of the Oakland Army Base Redevelopment Plan is to subdivide the Army Base site into parcels suitable for modern, integrated development; and

WHEREAS, one of the proposed actions included in the Oakland Army Base Redevelopment Plan was redevelopment of land by private enterprise; and

WHEREAS, the Oakland Base Reuse Authority ("OBRA") has acquired 365 acres of the former Oakland Army Base and has approximately 170 acres available for private development after transfers of land to the Port of Oakland, California Department of Transportation, and East Bay Regional Parks District; and

WHEREAS, OBRA plans to convey all of its interests in the Oakland Army Base land to the Redevelopment Agency in 2006; and

WHEREAS, on June 21, 2005, the Oakland Redevelopment Agency approved Resolution Number 2005-0035, authorizing an Exclusive Negotiating Agreement (ENA) with Opus West Developer Group for a term of 180 days to develop a proposal for development of approximately 50 acres of land within the Oakland Army Base; and

WHEREAS, after June 21, 2005, the development partners of Opus West Developer Group formed a limited liability company under the name "Oakland West Wind LLC"; and

WHEREAS, Oakland West Wind LLC ("OWW") consists of the following parties: Opus West Corporation, Legacy Partners Commercial, Levine Fricke EcoParks, LLC, United Indian Nations Community Development Corporation, Michael Ziegler, and Curtis Smothers; and

WHEREAS, the six-month ENA term expired on April 12, 2006; and

WHEREAS, the Agency wishes to extend the term of the existing ENA from 180 days to 360 days in order to allow coordination with projects being contemplated on adjacent portions of the Oakland Army Base, and so that OWW is able to incorporate information gathered during the current environmental studies of the former Oakland Army Base; and

WHEREAS, in exchange for the extension of the ENA, and in order to facilitate decisions regarding the land use and development of the Army Base, the Agency wishes to reduce the ENA subject area by omitting 17 acres from the northernmost portion of the East Gateway Development Area located at the former Oakland Army Base; and

WHEREAS, the revised ENA subject area is depicted in Exhibit A-1 attached to the proposed First Amendment to the Exclusive Negotiating Agreement (Attachment A) in the area labeled as "Oakland West Wind ENA"; now therefore be it

RESOLVED: That the Redevelopment Agency hereby authorizes the Agency Administrator to execute an amendment to the Exclusive Negotiating Agreement with Oakland West Wind LLC in a substantially similar form to the amendment attached hereto (Attachment 1) and that will (1) Extend the term of the ENA from 180 days to 360 days; and (2) Reduce the ENA subject area from approximately 50 acres to approximately 33 acres, so that it corresponds to the area labeled "Oakland West Wind ENA" in Attachment A hereto; and be it

FURTHER RESOLVED: That the Agency hereby authorizes the Agency Administrator, or her designee, to take all actions necessary to carry out this resolution and its basic purposes; and be it

FURTHER RESOLVED: That all documents shall be reviewed and approved by the Office of the City Attorney as to form and legality prior to execution, and copies will be placed on file with the City Clerk.

IN SESSION, OAKLAND, CALIFORNIA, _____, 2006

PASSED BY THE FOLLOWING VOTE:

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

NOES-

ABSENT-

ABSTENTION-

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

Attachment 1: Proposed First Amendment to the Exclusive Negotiating Agreement (Oakland West Wind Redevelopment Project)

**FIRST AMENDMENT TO THE EXCLUSIVE NEGOTIATING AGREEMENT
(Oakland West Wind Redevelopment Project)**

This First Amendment to the Exclusive Negotiating Agreement Between the Redevelopment Agency of the City of Oakland and Oakland West Wind LLC ("First Amendment"), is made and entered into this _____ day of April 2006 ("Effective Date"), by and between the REDEVELOPMENT AGENCY OF THE CITY OF OAKLAND, a community redevelopment agency organized and existing under the California Community Redevelopment Law ("Agency"), and OAKLAND WEST WIND LLC, a Delaware limited liability company ("Developer") (together, Agency and Developer are referred to as the "Parties"), pursuant to Agency Resolution No. 2006-_____ C.M.S., adopted on _____, 2006.

RECITALS

A. In October 2005, the Parties entered into an Exclusive Negotiating Agreement ("ENA") to explore the possibility of developing a portion of the former Oakland Army Base for a mixed-use project that may include auto retail, industrial, or other potential uses ("the Project") pursuant to Agency Resolution No. 2005-0034 C.M.S., adopted on June 21, 2005; and

B. Exhibit A to the ENA defined the Project site to consist of approximately 50 acres of land to be located within the East Gateway and Central Gateway portions of the Oakland Army Base; and

C. Under the ENA, the period for negotiations between the Parties is 180 calendar days, which period is set to expire on April 12, 2006; and

D. The Parties wish to amend the ENA in order to (1) extend the period for negotiations by an additional 180 days; and (2) reconfigure the Project site, as depicted on the Exhibit A-1 attached hereto, reducing the size to 33 acres.

NOW THEREFORE, the ENA is hereby amended as follows:

1. Exhibit A is hereby deleted in its entirety and replaced with Exhibit A-1 attached hereto.

2. Section 2 of Exhibit B is deleted in its entirety and replaced with the following:

Section 2. Defining of Project Site. During the Negotiation Period, Developer will work with Agency to define the boundaries and configuration of the Property upon which the Project is to be developed. The Property will consist of approximately 33 acres of land to be located within the East Gateway and Central Gateway

portions of the Oakland Army Base, as depicted in Exhibit A-1. Developer and Agency will determine the specific configuration of the Property in cooperation with the Agency's and OBRA's land use planning efforts. Within sixty (60) days of the commencement of the Negotiation Period, Developer will submit to Agency a map identifying the specific boundaries and configuration of the Property upon which the Project is proposed to be developed.

3. Section 1.4 is hereby deleted in its entirety and replaced with the following:

Section 1.4 Length of Negotiation Period. Unless extended by written mutual agreement after formal approval of the Agency governing body, or as otherwise provided herein, the period for negotiations between the Parties under this Agreement will be for three hundred sixty (360) calendar days, commencing on the date of this Agreement (the "Negotiation Period"); provided, however, that the Negotiation Period may be terminated earlier pursuant to the termination provisions of this Agreement.

4. The Parties hereby agree that all other terms, conditions, and provisions of the Agreement remain unchanged and in full force.

5. The persons signing this Agreement on behalf of Developer affirm that they are authorized to execute on Developer's behalf, and on behalf of all of the member organizations that comprise the development team, including Opus West Corporation, Legacy Partners Commercial LLC, Levine Fricke EcoParks, LLC, United Indian Nations Community Development Corporation, Michael Ziegler, Curtis Smothers, and any other organizations affiliated with prior ventures led by Oakland West Wind LLC or Opus West Corporation regarding the former Oakland Army Base.

[Signatures on following page]

IN WITNESS WHEREOF, this First Amendment to the Exclusive Negotiating Agreement Between the Redevelopment Agency of the City of Oakland and Oakland West Wind LLC has been executed by the Parties as of the date first written above.

AGENCY:

The REDEVELOPMENT AGENCY OF CITY OF OAKLAND, a community redevelopment agency organized and existing under the California Community Redevelopment Law

By: _____
Deborah A. Edgerly
Agency Administrator

Approved as to form and legality:

By: _____
Alix Rosenthal
Agency Counsel

DEVELOPER:

OAKLAND WEST WIND LLC,
a Delaware limited liability company

By: OPUS WEST CORPORATION,
a California corporation

By: _____
Name: Thomas W. Roberts
Title: President

By: _____
Name: Don D. Little
Title: Senior Vice President

EXHIBIT A-1

[MAP OF PROPERTY ATTACHED]

