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OAKLAND

AGENDA REPORT

CITY OF OAKLAND

2017 FEB 16 PM 7:45

TO: Sabrina B. Landreth
City Administrator

FROM: Darin Ranelletti,
Interim Director, PBD

SUBJECT: MacArthur BART Parcel B Revision
to Planned Unit Development and
Amendment to Development
Agreement

DATE: February 2, 2017

City Administrator Approval

Date:

2/16/17

RECOMMENDATION

Staff Recommends That The City Council Conduct A Public Hearing And Upon Conclusion, Adopt the Following:

A Resolution, As Recommended By The City Planning Commission, (A) Revising The MacArthur BART Planned Unit Development; (B) Adopting A Final Development Permit, Vesting Tentative Parcel Map 10561, And Design Review, And (C) Relying On The 2008 MacArthur Station Project Environmental Impact Report And Addenda, And Other Documents, Finding That No Additional Environmental Review Is Needed Pursuant to California Environmental Quality Act Guidelines Sections 15162-15164, 15168, 15180, 15183, And 15183.3 And Adopting Related CEQA Findings, For Parcel B, Located at 532-39th Street, Oakland, Ca (Assessor Parcel Numbers 012 102501100 And 012 102501200)

An Ordinance, As Recommended By the City Planning Commission, (A) Amending The Development Agreement By and Between City of Oakland and MacArthur Transit Community Partners, LLC Regarding The Property Known As "MacArthur Transit Village" To Allow For Increased Height On Parcel B, And (B) Relying On The 2008 MacArthur Station Project Environmental Impact Report and Addenda, Finding That No Additional Environmental Review Is Needed Pursuant To California Environmental Quality Act Guidelines Sections 15162-15164, 15168, 15180, 15183, and 15183.3 And Adopting Related CEQA Findings, For Parcel B, Located at 532-39th Street, Oakland, CA (Assessor Parcel Numbers 012 102501100 AND 012 102501200)

EXECUTIVE SUMMARY

Bureau of Planning staff, and the Planning Commission, recommend approval of an amendment to the Development Agreement by and Between City of Oakland and MacArthur Transit community Partners, LLC Regarding the Property and Project Known as "MacArthur Transit Village" (DA) and a revision to the MacArthur Transit Village Planned Unit Development (PUD) to allow increased height for development of Parcel B of the project, as well as a Final Development Permit (FDP) and Tentative Parcel Map (TPM) for the proposed Parcel B

Item: _____

Community and Economic Development Committee
February 28, 2017

development scheme. In summary, the applicant proposes an increase in the allowable building height from 90 to 260 feet (along with the increased development potential that would enable) on Parcel B of MacArthur Transit Village, along with a community benefits package to strengthen project support of Citywide public improvement objectives and projects. The proposal would allow for a 24-story tower with up to 402 dwelling units, 13,000 square feet of ground-floor commercial uses and up to 262 parking spaces. The Design Review Committee (DRC) previously reviewed this project at their regularly scheduled meetings on August 10, 2016 and October 19, 2016. The Planning Commission, at their regularly scheduled meeting on February 1, 2017, recommended approval of the proposed project, with some additional, complementary community benefits and a new condition of approval ensuring staff oversight of continued design development through project construction.

BACKGROUND / LEGISLATIVE HISTORY

The MacArthur Station Project Preliminary Development Plan (PDP) for the Planned Unit Development (PUD) was approved in July 2008 in association with several other approvals as listed below. The PUD/PDP approval authorizes the development on the entire 8.2 acre site of up to 675 residential units, 49,000 square feet of commercial space, 5,000 square feet of community space, a parking structure for BART patrons, and various infrastructure improvements. The PUD/PDP and Development Agreement establish the approved land uses, density, bulk, massing, and design guidelines for the site.

The approved PDP for the MacArthur Station Project includes the demolition of BART surface parking lots and all existing buildings on the project site to allow for the construction of a new mixed-use, transit village development project. The phased project includes five new blocks that would accommodate a total of up to 675 residential units (including 108 affordable units), 49,000 square feet of neighborhood-serving retail and commercial uses, 5,000 square feet of community space, and a 480-space parking garage for BART patrons. Parking for residential units will be provided within each individual building, and approximately 30 commercial parking spaces would be provided in Building A. The MacArthur Station Project also includes creation of two new streets, which were approved as part of the Vesting Tentative Tract Map (VTTM) and Stage 1 FDP: 39th Street will provide an east/west connection between Telegraph Avenue and Frontage Road, and Turquoise Street will provide a north/south connection from 39th Street to the southern edge of the project. Frontage Road will be reconfigured to allow continued access by shuttle operators. New sidewalks, bicycle paths, and streetscape improvements will also be constructed.

The project includes five stages of development, each of which is subject to a Final Development Permit (FDP). At this time, FDPs have been approved for four of the five stages of development.

Increased and enhanced access to the BART station is a key component of the approved PUD. 39th Street, the main pedestrian and vehicular access to the project, is envisioned as a lively pedestrian street with shops and service uses that include outdoor displays and seating areas. The existing BART plaza will be renovated and a new public plaza will be provided immediately east of the BART plaza and fare gates. The transit village plaza will include outdoor seating,

Item: _____

Community and Economic Development Committee
February 28, 2017

public art, landscaping, and other activity to provide a sense of arrival to the project, especially for BART patrons as they enter and exit the station.

Original Land Use Entitlements

The original land use entitlements include:

- 1) **EIR:** The City certified an EIR for the MacArthur Station Project (SCH No. 2006022075) on July 1, 2008.
- 2) **S-15 Text Amendment and Rezoning:** The City approved Ordinance No. 12883 C.M.S. amending Section 17.97.170 of the Oakland Planning Code related to the minimum usable open space requirements in the S-15 zone and rezoning the MacArthur Station Project site to S-15 Transit-Oriented Development Zone on July 1, 2008.
- 3) **PUD/PDP:** The City approved a PUD/PDP permit on July 1, 2008 that guides development of the site in five stages.
- 4) **Major Conditional Use Permit:** The City approved a major conditional use permit to allow the S-15 parking requirements to be exceeded and to allow off-street parking for non-residential uses on July 1, 2008.
- 5) **Design Review:** The City approved preliminary design review for the PUD/PDP on July 1, 2008.
- 6) **Development Agreement:** The City approved Ordinance No. 12959 C.M.S on July 21, 2009 enacting a Development Agreement (DA).

Project Implementation

Consistent with the requirements of the PUD, Final Development Permits (FDPs) have been sought (and approved) for each stage of development, as follows:

- 1) **Stage 1 BART Garage and Infrastructure Improvements:** On April 5, 2011, the City approved the Parcel E Parking Structure/Stage 1 FDP to construct the new BART parking structure and all horizontal infrastructure improvements (including streets and sidewalks) and the Vesting Tentative Tract Map (VTTM). This approval allowed an increase in the garage footprint to accommodate additional parking as required by the Project Conditions of Approval (COA) and adjustments to the plans for Turquoise Street and 39th Street (previously called Village Drive), and modified the PUD/PDP Illustrative Plan. The City relied on the 2008 certified EIR for the MS Project and determined that no new information or changes in the project or project circumstances required subsequent or supplemental environmental review. Construction of the garage was completed in 2014.
- 2) **Stage 2 Mural Apartments:** On May 17, 2011, the City approved the Stage 2 FDP for the development of Parcel D with 90 residential units and 90 parking spaces. The City relied on the 2008 certified EIR for the Project and determined that no new information or changes in the project or project circumstances required subsequent or supplemental environmental review. Construction of Mural Apartments was completed earlier in 2016.

Item: _____

- 3) **Stage 3 and 4:** On May 19, 2015, the Oakland City Council approved the Stages 3 and 4 FDP for development of Parcels A and C1. The Stages 3 and 4 FDP entails the construction of two 6-story mixed-use buildings on Blocks A and C1. Block A would include 286 residential units (eight of which would be affordable), 22,287 square feet of ground-floor commercial and building amenity space, and 254 parking spaces. Block A is one structure although it is designed to look like two separate buildings separated by a landscaped mews. The mews would include landscaping, lighting, lounge seating, and café seating. The Block A west portion of the building includes 92 units and the Block A east portion of the building includes 194 units. Block C1 would include 93 residential units (four of which would be affordable), 2,235 square feet of ground-floor commercial space, and 63 parking spaces. Construction of Stages 3 and 4 is expected to commence before the end of 2017. In 2016, the FDP was revised to substitute live/work units and community space for ground-floor retail space, reduce parking, and add a project driveway on Telegraph Avenue.

Current Proposal

The proposed project (Phase/Stage 5) is a revision to the PUD, a Final Development Plan for Parcel B, a Tentative Parcel Map for Parcel B, design review, and an amendment to the DA.

Final Development Plan (FDP)

The proposed Parcel B FDP application (case file PUD06058-R01-PUDF01) is for the construction of a 260-foot tall (24-story) tower with up to 402 dwelling units, 13,000 square feet of ground-floor commercial uses and up to 262 parking spaces. The proposal includes 45 affordable units (which complies with the Owner Participation Agreement (OPA), overseen by the City of Oakland Economic and Workforce Development Department, requirement of 20 affordable housing units for every 100 market-rate residential units throughout the overall PUD).

The ground floor includes a large publicly-accessible plaza facing 39th Street and 13,000 square feet of publicly accessible retail and commercial space. The building design includes two lobbies (both located along Turquoise Street), and vehicular access (and loading) from the setback area between the BART Garage and the proposed building. Major features of the design include the following:

- **Size:** The proposed building is 416,100 square feet and includes a 260-foot tower. The project includes 13,000 square feet of ground-floor commercial uses and 402 residential units.
- **Ground-Floor Uses:** The proposed ground floor design includes 13,000 square feet of street-facing commercial uses and a complementary large public plaza facing the length of the 39th Street frontage, two residential lobbies facing Turquoise Street, and parking access and loading on a 30-foot building setback at the property line with the BART garage. Proposed ground floor height in the commercial spaces along 39th and Turquoise Streets is at least 15 feet (floor to ceiling). Ground floor treatment includes extensive public-private interface, including storefront glazing and doors and lobby entrances along Turquoise and 39th Streets, vehicular access along the southern side of the building, and landscaped treatment along the Walter Miles Way side of the building.
- **Residential Uses:** The proposed project includes 402 residential units, 45 of which would be affordable.

Item: _____

- Usable Open Space: The project would provide over 80 square feet of usable open space per unit, mostly as group usable open space in rooftop gardens. The ground floor plaza includes tree planters and cast-in-place concrete seating areas.
- Parking and Loading: The project includes up to 262 parking spaces and two on-site loading spaces. Parking and loading are accessed from the setback located on the south side of the project adjacent to the BART garage.
- Appearance (including massing and exterior treatments and finishes): The project is a 260-foot tall highrise building with a generous at-grade public plaza, modulated base, and tower feature. The design has a complex massing with a slender tower and varied heights to provide visual interest and avoid a bulky mass. The top of the tower is sheathed in channel glass to provide lightness and visual depth. The exterior materials and treatments are high-quality and stylistically contemporary, and include pattern variation and extensive openings to support a residential scale and appearance.

Revision to PUD

The application for the proposed Parcel B development includes a revision to the adopted Preliminary PUD to allow for an increase in the allowable height on Parcel B from 80 feet to 260 feet.

**Summary of Current Proposal in Relation to
Approved PUD**

Use	Proposed Parcel B	Parcel A	Parcel C	Parcel D	Parcel E	2016 Modified Total	2008 EIR Certified Project Total	Difference between 2016 Modified and 2008 Projects
Residential	402 DU	287 DU	96 DU	90 DU	0	875 DU	675 DU	+200 DU
Commercial	13,000 SF	22,287 SF ^f	1,202 SF ^f	0	5,200 SF	41,689 SF	44,000SF	-2,311 SF
Community	0	0	5,000 SF ^f	0	0	5.0 KSF	5,000 SF	0

Notes: DU = Dwelling Units, KSF = 1,000 square feet.

Construction of buildings on Parcel D and E have been completed.

Vesting Tentative Parcel Map (TPM)

The proposed TPM reconfigures the site in order to merge two parcels into one, move parcel lines to accommodate a sidewalk on Walter Miles Way, and allow for a one-lot condominium.

Item: _____

Community and Economic Development Committee

February 28, 2017

Amendment to DA

The proposed project includes a request to amend the DA to allow for the increased height on Parcel B. The DA is a negotiated agreement between the applicant and the City of Oakland. In exchange for a longer approval period where the rules and requirements are locked in, the project sponsor has obligations and requirements, as requested by the City and community. As such, the City is taking the opportunity to negotiate an expanded community benefits package in exchange for the increased height allowance requested by the applicant. It should be noted that, consistent with the existing community benefits requirements included in the DA and a related Owner Participation Agreement (with the former Redevelopment Agency), the project includes 100 percent financing of 45 affordable housing units within the project (affordable to 80 percent area mean income). By increasing the number of residential units, the applicant is providing 41 more affordable housing units than is required for the currently approved development scheme. At this time, staff proposes the following community benefits package for City Council consideration:

Community Benefit Package (Recommended by Staff)

Community Benefit	Value
Already Included in Project (non-negotiable):	
100% Financing of 45 affordable units (80% AMI)	\$15,128,400*
Contribution to Pedestrian Streetlighting (TTBID)	\$95,000
Additional items proposed by staff (negotiable):	
Pay Transportation and Capital Projects Impact Fee	\$509,500 (357 du)**
Contribution to Mosswood Park	\$500,000
Apply tenant and service contractor local-hire req's	indeterminate
Total Value:	\$16,232,900
Change from existing community benefits:	+\$1,104,500

* Order of magnitude assumption based on recent analysis of 12th Street remainder parcel and similar projects

** 357 = total # of market rate units in 2017 proposed project

The proposed community benefits package includes features already proposed by the project, as well as additional line items intended to achieve current community goals and objectives. The project currently offers approximately \$15 million in independently financed affordable housing units and contribution to the Telegraph Avenue pedestrian lighting project. In addition, staff proposes approximately an additional \$1 million contribution toward established goals and projects, including application of the recently adopted impact fees (which does not apply to the project), a contribution to Mosswood Park, and a commitment to local business and hiring practices for the life of the project. These projects and goals are in line with established City policy and projects designed to support the community.

It should be noted that the staff-proposed community benefits package includes a line item to "apply tenant and service contractor local-hire requirements" with an indeterminate economic value. The line item includes: a "Fair Chance" policy, by which employers cannot screen for applicants' criminal histories until after a provisional job offer is made (also known as "ban-the-box"); "wall-to-wall" living wage policies to ensure that every employee working on-site receives a living wage consistent with the wages established by the City of Oakland's Living Wage

Item: _____

Community and Economic Development Committee

February 28, 2017

Ordinance; and a commitment to work with the Business Improvement District to maximize local hiring throughout the life of the project.

The Planning Commission, in their motion on February 1, 2017, recommended that the City Council include the following complementary items in the community benefits package:

- 1) direct any impact fee exactions to projects in the neighborhoods immediately surrounding the project;
- (2) applicant shall actively seek a grocery store for the ground-floor retail space, if feasible;
- (3) applicant shall lease the ground-floor commercial space at below-market rates, if feasible; and
- (4) the applicant shall meet with the community to explain options for leasing the ground-floor retail space and obtain and consider feed-back.

The Project Sponsor has agreed to Planning Commission community benefits package items 1, 2 and 4. The Project Sponsor indicates that Item 3 is infeasible. The Project Sponsor proposes fulfilling staff's additionally-proposed community benefits package as a Project Sponsor contribution of \$250,000, to be distributed pursuant to further negotiations.

ANALYSIS AND POLICY ALTERNATIVES

Staff has determined that the project, with the requested entitlements, is consistent with and supports General Plan Policies, the purpose and intent of the transit-oriented Planned Unit Development of which it is a part, and other Citywide policies and objectives for delivering new residential development (in particular, affordable housing). The supporting analysis is included in the Planning Commission report, dated February 1, 2017 (**Attachment A**).

The proposed Parcel B Project is a well-designed, high-density mixed-use project located at a major regional transit node that will add a significant number of residential units, including a substantial number of affordable units, to Oakland's currently limited supply of housing. The proposed high-rise building would be separated from existing, surrounding neighbors by BART and freeway rights-of-way, the MacArthur Transit Village (of which it is a part), and by 40th Street, Telegraph Avenue, and West MacArthur Boulevard (with one exception at 505-40th Street). The proposed project is an opportunity to support the use of existing transit and increase affordable and market-rate housing opportunities in Oakland, all desirable land-use planning goals in Oakland at this time.

Although the project would be visible throughout the surrounding neighborhood and is architecturally different from the nearby one- to four-story building context, the proposed building is nevertheless well-designed with elegant massing and refined exterior materials and details. It will be attractive and appropriate to its location at the high-use MacArthur BART station. The thoughtfully-designed active ground-floor design and uses will support commercial growth and pedestrian activity in the neighborhood. Finally, the community benefits package ensures that the increased development potential of the property contributes to improved quality

Item: _____

Community and Economic Development Committee

February 28, 2017

of life for the Oakland community through achieving established City goals and objectives. Staff supports the proposed Parcel B project and recommends approval.

If the proposed project is not approved, the existing approvals will continue to be effective. As such, the approved project would allow up to 200 dwelling units (including four affordable units) in a 90-foot tall (max) building. Although the approved moderate-density project could feasibly move forward, it does not reflect current thinking regarding locating high-density development at transit nodes to maximize use of and benefits from public transit. The following is a discussion of regulatory compliance and issues related to the proposed project.

Compliance with Planning Code

Staff provided analysis of the project compliance with the City of Oakland Planning Code in the Planning Commission report dated February 1, 2017 (**Attachment A**). In summary, the project exceeds the height limits established in the underlying zoning district and in the PUD (90 feet and 80 feet maximum height, respectively). However, the Applicant proposes negotiating an amendment to the adopted DA and revising the PUD accordingly, to allow the proposed 260-foot tall building. City of Oakland regulations allow for relaxation of height limits for PUDs to encourage integrated development design (Oakland Planning Code section 17.142.100 (G)). Community members have expressed concern about the proposed highrise impacting the neighborhood, changing the neighborhood, and being out of context with the neighborhood. Staff believes that the proposed project provides appropriately high density development immediately adjacent to a regional transit node (a contemporary goal for transit-oriented development), and is far enough away from most existing land uses (other than right-of-way and the transit village itself) to not be impactful (see further discussion below regarding compliance with CEQA).

Compliance with CEQA

The City conducted a detailed evaluation of the proposed project pursuant to the California Environmental Quality Act (CEQA) and concludes that the Parcel B Project qualifies for an addendum to the adopted 2008 Environmental Impact Report (EIR) for the project, as meeting other requirements such that further environmental review is not required. It should be noted that analysis of aesthetics and parking are no longer required for mixed-use projects on infill sites located within a transit priority area (CEQA Section 21099(d)); however, the City has included discussion of aesthetics in the CEQA analysis only for information purposes. The following is a summary of areas of community interest with regards to the aesthetics and transportation analysis:

- Views: While the Parcel B Project would be significantly taller (175 feet taller) than the Parcel B building evaluated as part of the PUD/PDP in the original 2008 Project EIR, and thus more visible than the original 2008 Project, the Parcel B Project would not block significant portions of the views from adjacent vantage points, as is shown in the visual simulations included in Addendum #4 Figures 5b through 5m; Figure 5a shows the visual simulation viewpoint locations. The structure would be taller than other structures in the immediate area, but would not block any vantage points to scenic features.
- Wind: Although wind is not required to be studied at this location under the City's CEQA Thresholds of Significance, an informational wind study was performed. The study

Item: _____

Community and Economic Development Committee
February 28, 2017

found that with implementation of the project under existing conditions, landscaping is needed at two locations in the public right-of-way to ensure that pedestrian wind levels do not exceed the hazard threshold. Such landscaping is required as a condition of approval. A third location would also experience substantial wind: Point 7 in the wind analysis (see Addendum #4) is located in a project driveway where pedestrian access would be restricted for safety purposes.

- **Shadow:** Overall, the shadow impacts on adjacent properties from the 2016 Modified Project would not be substantial as the majority of the shadows would be cast towards the freeway and onto the project site. While the 2016 Modified Project would be significantly taller than the proposed Parcel B Building evaluated within the 2008 Project EIR, it should be noted that Parcel B is located within the center of the site (over 250 feet from 40th Street, Telegraph Avenue, or West MacArthur Boulevard), and much of the additional shadow cast by the additional height would fall on the freeway or on other parcels within the MacArthur Station site. Shadows created by the proposed project on December 22 (the day after the winter solstice) would be the most extensive; however, the winter solstice shadows would not be significant because the new shadows created by the project would minimally contribute to the existing shadow condition on this day and, as a result, would not be considered significant.
- **Transportation:** With regards to potential transportation-related impacts, the project WILL generate the same or less impacts than than the approved project. This is due to improvements in the street network in the surrounding neighborhood, decreased automobile commute to and from the MacArthur BART station, and general reduction in single-occupancy vehicular use in the area (due, in part, to increased car share. Moreover, under the City's newly adopted transportation-related CEQA Thresholds of Significance, the project satisfies the "Low-VMT Area Criterion" based in part on its location at a regional transit node, and would therefore not result in transportation-related impacts.

The City published and made available the MacArthur Station – Modified 2016 Project CEQA Analysis document on December 30, 2016. Notices were mailed on that day to property owners within 300 feet of the larger PUD site and to interested parties on the City's mailing list. In addition, notice was provided electronically to an electronic interested parties list and via a project webpage subscriber list. As detailed below, the CEQA Analysis document (and related CEQA documents) are available electronically on the City of Oakland website and in hard-copy format at City of Oakland offices.

Planning Commission Recommendation

At their regularly scheduled meeting on February 1, 2017, the Planning Commission affirmed staff's environmental determination and recommended the City Council approve the project, with some additional, complementary community benefits (as discussed above) and a new condition of approval allowing for continued staff review of design development of the project through construction (Condition of Approval #33).

Item: _____

Community and Economic Development Committee
February 28, 2017

FISCAL IMPACT

The proposed project includes previously required and newly proposed community benefits that or of significant financial value.

The proposed project would fulfill a community benefit included in the existing approvals requiring delivery of 45 affordable residential units (affordable to 80 percent of area mean income families).

In addition, the proposed community benefits package (as currently proposed by staff) would result in an additional \$1.1 million contribution to established City of Oakland programs and projects, as described above.

PUBLIC OUTREACH / INTEREST

The proposed project has been considered at four community meetings, two Design Review Committee meetings of the Planning Commission (in August and October of 2016), and by the Planning Commission.

COORDINATION

This agenda report and legislation have been reviewed by the Office of the City Attorney and by the Controller Bureau. In addition, Bureau of Planning staff has coordinated with Project Implementation staff.

SUSTAINABLE OPPORTUNITIES

Economic: The Project would have a direct, positive economic impact on the City of Oakland through the increase of property and sales tax revenues. The MacArthur BART Transit Village replaces a surface parking lot with residential and commercial uses immediately adjacent to the MacArthur BART station. Increasing residential and commercial uses contributes to a livable neighborhood with an audience for the vital Temescal commercial area and adjacent MacArthur BART station. Enhancing the Temescal area with vibrant, active uses and more residences increases the desirability of living, working and doing business in Oakland.

Environmental: The Project would not have an adverse effect on the environment (see CEQA discussion below, as well). Facilitating delivery of residential units in a transit-rich neighborhood during a housing crisis benefits the Oakland and Bay Area communities.

Social Equity: Delivery of residential units in a transit-rich neighborhood during a housing crisis benefits the community, especially because the project includes forty-five residential units affordable to families at or below 80 percent area median income. This is the least-served income group in terms of available housing in Oakland. The proposed project would provide a substantial number of needed affordable units and a larger audience for a growing showcase commercial district in Oakland.

Item: _____

Community and Economic Development Committee

February 28, 2017

CEQA

The City conducted a detailed evaluation of the proposed project pursuant to CEQA, which concludes that the Parcel B Project qualifies for an addendum, as well as an exemption from additional environmental review, in accordance with Public Resources Code Sections 21083.3, 21094.5, and 21166; and CEQA Guidelines Sections 15162--15164, 15183, 15183.3, 15168 and 15180. The project would comply with the underlying zoning regulations (including the Planned Unit Development Regulations) and is consistent with the development density and land use characteristics established by the City of Oakland General Plan, and any potential environmental impacts associated with its development were adequately analyzed and covered by the analysis in the 2008 Project EIR, its three previous addenda, in the applicable Program EIRs: the 1998 LUTE EIR, the Broadway/MacArthur/San Pablo Redevelopment Plan EIR, and for the housing components of the proposed project, the 2010 General Plan Housing Element Update EIR and 2014 Addendum, as documented in the current CEQA Analysis (MacArthur Transit Village Project EIR Addendum #4: MacArthur Station – Modified 2016 Project CEQA Analysis). Each of the above provides a separate and independent basis for CEQA compliance. See attached CEQA Findings.

The 2008 EIR, previous addenda, and current Addendum #4, as well as the Program EIRs (LUTE EIR, Housing Update Element EIR, and Broadway/MacArthur/San Pablo Redevelopment Project EIR) have been distributed to the City Council, and 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/OurServices/Application/DOWD009157> (see #50 for MacArthur Transit Village EIR and Addenda)

<http://www2.oaklandnet.com/government/o/PBN/OurServices/Application/DOWD009158> (Housing Element and Redevelopment Plan EIRs are located here)

ACTION REQUESTED OF THE CITY COUNCIL

Staff Recommends That the City Council Conduct a Public Hearing and Upon Conclusion, Adopt the Following:

- A Resolution, As Recommended By The City Planning Commission, (A) Revising The MacArthur BART Planned Unit Development; (B) Adopting A Final Development Permit, Vesting Tentative Parcel Map 10561, And Design Review, And (C) Relying On The 2008 MacArthur Station Project Environmental Impact Report And Addenda, And Other Documents, Finding That No Additional Environmental Review Is Needed Pursuant to CEQA Guidelines Sections 15162-15164, 15168, 15180, 15183, And 15183.3 And Adopting Related CEQA Findings, For Parcel B, Located at 532-39th Street, Oakland, Ca (Assessor Parcel Numbers 012 102501100 And 012 102501200)
- An Ordinance, As Recommended By the City Planning Commission, (A) Amending The Development Agreement By and Between City of Oakland and Macarthur Transit Community Partners, LLC Regarding The Property Known As "MacArthur Transit

Item: _____

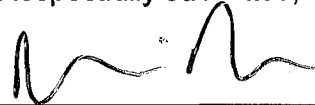
Community and Economic Development Committee

February 28, 2017

Village" To Allow For Increased Height On Parcel B, And (B) Relying On The 2008 MacArthur Station Project Environmental Impact Report and Addenda, Finding That No Additional Environmental Review Is Needed Pursuant To California Environmental Quality Act Guidelines Sections 15162-15164, 15168, 15180, 15183, and 15183.3 And Adopting Related CEQA Findings, For Parcel B, Located at 532-39th Street, Oakland, CA (Assessor Parcel Numbers 012 102501100 AND 012 102501200)

For questions regarding this report, please contact Catherine Payne, Planner IV, at (510) 238-6168 or cpayne@oaklandnet.com.

Respectfully submitted,



Darin Ranelletti, Interim Director
Planning and Building Department

Reviewed by:

Robert Merkamp, Development Manager

Prepared by:

Catherine Payne, Planner IV

Attachments (3):

- A. Planning Commission Report, dated February 1, 2017, including attachments
- B. February 1, 2017 UPP Memorandum regarding MacArthur Station Modified 2016 Project—Response to Comment Letter from Lozeau Drury LLP
- C. January 31, 2017 Lozeau Drury LLP letter

NOTE: Public comments submitted to staff in writing are available electronically, at <http://www2.oaklandnet.com/oakca1/groups/ceda/documents/agenda/oak062689.pdf>.

The MacArthur Transit Village Project EIR and addenda, and other related CEQA documents were provided under separate cover to the City Council; available to the public at 250 Frank Ogawa Plaza, Suite 3315, Oakland CA, 94612 during regular business hours, and can also be found on the City's website at:

<http://www2.oaklandnet.com/Government/o/PBN/OurServices/Application/DOWD009157> (see #50 for MacArthur Transit Village EIR and Addenda)

<http://www2.oaklandnet.com/government/o/PBN/OurServices/Application/DOWD009158> (Housing Element and Redevelopment Plan EIRs are located here)

Introduced by Councilmember _____

FILED
OFFICE OF THE CITY CLERK
OAKLAND

Approved as to Form and Legality

Mark P. Wall
Office of the City Attorney

2017 FEB 16 PM 7:45

OAKLAND CITY COUNCIL

RESOLUTION NO. _____ C.M.S.

A RESOLUTION, AS RECOMMENDED BY THE CITY PLANNING COMMISSION, (A) REVISING THE MACARTHUR BART PLANNED UNIT DEVELOPMENT; (B) ADOPTING A FINAL DEVELOPMENT PERMIT, VESTING TENTATIVE PARCEL MAP 10561, AND DESIGN REVIEW; AND (C) RELYING ON THE 2008 MACARTHUR STATION PROJECT ENVIRONMENTAL IMPACT REPORT AND ADDENDA, AND OTHER DOCUMENTS, FINDING THAT NO ADDITIONAL ENVIRONMENTAL REVIEW IS NEEDED PURSUANT TO CALIFORNIA ENVIRONMENTAL QUALITY ACT GUIDELINES SECTIONS 15162-15164, 15168, 15180, 15183, and 15183.3 AND ADOPTING RELATED CEQA FINDINGS, FOR PARCEL B, LOCATED AT 532-39TH STREET, OAKLAND, CA (ASSESSOR PARCEL NUMBERS 012 102501100 AND 012 102501200)

WHEREAS, on June 4, 2008, the City of Oakland Planning Commission certified the MacArthur Transit Village Environmental Impact Report (EIR), adopted California Environmental Quality Act (CEQA) findings and recommended approval of the MacArthur Transit Village Planned Unit Development (PUD) to the City Council; and

WHEREAS, the Oakland City Council affirmed and adopted the Planning Commission's certification of the EIR, the CEQA-related findings, and approval of the MacArthur Transit Village PUD on July 1, 2008; and

WHEREAS, Boston Properties in July 2016, submitted development applications relating to Parcel B/Phase 5 for: A Final Development Plan (FDP), a revision to the preliminary PUD, Vesting Tentative Tract Map (VTTM 10561), and Design Review (Project); and

WHEREAS, Boston Properties in December 2016, submitted a related application to amend the Development Agreement to allow for increased height on Parcel B up to 260 feet and providing for community benefits, which will be adopted via a separate ordinance; and

WHEREAS, the Project includes a total of 402 residential units (45 affordable units); up to 13,000 square feet of ground-floor commercial space; and 262 on-site parking spaces, in a single, 24-story, 260-foot tall building; and

WHEREAS, on August 10 and October 19, 2016, the City of Oakland Planning Commission's Design Review Committee held duly noticed meetings and recommended forwarding the Project to the full Planning Commission; and

WHEREAS, on February 1, 2017, the Planning Commission, after conducting and closing a duly noticed public hearing, recommended that the City Council: (a) affirm the Environmental Determination that no additional environmental review is needed pursuant to CEQA Guidelines Sections 15162-15164 15168 and 15180, 15183, and 15183.3; and (2) approve the Project based, in part, upon the Project Findings and Conditions of Approval contained in the February 1, 2017 City Planning Commission Report and attachments; and

WHEREAS, the Project was considered at a regular, duly noticed meeting of the City Council's Community and Economic Development Committee on February 28, 2017, which recommended approval of the Project; and

WHEREAS, the Project was considered at a regular, duly noticed, public hearing of the City Council on March 7, 2017; now, therefore, be it

RESOLVED: The City Council, based upon its own independent review, consideration, and exercise of its independent judgment, hereby finds and determines, on the basis of substantial evidence in the entire record before the City, that none of the circumstances necessitating further CEQA review are present for the reasons stated in the February 1, 2017 Planning Commission Report and Attachments (Planning Commission Report) and the February 28, 2017 Community and Economic Development Committee Agenda Report and Attachments (City Council Report), hereby incorporated by reference as if fully set forth herein. The City Council also adopts the Standard Conditions of Approval/Mitigation Monitoring and Reporting Program contained in the Planning Commission Report and City Council Report, hereby incorporated by reference as if fully set forth herein; and be it

FURTHER RESOLVED: That the City Council finds and determines that this action complies with CEQA, adopts the CEQA findings contained in the Planning Commission Report and City Council Report (hereby incorporated by reference as if fully set forth herein), and directs the Environmental Review Officer to cause to be filed a Notice of Determination and Notice of Exemption with the appropriate agencies; and be it

FURTHER RESOLVED: That the City Council hereby adopts all of the Project's planning-related permits and approvals and conditions of approval, based in part on the Findings and conditions of approval identified in the Planning Commission Report and the City Council Report (hereby incorporated by reference as if fully set forth herein); and be it

FURTHER RESOLVED: That the record before this Council relating to this Resolution includes, without limitation, the following:

1. the application, including all accompanying maps and papers;
2. all relevant plans and maps;
3. all final staff reports, decision letters and other documentation and information produced by or on behalf of the City, including all CEQA-related materials;

4. all oral and written evidence received by the City staff, Planning Commission, and City Council before and during the public hearings on the application; and

5. all matters of common knowledge and all official enactments and acts of the City, such as (a) the General Plan and the General Plan Conformity Guidelines; (b) the Oakland Municipal Code, including, without limitation, the Oakland real estate regulations, Oakland Fire Code; (c) Oakland Planning Code; (d) other applicable City policies and regulations; and (e) all applicable state and federal laws, rules and regulations; and be it .

FURTHER RESOLVED: That the custodians and locations of the documents or other materials which constitute the record of proceedings upon which the City's decision is based are respectively: (a) the Planning and Building Department, Planning Bureau, 250 Frank H. Ogawa Plaza, 3rd Floor, Oakland; and (b) the Office of the City Clerk, 1 Frank H. Ogawa Plaza, 1st Floor, Oakland; and be it

FURTHER RESOLVED: This Resolution shall only be effective if the Development Agreement Amendment Ordinance is adopted, and, if such Ordinance is adopted, this Resolution shall become effective upon the effective date of the Development Agreement Amendment Ordinance; and be it

FURTHER RESOLVED: That the recitals contained in this Resolution are true and correct and are an integral part of the City Council's decision.

IN COUNCIL, OAKLAND, CALIFORNIA, _____

PASSED BY THE FOLLOWING VOTE:

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

NOES -

ABSENT -

ABSTENTION –

ATTEST: _____

LaTonda Simmons
City Clerk and Clerk of the Council of the
City of Oakland, California

LEGAL NOTICE:

THIS DECISION OF THE CITY COUNCIL IS FINAL AND IS NOT ADMINISTRATIVELY APPEALABLE. HOWEVER, THE DECISION WILL ONLY BE EFFECTIVE IF THE DEVELOPMENT AGREEMENT AMENDMENT ORDINANCE IS ADOPTED, AND, IF SUCH ORDINANCE IS ADOPTED, THIS RESOLUTION SHALL BECOME EFFECTIVE UPON THE ADOPTION DATE OF THE DEVELOPMENT AGREEMENT AMENDMENT ORDINANCE. ANY PARTY SEEKING TO CHALLENGE THIS DECISION IN COURT MUST DO SO WITHIN NINETY (90) DAYS OF THE EFFECTIVE DATE OF THIS DECISION, UNLESS A DIFFERENT DATE APPLIES.

FILED
OFFICE OF THE CITY CLERK
OAKLAND

Mark P. Wald
Deputy City Attorney

2017 FEB 16 PM 7:46

OAKLAND CITY COUNCIL

ORDINANCE No. _____ C.M.S.

AN ORDINANCE, AS RECOMMENDED BY THE CITY PLANNING COMMISSION, (A) AMENDING THE DEVELOPMENT AGREEMENT BY AND BETWEEN CITY OF OAKLAND AND MACARTHUR TRANSIT COMMUNITY PARTNERS, LLC REGARDING THE PROPERTY AND PROJECT KNOWN AS "MACARTHUR TRANSIT VILLAGE" TO ALLOW FOR INCREASED HEIGHT ON PARCEL B, AND (B) RELYING ON THE 2008 MACARTHUR STATION PROJECT ENVIRONMENTAL IMPACT REPORT AND ADDENDA, FINDING THAT NO ADDITIONAL ENVIRONMENTAL REVIEW IS NEEDED PURSUANT TO CALIFORNIA ENVIRONMENTAL QUALITY ACT GUIDELINES SECTIONS 15162-15164, 15168 and 15180, 15183, and 15183.3 AND ADOPTING RELATED CEQA FINDINGS, FOR PARCEL B, LOCATED AT 532-39TH STREET, OAKLAND, CA (ASSESSOR PARCEL NUMBERS 012 102501100 AND 012 102501200)

WHEREAS, on June 4, 2008, the City of Oakland Planning Commission certified the MacArthur Transit Village Environmental Impact Report (EIR), adopted California Environmental Quality Act (CEQA) findings and recommended approval of the MacArthur Transit Village Planned Unit Development (PUD) to the City Council; and

WHEREAS, the Oakland City Council affirmed and adopted the Planning Commission's certification of the EIR, the CEQA-related findings, and approval of the MacArthur Transit Village PUD on July 1, 2008; and

WHEREAS, the Oakland City Council approved the Development Agreement by and between City of Oakland and MacArthur Transit Community Partners, LLC Regarding the Property and Project Known as "MacArthur Transit Village" (DA) on July 21, 2009; and

WHEREAS, Boston Properties in July 2016, submitted development applications relating to Parcel B/Phase 5 for: a Final Development Plan (FDP), a revision to the preliminary PUD, Vesting Tentative Tract Map (VTTM 10561), and Design Review; and

WHEREAS, Boston Properties in December 2016, submitted a related application to amend the Development Agreement to allow for increased height on Parcel B up to 260 feet and providing for community benefits. The development application submittal and Development Agreement application submittal, as revised, constitute the Project; and

WHEREAS, the Project includes a total of 402 residential units (45 affordable units); up to 13,000 square feet of ground-floor commercial space; and 262 on-site parking spaces, in a single, 24-story, 260-foot tall building; and

WHEREAS, on August 10, 2016 and October 19, 2016, the City of Oakland Planning Commission's Design Review Committee held duly noticed meetings and recommended forwarding of the Project to the Planning Commission; and

WHEREAS, on February 1, 2017, the Planning Commission, after conducting and closing a duly noticed public hearing, recommended that the City Council: (a) affirm the Environmental Determination that no additional environmental review is needed pursuant to CEQA Guidelines Sections 15162-15164, 15168 and 15180, 15183, and 15183.3; and (2) approve the Project based, in part, upon the Project Findings and Conditions of Approval contained in the February 1, 2017 City Planning Commission Report and attachments; and

WHEREAS, the Project was considered at a regular, duly noticed meeting of the City Council's Community and Economic Development Committee on February 28, 2017, which recommended approval of the Project; and

WHEREAS, the Project was considered at regular, duly noticed, public hearing of the City Council on March 7, 2017, wherein the public hearing was closed, a related Resolution approving the development applications was adopted, and this ordinance was introduced for first reading; now, therefore

THE COUNCIL OF THE CITY OF OAKLAND DOES HEREBY ORDAIN AS FOLLOWS:

Section 1: The City Council, based upon its own independent review, consideration, and exercise of its independent judgment, hereby finds and determines, on the basis of substantial evidence in the entire record before the City, that none of the circumstances necessitating further CEQA review are present for the reasons stated in the February 1, 2017 Planning Commission Report and Attachments (Planning Commission Report) and the February 28, 2017 Community and Economic Development Committee Agenda Report and Attachments (City Council Report), hereby incorporated by reference as if fully set forth herein. The City Council also adopts the Standard Conditions of Approval/Mitigation Monitoring and Reporting Program contained in the Planning Commission Report and City Council Report, hereby incorporated by reference as if fully set forth herein,

Section 2: The City Council finds and determines that this action complies with CEQA, adopts the CEQA findings contained in the Planning Commission Report and City Council Report (hereby incorporated by reference as if fully set forth herein), and directs the Environmental Review Officer to cause to be filed a Notice of Determination and Notice of Exemption with the appropriate agencies.

Section 3: The City Administrator or her designee is hereby authorized to execute, in form and content substantially in conformance with the Development Agreement Amendment and its Exhibits/Attachments, as set forth in the City Planning Commission Report and City Council Report, as may be revised by the City Council; and such other documents as necessary or appropriate, in consultation with the City Attorney's Office, to facilitate implementation of the Project in order to consummate the transaction authorized under the Development Agreement Amendment in accordance with this Ordinance and City Council direction, and to otherwise effectuate the purpose and

intent of this Ordinance and its basic purpose.

Section 4. The recitals set forth above are true and correct and are an integral part of this Ordinance.

Section 5. The City Council finds and determines the following:

a) The Development Agreement as amended contains all information required by State Law and by the Oakland Municipal Code, including all information referenced in Chapter 17.138;

b) The Project is consistent with the General Plan and all applicable planning and zoning enactments;

c) The Development Agreement as amended is desirable in order to facilitate the successful Project implementation;

d) The Project will have substantial economic and community benefits to the City, including generating permanent and construction jobs, provision of rental housing (including affordable housing), provision of commercial development and the catalytic effect the project will have on revitalizing the surrounding neighborhood, which will result in increased property values in the surrounding area and an increase in the viability of existing businesses and use of public transit;

e) The public safety, health, convenience, comfort, prosperity and general welfare will be furthered by the Development Agreement as amended.

Section 6. Except as specifically set forth herein, this Ordinance suspends and supersedes all resolutions, ordinances, plans, codes, laws and regulations conflicting with this Ordinance and/or implementation of the Development Agreement as approved or as amended.

Section 7. If any phrase, clause, section, subsection, paragraph, subdivision, sentence, term or provision of this Ordinance or its application to any person or circumstances is finally found to be void, invalid, illegal or unenforceable by a court of competent jurisdiction, then notwithstanding such determination, such term or provision shall remain in force and effect to the extent allowed by such ruling and all other terms and provisions of this Ordinance or the application of this Ordinance to other situations shall remain in full force and effect.

Section 8. If any phrase, clause, section, subsection, paragraph, subdivision, sentence, term or provision of the Development Agreement Amendment that this Ordinance approves or application of the Development Agreement Amendment to any person or circumstances is finally found to be void, invalid, illegal or unenforceable by a court of competent jurisdiction, then notwithstanding such determination, such term or provision shall remain in force and effect to the extent allowed by such ruling and all other terms and provisions of the Development Agreement Amendment or the application of the Development Agreement Amendment to other situations shall remain in full force and effect. Notwithstanding the foregoing, if any material term or provision of the Development Agreement Amendment or the application of such material term or

condition to a particular situation is finally found to be void, invalid, illegal or unenforceable by a court of competent jurisdiction, then the Parties to the Development Agreement Amendment shall work in good faith and fully cooperate with each other to amend the Development Agreement Amendment to carry out its intent.

Section 9. That the record before this Council relating to this Ordinance includes, without limitation, the following:

1. the application, including all accompanying maps and papers;
2. all relevant plans and maps;
3. all final staff reports, decision letters and other documentation and information produced by or on behalf of the City, including all CEQA-related materials;
4. all oral and written evidence received by the City staff, Planning Commission, and City Council before and during the public hearings on the application; and
5. all matters of common knowledge and all official enactments and acts of the City, such as (a) the General Plan and the General Plan Conformity Guidelines; (b) the Oakland Municipal Code, including, without limitation, the Oakland real estate regulations, Oakland Fire Code; (c) Oakland Planning Code; (d) other applicable City policies and regulations; and (e) all applicable state and federal laws, rules and regulations.

Section 10. That the custodians and locations of the documents or other materials which constitute the record of proceedings upon which the City's decision is based are respectively: (a) the Planning and Building Department, Planning Bureau, 250 Frank H. Ogawa Plaza, 3rd Floor, Oakland; and (b) the Office of the City Clerk, 1 Frank H. Ogawa Plaza, 1st Floor, Oakland.

Section 11. This Ordinance shall not be codified in the Oakland Municipal Code.

Section 12. Pursuant to section 216 of the City Charter, this Ordinance is effective as of the date it is adopted if passed by an affirmative vote of at least six council members; otherwise, it is effective seven days after final adoption.

Section 13. All documents related to this transaction shall be reviewed and approved by the City Attorney's Office prior to execution, and copies will be placed on file with the City Clerk.

IN COUNCIL, OAKLAND, CALIFORNIA, _____

PASSED BY THE FOLLOWING VOTE:

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

NOES -

ABSENT -

ABSTENTION –

ATTEST: _____

LaTonda Simmons
City Clerk and Clerk of the Council of
the City of Oakland, California

DATE OF ATTESTATION: _____

MPD

AN ORDINANCE, AS RECOMMENDED BY THE CITY PLANNING COMMISSION, (A) AMENDING THE DEVELOPMENT AGREEMENT BY AND BETWEEN CITY OF OAKLAND AND MACARTHUR TRANSIT COMMUNITY PARTNERS, LLC REGARDING THE PROPERTY AND PROJECT KNOWN AS "MACARTHUR TRANSIT VILLAGE" TO ALLOW FOR INCREASED HEIGHT ON PARCEL B, AND (B) RELYING ON THE 2008 MACARTHUR STATION PROJECT ENVIRONMENTAL IMPACT REPORT AND ADDENDA, FINDING THAT NO ADDITIONAL ENVIRONMENTAL REVIEW IS NEEDED PURSUANT TO CALIFORNIA ENVIRONMENTAL QUALITY ACT GUIDELINES SECTIONS 15162-15164, 15168 and 15180, 15183, and 15183.3 AND ADOPTING RELATED CEQA FINDINGS, FOR PARCEL B, LOCATED AT 532-39TH STREET, OAKLAND, CA (ASSESSOR PARCEL NUMBERS 012 102501100 AND 012 102501200)

NOTICE AND DIGEST

This Ordinance amends the Development Agreement by and between City of Oakland and MacArthur Transit Community Partners, LLC Regarding the Property and Project Known as "MacArthur Transit Village" (DA) to allow increased building height on Parcel B and to memorialize community benefits to be provided by the site developer at the time of issuance of the first construction-related permit for the Parcel B project. This ordinance adopts various findings, including findings under the California Environmental Quality Act.