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OFFICE OF THE CITY CLERK
OAKLAND

2017 AUG 29 PM 2:58

AGENDA REPORT

TO: Sabrina B. Landreth
Successor Agency Administrator

FROM: Mark Sawicki
Director, EWD

SUBJECT: MacArthur BART Transit Village –
Amend OPA Performance Date

DATE: August 21, 2017

Successor Agency Administrator Approval

Date:

[Handwritten signature]
8/24/17

RECOMMENDATION

Staff Recommends That The Oakland Redevelopment Successor Agency Adopt A Resolution Authorizing An Amendment To The Owner Participation Agreement (“OPA”) Between The Oakland Redevelopment Successor Agency And BXP Macarthur LLC, A Delaware Limited Liability Company, Or An Affiliated Entity, To Extend The OPA Date For Completion Of Project Construction From 24 Months To 36 Months Following Commencement Of Project Construction, 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 (CEQA) Guidelines Sections 15162-15164, 15168, 15180, 15183, 15183.3 And 15061, And Adopting Related CEQA Findings.

EXECUTIVE SUMMARY

On March 21, 2017, the Oakland Redevelopment Successor Agency (“ORSA”) approved Resolution No. 2017-002 C.M.S., consenting to the partial assignment of an Owner Participation Agreement (“OPA”) between ORSA and MacArthur Transit Community (“MTCP”) to BXP MacArthur LLC (“BP Mac”) for development of Parcel B at the San Francisco Bay Area Rapid Transit (“BART”) MacArthur Station. The legislation also authorized an amendment to the OPA, which included an extension of the start of construction date for Parcel B of up to 12 months or from March 2018 to March 2019.

The OPA also requires that construction be completed within 24 months after commencement. BP Mac is asking for 12 months of additional time to complete construction since the project they are planning to develop on Parcel B consists of a 24-story tower with over 400 residential units and 13,000 square feet of retail space, which requires more time to build than the smaller low-rise project originally anticipated for Parcel B. Staff is recommending an extension of the OPA date for completion of project construction by 12 months (i.e. from 24 to 36 months), following commencement of project construction. BP Mac is currently planning to start construction in the Spring of 2018.

Item: _____
CED Committee
September 12, 2017

BACKGROUND / LEGISLATIVE HISTORY

On February 24, 2010, the Oakland Redevelopment Agency ("Agency") executed an OPA with MTCP for the development of MacArthur BART Transit Village (the "Transit Station Project") 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 March 14, 2017, ORSA approved Resolution No. 2017-002 C.M.S to 1) amend Resolution No. 2016-005 C.M.S., which authorized ORSA consent to the partial assignment of the OPA between ORSA and MacArthur Transit Community Partners, LLC (MTCP) to BP Mac for the development of Parcel B of the Transit Station Project; and 2) authorize an amendment to the OPA to (A) waive a performance and payment bond requirement for development of the project; (B) extend OPA performance deadlines; (C) increase the net worth requirement for the entity that will provide the completion guaranty for the project; and (D) amend OPA Section 2.2.3 to limit placement of the below market rate units for the Parcel B project to floors five through nine.

ANALYSIS AND POLICY ALTERNATIVES

Time Extension

Exhibit B of the OPA outlines general performance dates for the various phases of the Transit Station Project, which must be met by BP Mac for the development of Parcel B. For each phase, project construction is required to be completed within 24 months of the construction commencement date. Currently, the outside date for the start of project construction on Parcel B is March 2019. Accordingly, construction would have to be completed within a 24-month period following the start of construction or no later than March 2021. This required period to complete construction was generally based on the time needed to build a Type V or low-rise wood-frame project on the site.

BP Mac is requesting 12 months of additional time or up to 36 months to complete construction of the project on Parcel B because they are planning to develop a 24-story tower with over 400 residential units (of which 45 units will be affordable to households earning up to 80 percent of the area median income), up to 13,000 square feet of ground-floor commercial uses and up to 262 parking spaces (the "Project"). This type of project is classified as Type I construction with a structure consisting of steel and concrete, which can typically be built within 30 to 36 months. Therefore, staff is recommending an extension of the OPA date for completion of Project construction from 24 to 36 months, or from March 2021 to March 2022, following commencement of Project construction. BP Mac is currently planning to start construction in the Spring of 2018.

FISCAL IMPACT

Approval of a resolution amending the OPA to completion of construction deadline will not have any fiscal impact on ORSA.

PUBLIC OUTREACH / INTEREST

No outreach was deemed necessary for the proposed policy action beyond the standard City Council agenda noticing procedures.

COORDINATION

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

- Office of the City Attorney;
- Planning and Building Department; and
- Budget Bureau.

SUSTAINABLE OPPORTUNITIES

Economic: The combination of the proposed actions will result in a mixed-use development that will provide further 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 45-unit affordable housing component of the proposed project will result in housing accessible to 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 accommodate diverse commuters, including those for whom extended auto commuting is unaffordable.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (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 Environmental Impact Report (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.

Separately and independently, the City and ORSA find and determine, after independent review and consideration, that the proposed amendment to the OPA is not a project under CEQA.

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 Planning Commission, 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 requests that the Successor Agency Administrator or designee is authorized to take whatever action is necessary with respect to an Amendment to the OPA between ORSA and BP Mac, an affiliated entity, to extend the OPA date for completion of Project construction from 24 months to 36 months following commencement of Project construction.

For questions regarding this report, please contact Jens Hillmer, Office of Economic and Workforce Development at (510) 238-3317.

Respectfully submitted,



Mark Sawicki
Director, Office of Economic and
Workforce Development

Reviewed by:
Patrick Lane, Manager Project Implementation
Office of Economic and Workforce
Development

Prepared by:
Jens Hillmer, Redevelopment Area Manager
Project Implementation Division

FILED
OFFICE OF THE CITY CLERK
OAKLAND

2017 AUG 29 PM 2:59

APPROVED AS TO FORM AND LEGALITY:

J.P. Miller

Agency Counsel

OAKLAND REDEVELOPMENT SUCCESSOR AGENCY

Resolution No. 2017-_____

A RESOLUTION AUTHORIZING AN AMENDMENT TO THE OWNER PARTICIPATION AGREEMENT ("OPA") BETWEEN THE OAKLAND REDEVELOPMENT SUCCESSOR AGENCY AND BXP MACARTHUR LLC, A DELAWARE LIMITED LIABILITY COMPANY, OR AN AFFILIATED ENTITY, TO EXTEND THE OPA DATE FOR COMPLETION OF PROJECT CONSTRUCTION FROM 24 MONTHS TO 36 MONTHS FOLLOWING COMMENCEMENT OF PROJECT CONSTRUCTION, 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, 15183.3 AND 15061, AND ADOPTING RELATED CEQA FINDINGS

WHEREAS, the Oakland Redevelopment Successor Agency's (ORSA), predecessor in interest to the Oakland Redevelopment Agency, entered into that certain Owner Participation Agreement (OPA) with MacArthur Transit Community Partners (MTCP) dated February 24, 2010, as amended by a First Amendment to the OPA dated March 2, 2011, and as further amended by a Second Amendment to the OPA dated December 1, 2016, and as further amended by a Third Amendment to the OPA dated June 29, 2017, for the phased development of the MacArthur BART Station Project; and

WHEREAS, on March 21, 2017, ORSA approved Resolution No. 2017-002 C.M.S., consenting to the partial assignment of the OPA between ORSA and MTCP to BXP MacArthur LLC (BP Mac) for development of Parcel B at the MacArthur BART Station; and

WHEREAS, the terms of the OPA require BP Mac to complete project construction on Parcel B within 24 months from the date of construction commencement; and

WHEREAS, BP Mac has requested that the construction completion deadline be extended by 12 months or from 24 to 36 months because they are planning to build a high-rise 24-story residential tower with over 400 units and up to 13,000 square feet of

retail space (the "Project"), which requires more time to build than the smaller low-rise project originally anticipated for Parcel B; and

WHEREAS, ORSA desires to grant BP Mac, or an affiliate, an extension of 12 months, or from 24 to 36 months, to complete construction of the Project on Parcel B;

Now therefore be it

RESOLVED: That ORSA, 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 ORSA, 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), the February 28, 2017 Community and Economic Development Committee Agenda Report and Attachments (City Council Report), the March 14, 2017 Community and Economic Development Committee Agenda Report and the September 12, 2017 Community and Economic Development Report, all hereby incorporated by reference as if fully set forth herein. ORSA 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 ORSA finds and determines that this action complies with CEQA, adopts the CEQA findings contained in the Planning Commission Report, the City Council Report and the September 12, 2017 Community and Economic Development Committee Agenda Report (all hereby incorporated by reference as if fully set forth herein), and directs that the Agency Administrator or designee shall cause to be filed with the appropriate entities a Notice of Determination and/or Exemption for this action; and be it further

RESOLVED: That the OPA with BP Mac, or an affiliate, be amended to extend the performance deadline for the completion of construction on Parcel B by 12 months or from 24 months to 36 months following commencement of construction of the Project on Parcel B; and be it further

RESOLVED: That the Successor Agency Administrator or designee is further authorized to take whatever action is necessary to negotiate and execute an amendment to the OPA and any other document necessary to extend the development completion deadline; and be it further

RESOLVED: That the record before ORSA 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 ORSA before and during the public hearings on the application; and

5. all matters of common knowledge and all official enactments and acts of ORSA, 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 ORSA'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 ORSA Clerk, 1 Frank H. Ogawa Plaza, 1st Floor, Oakland; and be it further

RESOLVED: That all documents necessary to effect the OPA amendment made pursuant to this Resolution shall be reviewed and approved by the City Attorney, and copies shall be placed on file with the ORSA Clerk.

ORSA, OAKLAND, CALIFORNIA, _____, 2017

PASSED BY THE FOLLOWING VOTE:

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

NOES-

ABSENT-

ABSTENTION-

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