

**CITY OF OAKLAND
AGENDA REPORT**

FILED
OFFICE OF THE CITY CLERK
OAKLAND
2004 OCT 29 PM 4:12

TO: Deborah Edgerly,
City Administrator

FROM: Community and Economic Development Agency & Oakland Base Reuse Authority

DATE: November 9, 2004

RE: RESOLUTION AUTHORIZING THE CITY ADMINISTRATOR TO ENTER INTO A LETTER AMENDMENT TO THE CONSENT AGREEMENT AMONG THE CITY OF OAKLAND, THE REDEVELOPMENT AGENCY OF THE CITY OF OAKLAND, OAKLAND BASE REUSE AUTHORITY AND THE STATE OF CALIFORNIA DEPARTMENT OF TOXIC SUBSTANCES CONTROL, TO ADD THE OAKLAND ARMY BASE "SUBARU PARCEL" TO THE FINAL REMEDIAL ACTION PLAN FOR THE OAKLAND ARMY BASE PROJECT

SUMMARY

In August 2003, a portion of the former Oakland Army Base commonly known as the No-Cost Economic Development Conveyance parcel ("EDC Parcel") was transferred to the Oakland Base Reuse Authority ("OBRA") for economic development. Before that transfer, OBRA was required to obtain the approval of the California Department of Toxic Substances Control ("DTSC") for its plan for environmental remediation, titled the Oakland Army Base Remedial Action Plan ("RAP"). On September 26, 2002, DTSC approved the RAP, but required OBRA and the Oakland Redevelopment Agency ("Redevelopment Agency") to enter into a Consent Agreement with DTSC to ensure implementation and completion of the RAP.

In December 2003, OBRA authorized its staff to take any and all actions to acquire the 19.032 acre Subaru Lot property, which is adjacent to the EDC Parcel, for economic development by the Redevelopment Agency and the Port of Oakland (OBRA Resolution 2003-25). The environmental conditions of the Subaru Lot were evaluated and on August 2, 2004, DTSC approved the Final Amendment to the Remedial Action Plan for the Oakland Army Base ("RAP Amendment"), adding the Subaru Lot to the RAP. DTSC now requires that OBRA, the City of Oakland and the Redevelopment Agency enter into a Letter Amendment to the Consent Agreement to implement the RAP Amendment. The Consent Agreement - and the Letter Amendment thereto - identify the compliance elements, timetable and deliverables required by DTSC.

Staff recommends that the City Council approve the resolution authorizing the City Administrator to enter into the Letter Amendment to the Consent Agreement required by DTSC.

Item: _____
Community and
Economic Development Committee
November 9, 2004

FISCAL IMPACT

Entering into the Letter Amendment will provide for the implementation of the Remedial Action Plan, which will allow for the development of the Subaru Lot property. If the City fails to enter into the Letter Amendment, the development schedule of the Subaru Lot will be negatively impacted.

BACKGROUND

Prior to the transfer of any federally owned property, the federal government must evaluate the environmental conditions of the property and determine that the property is suitable for transfer. The U.S. Department of the Army ("Army"), DTSC and OBRA worked together to negotiate, draft and publish for public comment the Final Subaru Lot Finding of Suitability for Transfer, dated June 22, 2004.

Before transfer of the Subaru Lot, DTSC must find that all appropriate site inquiry and remedial actions have been taken to make the property suitable for its intended use. The environmental conditions of the Subaru Lot were evaluated and the findings published in the Final Amendment to the Remedial Action Plan for the Oakland Army Base, dated August 2, 2004 (RAP Amendment).

The RAP Amendment summarizes the known site conditions, identifies the site remedy, and sets forth the risk management protocols to be used during development. The approved remedy for the Subaru Lot is the implementation of Institutional Controls. These controls include the following restrictions: (a) sensitive land uses, including but not limited to, residential housing, schools, day-care facilities, hospitals, and hospices are prohibited unless specifically approved by DTSC and the Army, and (b) the construction of groundwater wells and the extraction of groundwater for all purposes are prohibited unless specifically approved by DTSC. These controls are contained in the Covenant to Restrict Use of the Property ("Covenant") signed and executed by the Army and DTSC on August 31, 2004.

Pursuant to the terms of the Oakland Army Base City/Port Memorandum of Agreement, OBRA will transfer 2.51 acres of the Subaru Lot (Parcel 15A) to the Port. The terms of the transfer of Parcel 15A are included in the Subaru Lot Agreement between the City and the Port, and include: (1) the purchase price, (2) the amount of transaction costs to be paid by the Port to the City, (3) the Port's assumption of responsibilities for the terms of the Covenant with respect to Parcel 15A, and (4) the Port's agreement to jointly submit a letter to DTSC requesting assignment of the rights and responsibilities associated with Parcel 15A contained in the Consent Agreement.

The North Gateway area consists of the 19.032-acre Army Reserve property known as the "Subaru Lot and the approximately 11.5-acre site known as the Baldwin Yard. OBRA is in the process of acquiring the Subaru Lot from the Army Reserve. OBRA plans to sell approximately 2.51 acres at the far eastern side of the property to the Port, and will transfer the remainder to the Redevelopment Agency. The Baldwin Yard was designated as the location for the City's

Item: _____
Community and
Economic Development Committee
November 9, 2004

commitment to BCDC to provide 15 acres of ancillary maritime support services (e.g., truck parking) on the GDA. (The Port has a similar requirement for its PDA).

DESCRIPTION

DTSC further requires that OBRA, the City of Oakland and the Redevelopment Agency enter into a Letter Amendment to the Consent Agreement to implement the RAP Amendment at the Subaru Lot. The Consent Agreement identifies the compliance elements, timetable and deliverables required by the DTSC. The Consent Agreement was negotiated and executed by the OBRA Executive Director and the Agency Administrator.

The Consent Agreement specifically states that the City shall retain all inspection, certification and reporting responsibilities as required by the Covenant. Since the Agreement identifies OBRA, the Redevelopment Agency and the City as collectively being the City, the DTSC also requires that the City Administrator be a signatory to the Consent Agreement.

SUSTAINABLE OPPORTUNITIES

This report does not include approval of any specific projects addressing sustainable opportunities, however, as specific plans and agreements for the North Gateway Development Area are prepared, those agreements can incorporate sustainable opportunities.

DISABILITY AND SENIOR CITIZEN ACCESS

This report does not include the approval of any specific projects or programs. Disability and senior access issues will be addressed when specific development plans are submitted to the City by the developer for review and approval.

RECOMMENDATION AND RATIONALE

Staff recommends that the City Council accept this report and approve the accompanying resolution authorizing the City Administrator to enter into a Letter Amendment to the Consent Agreement. Entering into the Letter Amendment with DTSC will allow the implementation of the Remedial Action Plan, which will allow the development of the Subaru Lot property. If the City fails to enter into the Letter Amendment, the development schedule of the Subaru Lot may be negatively impacted.

ACTION REQUESTED OF THE CITY COUNCIL

Staff requests that the City Council accept this report and approve the accompanying resolution authorizing the City Administrator to enter into a Letter Amendment to the Consent Agreement to implement the amendment adding the Subaru Lot to the Remedial Action Plan for the Oakland Army Base.

Respectfully submitted,

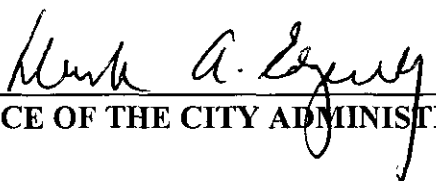


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Director of Planning, Building Services,
Major Projects, and OBRA
Community and
Economic Development Agency

Reviewed by:
Aliza Gallo, Executive Director
Oakland Base Reuse Authority

Prepared by:
Andrew Clough, Environmental Manager
Oakland Base Reuse Authority

APPROVED AND FORWARDED TO THE
COMMUNITY AND ECONOMIC DEVELOPMENT COMMITTEE:



OFFICE OF THE CITY ADMINISTRATOR

OAKLAND CITY COUNCIL

FILED
OFFICE OF THE CITY CLERK
OAKLAND

RESOLUTION No. _____ C.M.S.

2004 OCT 29 PM 4:12

RESOLUTION AUTHORIZING THE CITY ADMINISTRATOR TO ENTER INTO A LETTER AMENDMENT TO THE CONSENT AGREEMENT AMONG THE CITY OF OAKLAND, THE REDEVELOPMENT AGENCY OF THE CITY OF OAKLAND, OAKLAND BASE REUSE AUTHORITY AND THE STATE OF CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY DEPARTMENT OF TOXIC SUBSTANCES CONTROL, TO ADD THE OAKLAND ARMY BASE "SUBARU PARCEL" TO THE FINAL REMEDIAL ACTION PLAN FOR THE OAKLAND ARMY BASE PROJECT

WHEREAS, in August 2003, a portion of the former Oakland Army Base commonly known as the No-Cost Economic Development Conveyance parcel ("EDC Parcel") was transferred to the Oakland Base Reuse Authority ("OBRA") for economic development; and

WHEREAS, before any transfer of federal property to a local agency in California, the California Department of Toxic Substances Control ("DTSC") must first ensure that all appropriate site inquiry and environmental remedial actions will be taken to make the property suitable for its intended use; and

WHEREAS, the environmental conditions of the EDC Parcel were evaluated, and on September 26, 2002, DTSC approved the plan for implementation of all required environmental remedial actions titled the Remedial Action Plan ("RAP"); and

WHEREAS, as a condition of, and prior to the transfer of the EDC Parcel, OBRA, the Redevelopment Agency of the City of Oakland ("Redevelopment Agency") and the United States Department of the Army ("Army") entered into agreements that obligated OBRA to implement and complete the RAP; and

WHEREAS, on May 19, 2003, OBRA, the Redevelopment Agency and DTSC entered into a Consent Agreement to ensure implementation and completion of the RAP; and

WHEREAS, OBRA intends to acquire from the Army an additional 19.032 acre parcel adjacent to the EDC Parcel ("Subaru Lot"), for economic development by the Redevelopment Agency and the Port of Oakland; and

WHEREAS, the environmental conditions of the Subaru Lot were evaluated, and on August 2, 2004, DTSC approved the Final Amendment to the Remedial Action Plan for the Oakland Army Base, adding the Subaru Lot to the RAP; and

WHEREAS, before transfer of the Subaru Lot to OBRA, DTSC has required that OBRA, the City of Oakland and the Redevelopment Agency enter into a Letter Amendment to the Consent Agreement, to ensure implementation and completion of all required environmental remedial actions at the Subaru Lot; and

WHEREAS, on July 31, 2002, the Oakland Army Base Area Redevelopment Plan Environmental Impact Report (EIR) was certified by the City of Oakland, acting as Lead Agency, and approved by OBRA, acting as a Responsible Agency; and

WHEREAS, the requirements of the California Environmental Quality Act of 1970 ("CEQA"), the CEQA implementing Guidelines, and the City of Oakland's Environmental Review Regulations have been satisfied with the previous certification of the Oakland Army Base Area Redevelopment Plan EIR; now, therefore, be it

RESOLVED: That the City of Oakland agrees that the implementation and completion of environmental remedial actions pursuant to the Letter Amendment to the Consent Agreement are necessary and in the best interest of all parties concerned and the economic redevelopment of the Oakland Army Base property; and be it

FURTHER RESOLVED: That the City Administrator is hereby authorized to enter into a Letter Amendment to the Consent Agreement among the Oakland Base Reuse Authority, the Redevelopment Agency of the City of Oakland, and California Department of Toxic Substances Control implementing the RAP Amendment for the Subaru Lot; and be it

FURTHER RESOLVED: That the City Council finds and determines that this Resolution complies with CEQA, the CEQA Implementing Guidelines and the City of Oakland's Environmental Review Regulations, and the Agency Administrator shall cause to be filed a Notice of Determination.

IN SESSION, OAKLAND, CALIFORNIA, _____, 2004

PASSED BY THE FOLLOWING VOTE:

AYES-

NOES-

ABSENT-

ABSTENTION-

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