

CITY OF OAKLAND

2004 MAR 11 PM 1:49

Agenda Report

TO: City Manager/Agency Administrator
FROM: Community and Economic Development Agency & Oakland Base Reuse Authority
DATE: March 25, 2004

SUBJECT: **REPORT AND RESOLUTIONS SUPPORTING STATE LEGISLATION REGARDING A PUBLIC TRUST LAND EXCHANGE AT THE FORMER OAKLAND ARMY BASE AND AUTHORIZING THE CITY MANAGER/AGENCY ADMINISTRATOR TO NEGOTIATE AND ENTER INTO AN EXCHANGE AGREEMENT WITH THE STATE LANDS COMMISSION AND TO TAKE ALL OTHER NECESSARY ACTIONS TO EFFECTUATE THE EXCHANGE**

EXECUTIVE SUMMARY

This report recommends Oakland City Council and Oakland Redevelopment Agency ("ORA") support for the pending state legislation entitled the *Oakland Army Base Trust Exchange Act, SB 1435*, introduced in the California State Senate by Senator Don Perata on February 19, 2004. The proposed legislation will allow the California State Lands Commission ("SLC") to effect a boundary settlement and exchange of public trust lands within the former Oakland Army Base. Senator Perata introduced the legislation sponsored by the City of Oakland, Oakland Redevelopment Agency, Oakland Base Reuse Authority (collectively, the "City") and the Port of Oakland to support redevelopment efforts at the Oakland Army Base ("Base").

When enacted the Act will resolve public trust title uncertainties in the lands comprising the Base development property and will facilitate productive use of those lands in a manner that will further the purposes of the trust. The Act approves and authorizes the SLC to carry out a boundary settlement and trust exchange under which those lands having the greatest value to the trust will be exchanged into the trust, and those lands that are not needed for trust purposes will be exchanged out of the trust.

The importance of the trust exchange is fundamental to the City's ability to fully implement the Final Reuse Plan for Oakland Army Base; it must be completed in order for OBRA/ORA to realize the economic development potential of the property. The exchange enabled by the Act would lift the trust designation from approximately 98 development acres of the City's development area west of Maritime Street, and in exchange, impose the trust designation on 130 acres east of Maritime Street to be developed by the Port. The exchange is needed for the City to maximize the economic development potential of its development area, known as the Gateway Development Area, while preserving valuable waterfront land for trust uses. Additionally the

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proposed trust exchange configuration supports the Port of Oakland's maritime cargo capacity, enabling the Port to exceed San Francisco Bay Conservation and Development Commission ("BCDC") cargo throughput goals for years 2020. The exchange also enhances job-creation capacity resulting from the full site redevelopment, as required by the Economic Development Conveyance Agreement with the Department of the Army. The exchange provides significant benefits not only to the City and Port, but also is in the best interest of the State of California in the improvement and enhancement of Trust uses; resolution of long-term boundary uncertainties in a non-litigious manner; and addition of financial and land value to the trust.

Senate Bill 1435 is the culmination of a focused effort by the City, ORA, Oakland Base Reuse Authority ("OBRA") and the Port of Oakland to plan the best arrangement of their respective development areas at the former Base. In July 2003, these entities entered into a Memorandum of Agreement ("City-Port MOA") for the Base, in which all parties agreed to undertake and cooperate fully to cause the State of California to irrevocably release its actual or potential public trust interest in at least 80 acres of the Gateway Development Area and impose a public trust on the new trust parcels, the Port development area (City-Port MOA - Section 3.1). The MOA further states that the parties agreed that if the State Lands Exchange Agreement process does not result in certain benefits to the City of Oakland, that the City has several options to realize the value of the real estate transaction that it entered into with the Port of Oakland. The parties have also agreed to follow an Implementation Action Schedule for the Public Trust Exchange that requires that the legislation be introduced during the 2004 Legislative Session. Following the enactment of the legislation, the City and Port team will continue to work closely with the SLC and the State Attorney General's Office to negotiate the actual Exchange Agreement. It is expected that the Exchange Agreement will be presented to the SLC for approval by mid-February 2005.

The City's Government Affairs Director has advised that SB 1435 will be assigned to a Senate committee by mid-April, at which time it will be extremely important to demonstrate the City and Port support for this bill. Therefore, we respectfully request that the Council and ORA adopt the accompanying resolutions to support the bill and authorize the City Manager/Agency Administrator to negotiate and enter into an exchange agreement with the SLC. The OBRA Governing Body will consider the resolution request at its March 22, 2004 meeting. The Port of Oakland also has endorsed the exchange.

FISCAL IMPACT ANALYSIS

There is no direct fiscal impact from this request. However, failure of Senate Bill 1435 to pass will severely affect the City's full ability to develop its property at the former Base because of the limitations of uses imposed by the Tidelands Trust. Additionally, the City-Port MOA requires the full cooperation of the parties to effectuate a State Lands Exchange by the end of the Trust Period (August 2006); otherwise the City will lose its right to elect the City Cash-Out Remedy, a right provided to the City in the MOA, to exercise an ability to sell all or certain portions of its development footprint to the Port of Oakland.

BACKGROUND

The Oakland Redevelopment Agency and the Port will be co-developers of the majority of the Army Base property. On August 7, 2003, after several years of negotiations and planning, a 364-acre portion of the Base was transferred from the Department of Army to OBRA under an Economic Development Conveyance (“EDC”). The long-awaited transfer brought the City and Port a step closer to realizing the goals of their collaborative planning efforts for the Base, which will result in the development of several important transportation, cargo, recreational and key economic development projects for the City of Oakland.

In anticipation of the transfer of the Base, OBRA and the Port of Oakland worked together on a reuse plan for the Base and the best configuration of trust lands. In response to concerns by BCDC that a development plan for the Base must support the 2020 cargo throughput goals for the Port as envisioned in BCDC’s *Sun Francisco Bay* and *Seaport* plans, the parties agreed to reconfigure their original development areas. This process involved assessing which portions of the Base were most suitable for Port-related uses and other trust purposes. It was determined that the lands most useful to the Port were those lands east of Maritime Street adjacent to its existing marine terminals, together with a much smaller area located West of Maritime Street (collectively “Port Development Area”), rather than other land areas originally proposed [see Attachment 1: Oakland Army Base Development Areas]. The eastern lands could be used to reconfigure and expand the Port’s rail facility through its new Intermodal Facility project and increase its terminal capacity. Port development on the west would be limited to its proposed Berth 21 project, which involves about 127 fewer acres of Bay fill than contemplated under the prior configuration.

The remaining portions of the EDC parcel, as well as adjacent parcels currently owned by the Port (“Port sliver parcels”), are comprised of lands adjacent to the Interstate 880 Bay Bridge approach. With the exception of the lands abutting the waterfront, these lands were determined to have the least future utility for trust purposes. Thus, these lands were found to be the best location for the City to focus its non-Port economic revitalization efforts. The area is envisioned as a “Gateway Development Area” – a mixed-use commercial development at the foot of the Bay Bridge. The proposed mixed-use Gateway Development would revitalize the area. It could contain a variety of land uses such as light industrial, R&D, flex-office, retail, and possibly hotel, which would create significant economic benefits for Oakland [refer to Attachment 1]. In order to fully implement the Reuse Plan, it was determined that a public trust exchange was necessary. The waterfront itself would remain in the trust as a recreational and open space park, increasing public access to the Oakland waterfront. The boundaries of the proposed open space are shown in Attachment 2.

On October 23, 2001, the Council and ORA, respectively, passed Council Resolution No. 76783 C.M.S. and Agency Resolution No. 01-73 C.M.S. that, among other things, authorized the City Manager/Agency Administrator to work with OBRA, the Port of Oakland and the SLC to resolve all issues related to the public trust at the Base so as to allow for the implementation of the Reuse Plan and to fully meet the requirements of the BCDC *Seaport Plan* and the mandates of the public trust.

On July 31, 2002, the OBRA adopted the Final Reuse Plan for the Oakland Army Base, which set forth the intended uses and development of land at the Base, and the need to seek an exchange of the public trust designation to enhance the configuration of trust lands and maximize the utility of the non-trust development areas.

On October 29, 2002, the Council and ORA, respectively, passed Council Resolution No. 77510 C.M.S. and Agency Resolution No. 02-80 C.M.S. authorizing the City Manager/Agency Administrator to negotiate and enter into a MOA with the Port of Oakland, OBRA and the City that, among other things, provides that the parties will work together to accomplish a public trust exchange and that OBRNORA can transfer the Gateway Development Area to the Port at fair market value if the public trust exchange is not completed (the "cash out remedy").

The City and Port subsequently negotiated terms and conditions related to the conveyance of lands and implementation of the Reuse Plan, which were incorporated into a comprehensive MOA. These terms include provisions requiring the parties to jointly pursue a trust exchange. The MOA was entered into on July 8, 2003 and received all needed governing board approvals by July 31, 2003. The parties agreed that certain terms required further clarification following conveyance, and so are concluding negotiations on the remaining issues, which will be incorporated in an Amended & Restated MOA.

Since the adoption of the Reuse Plan, the City, ORA, OBRA and Port have been working in a joint effort to achieve a trust exchange. OBRA and the Port conducted the technical studies and planning required to support a trust exchange plan and developed a conceptual plan. On October 8, 2003, OBRA and the Port submitted a formal proposal to Paul Thayer, Executive Officer of the SLC detailing the exchange concept. OBRA and Port representatives have been meeting with representatives of the SLC and the State Attorney General's office to discuss the exchange proposal. In February 2004, the Oakland Army Base Trust Exchange Act, SB 1435 was introduced by Senator Perata.

Once passed in the legislature, the Act will become law on January 1, 2005. Following passage of the Act, OBRA and the Port will begin a comprehensive process with the SLC to negotiate and execute an Exchange Agreement. This Exchange Agreement process is expected to be completed in 2005. The steps to implement the exchange will occur subsequently. The exchange must be completed by August 7, 2006, the date on which the Port will record title to the East Maritime area of the Base.

KEY ISSUES AND IMPACTS

Significance of the Trust Exchange for Oakland Army Base Development

The proposed trust exchange is a critical piece in the program for redevelopment of the EDC property at Oakland Army Base. The key conveyance and development agreements which the City has entered since 2001 contain commitments to pursue a public trust exchange. This commitment is embedded in the application to the Army for the no-cost EDC (October 2001), the Final Reuse Plan for Oakland Army Base (adopted July 2002), the City-Port MOA (entered

into July 2003), and the transfer-related agreements under which the EDC property was conveyed (executed August 2003).

Relation of City-Port MOA to State Lands Commission Exchange Process

In anticipation of OBRA's acquisition of Army Base property through an EDC and Finding of Suitability for Early Transfer from the Army, the City and the Port entered a Memorandum of Agreement under which the parties agreed to certain property transfers and other conditions in order to implement the Reuse Plan. The City-Port MOA,' contains the agreements and implementation details of these subsequent deed transfers, the financial considerations and the timing required for them.

The MOA sets forth, among other things, agreements regarding (i) the conveyances of specified parcels of the Army Base and adjacent lands between and among the parties, (ii) completion of a trust exchange, (iii) the relocation of the Homeless Collaborative and Army Reserve currently occupying the future Port property, (iv) the coordination and funding of an environmental remediation program, and (v) the implementation of environmental mitigation measures related to development. The obligations set forth in the MOA are premised in part on the assumption that a trust exchange will in fact occur. In the event that an exchange meeting the criteria specified in the MOA does not occur, the Agreement provides for several alternative courses of action, including the adoption of an alternative agreement. If these MOA provisions are changed due to SLC requirements, the MOA provides for certain recourse measures.

All parties are on schedule with the required activities for the SLC exchange process, with the introduction of legislation in 2004 as proposed.

Public Trust

Lands within the state of California that are now or were historically submerged or subject to tidal action are generally subject to the Public Trust for Commerce, Navigation and Fisheries ("tidelands trust"). Portions of the Base are submerged lands and former submerged lands that have since been filled, and therefore may be subject to the tidelands trust. Trust lands may only be used for navigation, fishing and commerce, or other trust uses.

The complicated legal and title history of the former base gives rise to a number of trust-related issues. The proposed exchange would resolve the issues by confirming the trust on more than 200 acres of land within the base, including the Port development area, while establishing that certain inland lands west of Maritime Street are free of the trust. Lands west of Maritime Street fronting the water, would remain in the trust and be utilized as publicly accessible open space.

¹ The Council and Agency at their regular meeting of October 29, 2002, passed resolutions (Nos. 77510 C.M.S. and 02-80 C.M.S. respectively) authorizing the City Manager and Agency Administrator to negotiate and enter into the City-Port MOA.

The legislation would result in a public trust boundary settlement and grant the State's trust interest in the lands exchanged or confirmed in the trust to the City, OBRA, ORA and Port respectively, for the lands that they own.

The Exchange Agreement

The proposed new configuration of trust lands reflects substantial efforts on the **part** of the Port and the City to determine the areas of the base most suitable for trust uses. The Reuse Plan is designed to maximize trust benefits by providing an approximately 174-acre Port Development Area (and an additional 50 acres of submerged lands) adjacent to the Port's existing terminal facilities, which will allow the Port to expand its cargo capacity, develop a new joint intermodal rail terminal, and construct its proposed Berth 21 project (referred to in the MOA as the "Port Fill Project"). Approximately 200 acres of the Port Development Area (not including the Knight Rail Yard or Army Reserve parcels) would be traded into or confirmed in the trust under the exchange.

On the remainder of the Base, the development configuration gives the ORA a total footprint of 171 acres of land west and **north** of Maritime Street, including the areas adjacent to the Bay Bridge touchdown, to develop as the Gateway Development Area. A feature of the Gateway Development would be a destination waterfront open space park that would open almost a mile of previously inaccessible waterfront to the public for recreational purposes. Open space is a public trust use. The proposed open space park (approximately 15 acres) would therefore remain in the public trust. The open space would be contiguous with the approximately 15-acre "Spit" area, to be acquired by the East Bay Regional Parks District, under a public benefit conveyance.

Following passage of SB 1435, OBRA and the Port, in consultation with SLC staff, will begin the process to develop and negotiate an Exchange Agreement that will implement the exchange in accordance with the statute. Then, the Exchange Agreement will require formal approval by the SLC. As required by the statute, the SLC will need to make certain findings to approve the Agreement.

Exchange Conditions

Pursuant to Sec. 11 of the proposed *Oakland Army Base Public Trust Exchange Act* (SB 1435), the State Lands Commission will be authorized to approve the public trust exchange subject to certain requirements, including the following:

1. Land Value and Acreage

The monetary value and net acreage of land going into the trust must be equal to or exceed the value and acreage of the land coming out of the trust in order for State Lands to approve an exchange. To obtain a detailed estimate of the market value of the lands proposed for the exchange plan, OBRA conducted a preliminary valuation of the land going to the trust. Based upon the results of that valuation, it is likely that a formal appraisal will find the exchange to meet the equal value requirement. OBRA and the Port have retained a State Lands-approved appraiser to conduct a formal appraisal of the involved parcels. The exchange would result in approximately 131 acres of East Maritime land going into the trust (not including the Knight Rail

Yard or the Army Reserve parcels), and approximately 98 West Maritime acres (including 12 acres of land adjacent to the former base that is west of Maritime Street) going out. Therefore, the trust exchange would result in a net gain to the trust of both market value and acreage.

2. No Cash-Out Remedy

The City-Port MOA provides that the parties will work together to accomplish a public trust exchange. A provision of the MOA allows OBRA/ORR to transfer the Gateway Development Area to the Port at fair market value if a Qualified Land Exchange is not completed with at least 80 acres removed from the trust (the "cash out remedy"). At the request of the State Lands Commission, the legislation includes a provision requiring the cash-out remedy provision be eliminated as a condition of approval for the final Exchange Agreement. Elimination of the cash-out remedy would require an amendment to the City-Port MOA. Staff recommends that the City parties amend the MOA after the terms and conditions of the Exchange Agreement are fully negotiated with the SLC. The City's right to elect the cash-out remedy is specifically tied to the completion of a Qualified Land Exchange by the end of the Trust Period (August 2006). A Qualified Land Exchange is defined as an Exchange whereby State Lands agrees that at least eighty (80) acres of the Gateway Development Area are not subject to the public trust and the Exchange Agreement terms do not result in the disallowance of more than Four Million Dollars (\$4,000,000) in value of the consideration to be paid by the Port under the negotiated terms of the City-Port MOA. These considerations include the Port's share of the Conveyance Transaction costs, the Knight Rail Yard purchase, the Port's equal share of the Homeless Accommodation and the Port's equal share of the Community Trust Fund. If these considerations and the minimum acreage count are met, then the cash out remedy option right of the City cannot be exercised.

Environmental Remediation and Protection

The property to be received or confirmed in public trust ownership must be remediated consistent with the requirements of the Remediation Action Plan² and Risk Management Plan³ ("RAP/RMP"), and the Consent Agreement⁴. These agreements are between the State of California, Department of Toxic Substances Control ("DTSC") and OBRA and ORR. Sufficient protections must be in place to ensure that the remedial actions for property to be received or confirmed in public trust ownership will be completed consistent with the time frame and standards set forth in the RAP/RMP and Consent Agreement. The Act states that sufficient protections may be demonstrated by a showing of financial assurances consistent with OBRA Resolution No. 2003-13, Port of Oakland Resolution No. 03150, Oakland City Council Resolution No. 77857 and Oakland Redevelopment Agency Resolution No. 2003-29. These resolutions all approved the environmental remediation and protection commitments of OBRA's Early Transfer of the EDC property from the Army.

² The RAP addresses remediation of certain environmental contamination on the Base.

³ The RMP sets forth the procedures for addressing environmental conditions on the Base.

⁴ The Consent Agreement implements the RAP/RMP.

3. Access to Open Space

The final layout of streets in the Gateway Development Area and the Port Development Area must provide access to the public trust lands within those respective areas, and be consistent with the beneficial use of those lands. As discussed above, the Gateway Development Area Piers 7-9 waterfront would remain in the trust following the exchange, to be developed by the City as public open space.

SUMMARY

A State Lands Commission public trust exchange of lands within the EDC property at the former Oakland Army Base must be completed in order for OBRA/ORA to fully implement their development plans at the property. Special legislation is the preferable means of accomplishing this in large, complex exchanges which may require special consideration and conditions, and has been utilized effectively in connection with trust exchanges at other large military bases in similar circumstances.

The governing bodies have taken numerous actions in support of this concept and of enabling legislation, including Council and ORA action which included trust exchange legislation for the Base as part of their State Legislative Agenda for legislative years 2003 and 2004.

In order to meet the timing requirements to which the City/ORA/OBRA and the Port have agreed in the City-Port MOA, it is essential that trust exchange legislation be approved in this 2004 legislative year. The *Oakland Army Base Trust Exchange Act*, SB 1435, would enable the SLC to effectuate a trust exchange. SB 1435 will be assigned to committee by mid-April, at which time it will be critical for the City to demonstrate its support for this bill. Therefore, we respectfully request that the Council/Agency adopt the accompanying resolutions in support of the bill and authorize the Agency Administrator to negotiate and enter into an Exchange Agreement with the State Lands Commission and to take all other actions necessary to effectuate the exchange.

The Oakland Army Base Redevelopment Project Area Environmental Impact Report ("EIR") was certified on July 31, 2002, by the City of Oakland, acting as a Lead Agency, and subsequently reviewed, considered and approved by OBRA, the ORA, and the Port of Oakland, each acting as a Responsible Agency. The EIR considered the foregoing public trust exchange and related matters, thereby meeting the environmental review requirements of the California Environmental Quality Act of 1970 ("CEQA"), the CEQA Implementing Guidelines and the City of Oakland's Environmental Review Regulations.

SUSTAINABLE OPPORTUNITIES

This report does not include approval of any specific projects addressing sustainable opportunities; however, as specific plans and agreements for the OARB Gateway Development Area are prepared with an eventual Master Developer, 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.

RECOMMENDED ACTIONS REQUESTED OF THE AGENCY

The Oakland Redevelopment Agency and City Council is requested to accept this report and approve the accompanying resolutions supporting SB 1435.

Respectfully submitted,



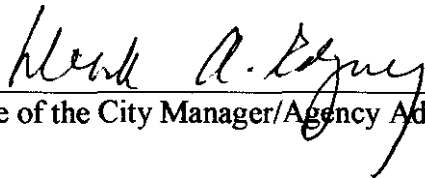
CLAUDIA CAPPIO,

Director of Planning, Building Services, Major Projects, and OBRA



Aliza Gallo, Executive Director,
Oakland Base Reuse Authority

APPROVED AND FORWARDED TO THE OAKLAND REDEVELOPMENT AGENCY



Office of the City Manager/Agency Administrator

Attachments:

- Attachment 1 : Oakland Army Base Development Areas Map
- Attachment 2: Proposed Trust Boundary Map

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March 25, 2004

San Francisco Bay

Emeryville Water Plant

Oyster Harbor

Oakland Base Reuse Authority

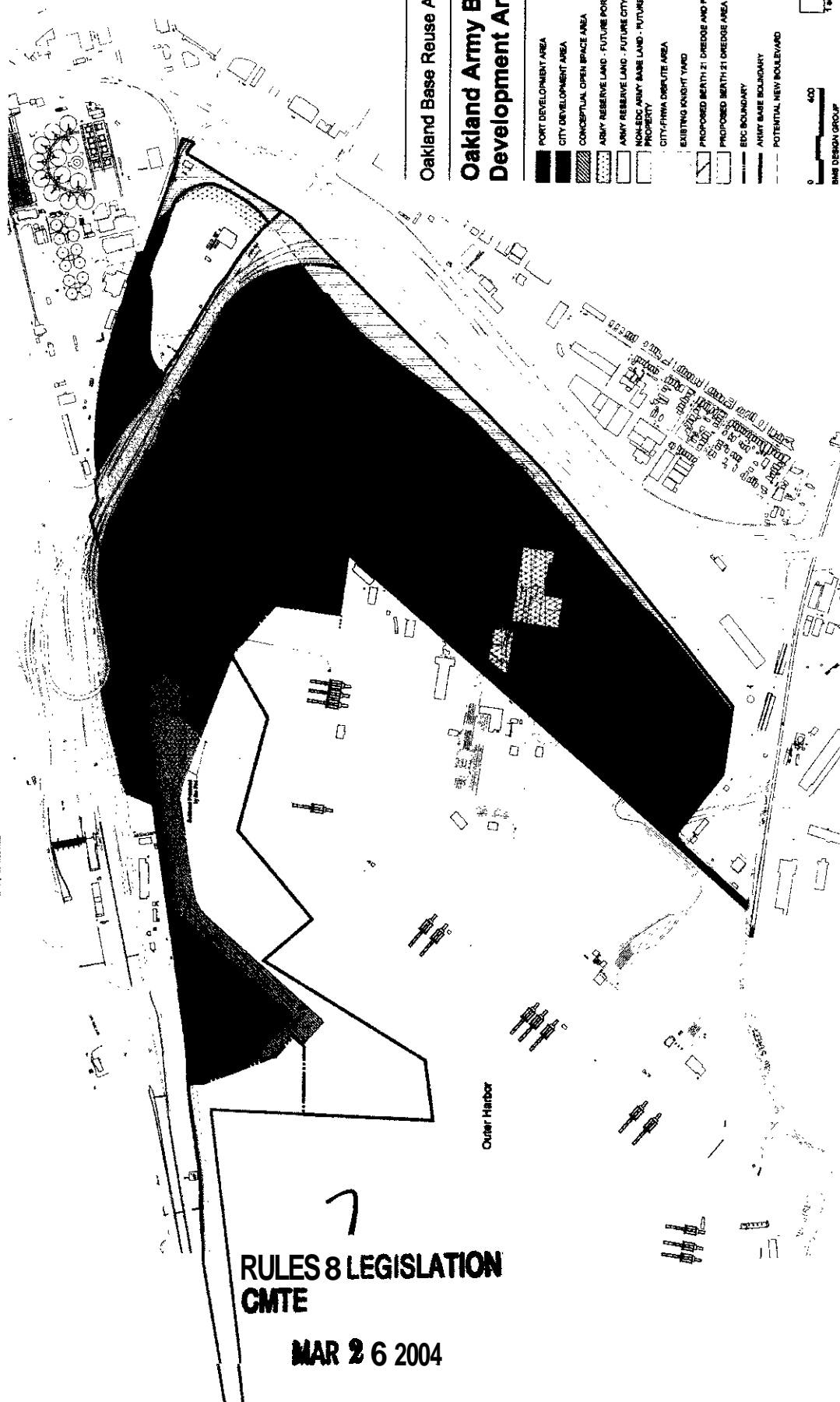
Oakland Army Base Development Areas

- PORT DEVELOPMENT AREA
- CITY DEVELOPMENT AREA
- CONCEPTUAL OPEN SPACE AREA
- ARMY RESERVE LAND - FUTURE PORT PROPERTY
- ARMY RESERVE LAND - FUTURE CITY PROPERTY
- NON-EDC ARMY BASE LAND - FUTURE EBRPD PROPERTY
- CITY/PRWA DISPUTE AREA
- EXISTING KNIGHT YARD
- PROPOSED SEATH 21 DREDGE AND FILL AREA
- PROPOSED SEATH 21 DREDGE AREA (P-1)
- EDC BOUNDARY
- ARMY BASE BOUNDARY
- POTENTIAL NEW BOULEVARD

0 400 800
1" = 800'

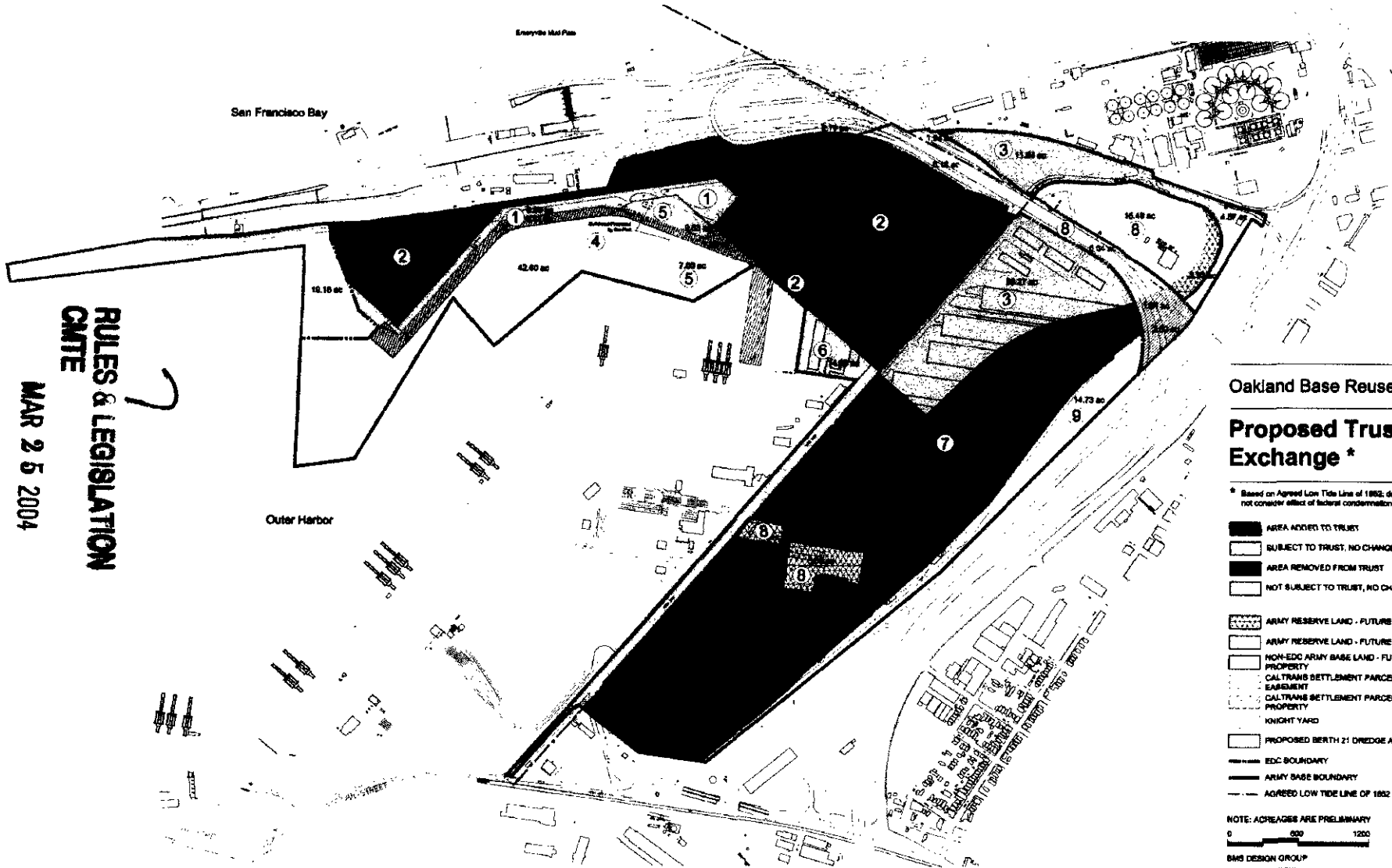
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B&B DESIGN GROUP



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RULES 8 LEGISLATION
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MAR 26 2004



Oakland Base Reuse Authority

Proposed Trust Land Exchange *

* Based on Agreed Low Tide Line of 1852; does not consider effect of federal condemnation.

- AREA ADDED TO TRUST
- SUBJECT TO TRUST, NO CHANGE
- AREA REMOVED FROM TRUST
- NOT SUBJECT TO TRUST, NO CHANGE
- ARMY RESERVE LAND - FUTURE PORT PROPERTY
- ARMY RESERVE LAND - FUTURE CITY PROPERTY
- NON-EDC ARMY BASE LAND - FUTURE EBRPD PROPERTY
- CALTRANS SETTLEMENT PARCEL - FUTURE CITY EAPLEMENT
- CALTRANS SETTLEMENT PARCEL - FUTURE PORT PROPERTY
- KNIGHT YARD
- PROPOSED BERTH 21 DREDGE AND FILL AREA
- EDC BOUNDARY
- ARMY BASE BOUNDARY
- AGREED LOW TIDE LINE OF 1852

NOTE: ACREAGES ARE PRELIMINARY

0 500 1000

1 INCH = 1000 FEET

BMS DESIGN GROUP 1/14/2004

RULES & LEGISLATION

MAR 25 2004

OAKLAND CITY COUNCIL

RESOLUTION No. _____ C.M.S.

CSK

RESOLUTION SUPPORTING STATE LEGISLATION REGARDING A PUBLIC TRUST LAND EXCHANGE AT THE FORMER OAKLAND ARMY BASE AND AUTHORIZING THE CITY MANAGER TO NEGOTIATE AND ENTER INTO AN EXCHANGE AGREEMENT WITH THE STATE LANDS COMMISSION AND TO TAKE ALL OTHER NECESSARY ACTIONS TO EFFECTUATE THE EXCHANGE

WHEREAS, the Oakland Base Reuse Authority (“OBRA”), on July 31, 2002, adopted the Final Reuse Plan for the Oakland Army Base (“Reuse Plan”) which sets forth the intended uses and development of land at the former military base; and

WHEREAS, the Reuse Plan provides that most of the land west of Maritime Street and a portion of the land east of Maritime Street will be developed by the Redevelopment Agency with a variety of uses to stimulate job creation and economic development (the “Gateway Development Area”), while most of the land east of Maritime Street and a portion of the land west of Maritime Street will be developed by the Port of Oakland (“Port”) to expand its maritime terminals and reconfigure and expand the Port’s rail facility through its New Intermodal Facility project (the “Port Development Area”); and

WHEREAS, there is uncertainty regarding the extent to which the lands within and adjacent to the former Oakland Army Base are subject to the public trust for navigation, fisheries and commerce (“Public Trust”) and such uncertainty presents, among other things, obstacles to the productive reuse and redevelopment of the property consistent with the Reuse Plan; and

WHEREAS, the State Lands Commission has indicated that, although there exists a dispute regarding the current boundary between Public Trust and non-Public Trust lands, it would be appropriate to assume, for purposes of negotiating a boundary settlement and property exchange, that the portion of the former Army Base west of Maritime Street is currently subject to the Public Trust and that the portion of the former Army Base east of Maritime Street is currently not subject to the Public Trust; and

WHEREAS, the intended use and development of the Gateway Development Area cannot be accomplished unless most the land west of Maritime Street is freed from the Public Trust restrictions on, among other things, development and alienation; and

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CMTE**

MAR 25 2004

WHEREAS, land within the Port Development Area east of Maritime Street is adjacent to the Port's existing terminals and is needed by the Port to increase its terminal capacity; and

WHEREAS, the California law allows the State Legislature to authorize the State Lands Commission to perform a Public Trust boundary settlement and an exchange of Public Trust land for non-Pubic Trust land if certain specified findings can be made, including, but not limited to, a determination that the value of the lands exchanged into the Public Trust equals or exceeds the value of the lands exchanged out of the Public Trust: and

WHEREAS, the City Council, at its meeting of October 23, 2001, passed Resolution No. 76783 C.M.S. that, among other things, authorizes the City Manager to work with OBRA, the Redevelopment Agency, the Port of Oakland and the State Lands Commission to resolve all issues related to the Public Trust at the former Oakland Army Base so as to allow for the implementation of the Reuse Plan; and

WHEREAS, the City Council, at its meeting of October 29, 2002, passed Resolution No. 77510 C.M.S. thereby authorizing the Agency Administrator to negotiate and enter into a Memorandum of Agreement with the Port of Oakland, OBRA and the Oakland Redevelopment Agency ("Port MOA) that, among other things, provides that the parties will work together to accomplish a Public Trust exchange and that OBRA/Agency can transfer the Gateway Development Area to the Port at fair market value if the Public Trust exchange is not completed (the "Cash-Out Remedy"): and

WHEREAS, the City Manager has worked with OBRA and the Port on a proposal to remove the Public Trust designation from approximately 98 acres of land west of Maritime Street (including 12 acres of land adjacent to the former base that is currently subject to the Public Trust) and to impose the Public Trust designation on approximately 131 acres of land east of Maritime Street as set forth on the map attached hereto; and

WHEREAS, there are several parcels of former Army Base land adjacent to the lands conveyed to OBRA by the Army that are also subject to trust-related title uncertainties and for which it may be in the public interest to include in the Public Trust exchange: and

WHEREAS, certain parcels of land within the Gateway Development Area west of Maritime Street will, after the contemplated Public Trust exchange is completed, remain subject to the Public Trust and will be developed as a park or other open space so as to allow public access to the San Francisco Bay and shoreline; and

WHEREAS, State legislation entitled the Oakland Army Base Public Trust Exchange Act has been introduced in the State Legislature as Senate Bill 1435 (“SB 1435”) which would authorize the State Lands Commission to negotiate and enter into a Public Trust boundary settlement and exchange agreement as set forth above; and

WHEREAS, the current version of SB 1435 provides, among other things, that the State Lands Commission shall not approve the exchange unless the Memorandum of Agreement with the Port is amended to eliminate the Cash-Out Remedy; and

WHEREAS, it is in the best interests of the City of Oakland to support passage of SB 1435 in order to (i) eliminate title uncertainties, (ii) allow for the intended use and development of the Gateway Development Area, (iii) assist in the elimination of blight, and (iv) promote job creation and economic development; and

WHEREAS, the Oakland Army Base Redevelopment Project Area Environmental Impact Report (“EIR) was certified on July 31, 2002, by the City of Oakland, acting as a Lead Agency, and subsequently reviewed, considered and approved by OBRA, the Oakland Redevelopment Agency and the Port of Oakland, each acting as a Responsible Agency, and said EIR considered the foregoing Public Trust exchange and related matters; and

WHEREAS, the requirements of the California Environmental Quality Act of 1970, the CEQA Implementing Guidelines and the City of Oakland’s Environmental Review Regulations have been satisfied with the previous certification of the EIR and no supplemental or subsequent EIR is required; now, therefore, be it

RESOLVED: That the City Council hereby fully supports the Oakland Army Base Public Trust Exchange Act (SB 1435) and requests the California Legislature to adopt and the Governor to sign the legislation as expeditiously as possible; and be it

FURTHER RESOLVED: That the City Manager is hereby authorized to take all necessary actions to support the passage of SB 1435 and to accomplish the intent of this resolution; and be it

FURTHER RESOLVED: That the City Manager is further authorized to negotiate and enter into a Public Trust boundary settlement and exchange agreement with the State Lands Commission that is consistent with the terms of SB 1435 and this Resolution; and be it

FURTHER RESOLVED: That the City Manager is further authorized to negotiate and enter into an amendment to the Memorandum of Agreement with the Port of Oakland to eliminate the Cash-Out Remedy on the condition that the City of Oakland secures the benefits set forth in the agreement; 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 COUNCIL, OAKLAND, CALIFORNIA, _____, 2004

PASSED BY THE FOLLOWING VOTE:

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

NOES-
ABSENT-
ABSTENTION-

ATTEST: _____

CEDA FLOYD

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

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**RULES & LEGISLATION
CMTE**

MAR 25 2004

OFFICE OF THE CLERK
OAKLAND REDEVELOPMENT AGENCY

RESOLUTION No. _____ C.M.S.

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CSK

RESOLUTION SUPPORTING STATE LEGISLATION REGARDING A PUBLIC TRUST LAND EXCHANGE AT THE FORMER OAKLAND ARMY BASE AND AUTHORIZING THE AGENCY ADMINISTRATOR TO NEGOTIATE AND ENTER INTO AN EXCHANGE AGREEMENT WITH THE STATE LANDS COMMISSION AND TO TAKE ALL OTHER NECESSARY ACTIONS TO EFFECTUATE THE EXCHANGE

WHEREAS, the Oakland Base Reuse Authority (“OBRA”), on July 31, 2002, adopted the Final Reuse Plan for the Oakland Army Base (“Reuse Plan”) which sets forth the intended uses and development of land at the former military base; and

WHEREAS, the Reuse Plan provides that most of the land west of Maritime Street and a portion of the land east of Maritime Street will be developed by the Redevelopment Agency with a variety of uses to stimulate job creation and economic development (the “Gateway Development Area”), while most of the land east of Maritime Street and a portion of the land west of Maritime Street will be developed by the Port of Oakland (“Port”) to expand its maritime terminals and reconfigure and expand the Port’s rail facility through its New Intermodal Facility project (the “Port Development Area”); and

WHEREAS, there is uncertainty regarding the extent to which the lands within and adjacent to the former Oakland Army Base are subject to the public trust for navigation, fisheries and commerce (“Public Trust”) and such uncertainty presents, among other things, obstacles to the productive reuse and redevelopment of the property consistent with the Reuse Plan; and

WHEREAS, the State Lands Commission has indicated that, although there exists a dispute regarding the current boundary between Public Trust and non-Public Trust lands, it would be appropriate to assume, for purposes of negotiating a boundary settlement and property exchange, that the portion of the former Army Base west of Maritime Street is currently subject to the Public Trust and that the portion of the former Army Base east of Maritime Street is currently not subject to the Public Trust; and

WHEREAS, the intended use and development of the Gateway Development Area cannot be accomplished unless most the land west of Maritime Street is freed from the Public Trust restrictions on, among others, development and alienation; and

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WHEREAS, land within the Port Development Area east of Maritime Street is adjacent to the Port's existing terminals and is needed by the Port to increase its terminal capacity; and

WHEREAS, California law allows the State Legislature to authorize the State Lands Commission to perform a Public Trust boundary settlement and an exchange of Public Trust land for non-Public Trust land if certain specified findings can be made, including, but not limited to, a determination that the value of the lands exchanged into the Public Trust equals or exceeds the value of the lands exchanged out of the Public Trust; and

WHEREAS, the Redevelopment Agency, at its meeting of October 23, 2001, passed Resolution No. 01-73 C.M.S. that, among other things, authorizes the Agency Administrator to work with OBRA, the Port of Oakland and the State Lands Commission to resolve all issues related to the Public Trust at the former Oakland Army Base so as to allow for the implementation of the Reuse Plan; and

WHEREAS, the Redevelopment Agency, at its meeting of October 29, 2002, passed Resolution No. 02-80 C.M.S. thereby authorizing the Agency Administrator to negotiate and enter into a Memorandum of Agreement with the Port of Oakland, OBRA and the City of Oakland ("Port MOA) that, among other things, provides that the parties work together to accomplish a Public Trust exchange and that OBRA/Agency can transfer the Gateway Development Area to the Port at fair market value if the Public Trust exchange is not completed (the "Cash-Out Remedy"); and

WHEREAS, the Agency Administrator worked with OBRA and the Port on a proposal to remove the Public Trust designation from approximately 98 acres of land west of Maritime Street (including 12 acres of land adjacent to the former base that is west of Maritime Street) and to impose the Public Trust designation on approximately 131 acres of land east of Maritime Street as set forth on the map attached hereto; and

WHEREAS, there are several parcels of former Army Base land adjacent to the lands conveyed to OBRA by the Army that are also subject to trust-related uncertainties and for which it may be in the public interest to include in the Public Trust exchange; and

WHEREAS, certain parcels of land within the Gateway Development Area west of Maritime Street will, after the contemplated Public Trust exchange is completed, remain subject to the Public Trust and will be developed as a park or other open space so as to allow public access to the San Francisco Bay and shoreline; and

WHEREAS, State legislation entitled the Oakland Army Base Public Trust Exchange Act has been introduced in the State Legislature as Senate Bill 1435 ("SB 1435) which will authorize the State Lands Commission to negotiate and enter into a Public Trust boundary settlement and exchange agreement as set forth above; and

WHEREAS, the current version of SB 1435 provides, among other things, that the State Lands Commission shall not approve the exchange unless the Memorandum of Agreement with the Port is amended to eliminate the Cash-Out Remedy; and

WHEREAS, it is in the best interests of the Redevelopment Agency to support passage of SB 1435 in order to (i) eliminate title uncertainties, (ii) allow for the intended use and development of the Gateway Development Area, (iii) assist in the elimination of blight, and (iv) promote job creation and economic development; and

WHEREAS, the Oakland Army Base Redevelopment Project Area Environmental Impact Report ("EIR) was certified on July 31, 2002, by the City of Oakland, acting as a Lead Agency, and subsequently reviewed, considered and approved by OBRA, the Oakland Redevelopment Agency, and the Port of Oakland, each acting as a Responsible Agency, and said EIR considered the foregoing Public Trust exchange and related matters; and

WHEREAS, the requirements of the California Environmental Quality Act of 1970, the CEQA Implementing Guidelines and the City of Oakland's Environmental Review Regulations have been satisfied with the previous certification of the EIR and no supplemental or subsequent EIR is required; now, therefore, be it

RESOLVED: That the Redevelopment Agency hereby fully supports the Oakland Army Base Public Trust Exchange Act (SB 1435) and requests the California Legislature to adopt and the Governor to sign the legislation as expeditiously as possible; and be it

FURTHER RESOLVED: That the Agency Administrator is hereby authorized to take all necessary actions to support the passage of SB 1435 and to accomplish the intent of this resolution; and be it

FURTHER RESOLVED: That the Agency Administrator is further authorized to negotiate and enter into a Public Trust boundary settlement and exchange agreement with the State Lands Commission that is consistent with the terms of SB 1435 and this Resolution; and be it

FURTHER RESOLVED: That the Agency Administrator is further authorized to negotiate and enter into an amendment to the Memorandum of Agreement with the Port of Oakland to eliminate the Cash-Out Remedy on the condition that the Agency secures the benefits set forth in the agreement; and be it

FURTHER RESOLVED: That the Redevelopment Agency 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- BROOKS, BRUNNER, CHANG, NADEL, QUAN, REID, WAN, AND
PRESIDENT DE LA FUENTE

NOES-
ABSENT-
ABSTENTION-

ATTEST: _____
CEDA FLOYD

City Clerk and Clerk of the Redevelopment Agency
of the City of Oakland, California

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