



FILED
OFFICE OF THE CITY CLERK
OAKLAND
2013 FEB 27 PM 4:41

AGENDA REPORT

TO: DEANNA J. SANTANA
CITY ADMINISTRATOR

FROM: Scott Miller

SUBJECT: Memorandum of Understanding for
6701 San Pablo Avenue

DATE: February 15, 2013

City Administrator
Approval

Date

2/26/13

COUNCIL DISTRICT: 1

RECOMMENDATION

Staff Recommends that the City Council adopt:

A Resolution authorizing a Memorandum of Understanding with the City of Berkeley and the City of Emeryville for the development of 6701 San Pablo Avenue, a property located within each of the three jurisdictions.

OUTCOME

If adopted, this resolution would authorize a Memorandum of Understanding that transfers all planning permit and building permit responsibilities to the City of Berkeley.

BACKGROUND/LEGISLATIVE HISTORY

The property owner of 6701 San Pablo Avenue (LBA) seeks to develop its property. The property currently contains an approximately 500,000 square foot commercial/industrial building that was formerly a storage facility for the University of California. The property site is approximately 2.2 acres in size and is divided between the Cities of Oakland, Berkeley and Emeryville, with approximately 45% of the property site located within Oakland. LBA has stated its intention to develop the property as a Mixed Use Facility potentially containing sports club facilities, retail, office space, dry research space, warehousing and associated parking.

Item: _____
CED Committee
March 12, 2013

ANALYSIS

LBA has requested that all required permits for land use and building inspections be processed by the City of Berkeley. After a review of the City of Berkeley’s Planning Code, it seems reasonable to allow the development of the property to be subject to Berkeley’s regulations as the Zoning in Berkeley is substantially similar to that in the City of Oakland for this and adjacent properties. The MOU contains language that will allow the City to receive notice of any and all Land Use Entitlements as well as to be able to comment on them.

Further, staff agrees that the building permitting and inspections should be solely handled by the City of Berkeley. There is little difference between Berkeley and Oakland’s Building Codes, as those are guided directly by the State. Since Building Codes deal directly with life safety issues, it makes sense to have one set of inspectors reviewing the plans and inspecting the development site.

Finally, the MOU contains language that will require the property taxes, parking fees, and business license taxes to be shared proportionately among all three jurisdictions.

POLICY ALTERNATIVES

<i>Alternative #1</i>	Require Land Use Control for the portions of the property within Oakland and allow the City of Berkeley to review Building permits
<i>Pros</i>	The City of Oakland keeps the ability to control land uses within its boundaries on this project site.
<i>Cons</i>	Consolidation of process, streamlined review for applicant
<i>Reason for not recommending</i>	Staff believes the most orderly development pattern would be to allow one jurisdiction to review all the permits on the property subject to safeguards regarding notice of uses, landscaping on site and streetscape requirements and control.

PUBLIC OUTREACH/INTEREST

This item did not require any additional public outreach other than the required posting on the City’s website.

COORDINATION

The City Attorney's Office has worked closely with staff on the preparation of the Memorandum of Understanding.

COST SUMMARY/IMPLICATIONS

Adopting this resolution would likely be revenue neutral. While fees would not be paid to the City, Planning and Building Division staff would not work on the project. Therefore, this is neutral.

SUSTAINABLE OPPORTUNITIES

Economic: The development would lead to new jobs as an institutional building would be redeveloped for commercial uses. This is likely to benefit Oakland residents.

Environmental: The building exists now and any building permits submitted will be required to meet modern standards for energy efficiency and Green Building.

Social Equity: This project will add new commercial opportunities for local residents on a site that had a prior public use.

CEQA

The California Environmental Quality Act (CEQA) Guidelines categorically exempts specific types of projects from environmental review. The following is an analysis citing the CEQA exemptions, each of which as a separate and independent basis, that apply to this project, as well as potential exceptions to the exemptions, and why these exceptions do not apply to this project. Since all potential tenants are not known at this time, additional CEQA analysis (including use of these exemptions) will be done as necessary for each tenant.

Section 15301 - Existing Facilities:

CEQA Guidelines Section 15301 relates to existing facilities, and includes minor alterations to existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of an existing use.

No new or altered structures are proposed for the project site. Only minor alterations to the existing structure are anticipated, most of which will likely be internal. External modifications are likely to consist of minor alterations to the façade and signage for new businesses. This will

Item: _____
CED Committee
March 12, 2013

result in negligible or no expansion of the existing use. Some of the uses may not be ministerial in nature but the description provided by the project sponsor does not indicate any activities that would not be covered by Section 15301 as such uses are common in existing buildings and typically do not have a significant impact on the environment.

Section 15268 – Ministerial Projects:

CEQA Guidelines Section 15268 lists projects exempt from the requirements of CEQA.

15268(b) In the absence of any discretionary provision contained in the local ordinance or other law establishing the requirements for the permit, license, or other entitlements for use, the following actions shall be presumed to be ministerial:

- 1) Issuance of Building Permits.*
- 2) Issuance of Business Licenses.*
- 3) Approval of Final Subdivision Maps.*
- 4) Approval of individual utility service connections and disconnections.*

The project will include tenant improvements to the existing building for a variety of commercial uses. At this time, we know the property owner anticipates possible retail, office space, sports club facilities, dry research space and warehousing uses. Some of these uses are permitted outright by both the Oakland and Berkeley Zoning regulations and would therefore be ministerial as the city would only require them to receive a Business License and potentially Building Permits.

Section 15061(b)(3) – No possibility of significant effect on the environment:

CEQA Guidelines Article 5, Section 15061 states that once a lead agency has determined that an activity is a project subject to CEQA, a lead agency shall determine whether the project is exempt from CEQA. Further, Section 15061 (b)(3) states that a project is exempt from CEQA if “The activity is covered by the general rule that CEQA applies only to projects, which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.”

The CEQA Exemption findings contained herein support staff's determination that the MOU will not cause a significant effect on the environment. The issue before the Council is to decide who will review any entitlement and building permit applications at 6701 San Pablo Avenue. Therefore this act alone cannot be said to have a significant impact on the environment. All subsequent applications that are eventually filed here will be reviewed by the City for compliance with all local ordinances and CEQA review will be a part of that.

Item: _____
CED Committee
March 12, 2013

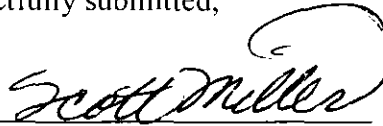
Section 15183 - Projects Consistent with a Community Plan, General Plan, or Zoning:

CEQA Guidelines Section 15183 states that projects which are consistent with the development density established by existing zoning, community plan, or general plan policies for which an EIR was certified shall not require additional environmental review, except as might be necessary to examine whether there are project-specific significant effects which are peculiar to the project or its site.

As a separate and independent basis from the other CEQA findings, pursuant to Public Resources Code Section 21083.3 and CEQA Guidelines Section 15183, the Zoning Manager finds and determines that: (a) the project is consistent with the Land Use and Transportation Element (LUTE), for which an EIR was certified in March 1998; (b) feasible mitigation measures identified in the LUTE EIR were adopted and have been, or will be, undertaken; (c) the EIR evaluated impacts peculiar to the project and/or project site, as well as off-site and cumulative impacts; (d) uniformly applied development policies and/or standards (Standard Conditions of Approval) have previously been adopted and found, when applied to future projects, to substantially mitigate impacts. To the extent that no such findings were previously made, the Zoning Manager hereby finds and determines that the Standard Conditions of Approval imposed on the Project substantially mitigate environmental impacts; and (e) substantial new information does not exist to show that the Standard Conditions of Approval will not substantially mitigate the project and cumulative impacts.

For questions regarding this report, please contact Robert D. Merkamp, Acting Zoning Manager, at (510) 238-6283.

Respectfully submitted,



Scott Miller, Interim Planning Director
Department of Planning and Building

Prepared by:
Robert Merkamp, Acting Zoning Manager
Zoning Division

Item: _____
CED Committee
March 12, 2013



City Attorney

 FILED
 OFFICE OF THE CITY CLERK
 OAKLAND

OAKLAND CITY COUNCIL

 2013 FEB 27 PM 4:45 **RESOLUTION NO.** _____ **C.M.S.**

 Introduced by Councilmember _____

A RESOLUTION AUTHORIZING A MEMORANDUM OF UNDERSTANDING BY AND AMONG THE CITY OF OAKLAND, THE CITY OF BERKELEY AND THE CITY OF EMERYVILLE FOR THE DEVELOPMENT OF 6701 SAN PABLO AVENUE, A PROPERTY LOCATED WITHIN EACH OF THE THREE JURISDICTIONS

WHEREAS, the owner of 6701 San Pablo Ave, LBA, approached the cities of Oakland, Berkeley and Emeryville regarding the development of the aforementioned property which is located within all three jurisdictions; and

WHEREAS, the property owner requests that all future land use and building permits be processed by the City of Berkeley for efficient development; and

WHEREAS, the City of Oakland agrees that the issuance of planning and building permits and building inspections should be solely handled by the City of Berkeley as there is little difference between Berkeley and Oakland's Codes; and

WHEREAS, the City of Oakland is committed to seeing properties developed in as efficient a manner as possible; and

WHEREAS, the City Council hereby finds and determines that CEQA exemptions 15268(b) (Projects which are Ministerial), 15061(b)(3) (Projects which will have no impact on the environment) and 15301 (Projects involving Existing Facilities) apply to this project; now, therefore be it

RESOLVED: The City Council, having independently heard, considered, reviewed and weighed all the evidence in the record presented on behalf of all parties and being fully informed of the Memorandum of Understanding negotiated by and among the City of Oakland, the City of Berkeley and the City of Emeryville accept that Zoning Land Use controls, Building Permits and Building Inspections for activities on the property will be solely reviewed, issued and conducted by the City of Berkeley; 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 Council's decision is based are respectively: (a) City of Oakland, Office of Planning, Building and Neighborhood Preservation, 250 Frank H. Ogawa Plaza, Suite 2114, Oakland, CA; and (b) Office of the City Clerk, 1 Frank H. Ogawa Plaza, 1st Floor, Oakland, CA; 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, _____, 20_____

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, GALLO, GIBSON McELHANEY, KALB, KAPLAN, REID, SCHAAF and PRESIDENT KERNIGHAN

NOES -

ABSENT -

ABSTENTION -

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