



AGENDA REPORT

TO: Edward D. Reiskin
City Administrator

FROM: Alexa Jeffress
Director, Economic and
Workforce Development
Department

SUBJECT: Exclusive Negotiating Agreement
with East Bay Asian Local
Development Corporation for a
Portion of the 12th Street Remainder
Parcel

DATE: May 30, 2022

City Administrator Approval

Date: Jun 20, 2022

RECOMMENDATION

Staff Recommends That The City Council Adopt A Resolution (1) Declaring A Portion Of The 12th Street Remainder Parcel, Located At East 12th Street And 2nd Avenue (Property), As Exempt Surplus Land Under The State Surplus Land Act, Meeting The Criteria Under Government Code Section 54221(f)(1)(A); (2) Waiving The Competitive Process For Disposition Of Property For Development; and (3) Authorizing The City Administrator To Negotiate And Enter Into An Exclusive Negotiation Agreement With East Bay Asian Local Development Corporation And/Or An Affiliate, For Twelve (12) Months With One Additional Six-Month Administrative Extension, For The Potential Lease Disposition and Development Of A Portion Of The Property And Development Of An Affordable Housing Project, Subject To The Completion Of A California Environmental Quality Act Determination

EXECUTIVE SUMMARY

The City of Oakland (City) owns approximately 0.925 acres of vacant land, with frontage on 12th Street, between Lake Merritt Boulevard and 2nd Avenue (Property). East Bay Asian Local Development Corporation (EBALDC) is seeking to create a new parcel through a long-term ground lease for approximately half of the Property (Parcel 1) as depicted on **Attachment A**, to develop a 100 percent affordable housing project (Parcel 1 Project) with approximately 91 units (90 units plus 1 staff unit) that will target very low and low-income households with incomes between 30 and 60 percent of Alameda County area median income (AMI). The City plans to issue a Notice of Availability (NOA) for the remaining portion of the Property (Parcel 2) for a separate 100 percent affordable housing development (Parcel 2 Project) at a later date.

EBALDC was part of a team that previously entered into a Disposition and Development Agreement (DDA) with the City for a mixed-income project on the Property that did not move forward. EBALDC had received approximately \$21.2 million in State Affordable Housing and Sustainable Communities (AHSC) and Infill Infrastructure Grant (IIG) funding to advance the

CED Committee
June 28, 2022

affordable housing component of the prior project and has obtained an extension from the State for these funds provided the affordable project moves forward. EBALDC is now seeking approval from the City to continue with the affordable housing component as a standalone project on half of the site only.

To preserve this significant State funding for Oakland and quickly advance affordable housing on City land, staff seeks authorization to (1) declare Parcel 1 exempt surplus land under the State Surplus Land Act (SLA); (2) waive the competitive process for disposition of property for development under the Oakland Municipal Code (OMC); and (3) negotiate and enter into an Exclusive Negotiation Agreement (ENA) with EBALDC and/or its affiliate for a 12-month period, with an optional six-month administrative extension.

BACKGROUND / LEGISLATIVE HISTORY

A. Property Location and Ownership History

The Property is currently owned by the City. This property, approximately 40,293 square feet (0.925 acre) of vacant land, was previously public right-of-way and was created in 2011 as a result of the reconfiguration of 12th Street that was a part of the City's Lake Merritt Park Improvement/12th Street Reconstruction Project funded by Measure DD.

The Property is bounded by East 12th Street on the east, by 2nd Avenue and Oakland Unified School District (OUSD) property on the south, by the newly created open space to the west and by Lake Merritt Blvd to the north.

The Redevelopment Agency acquired the Property from the City on June 16, 2011, for the purpose of guiding development of this key site through a DDA. In February of 2012, with the dissolution of the Redevelopment Agency, the Property was transferred to the Oakland Redevelopment Successor Agency (ORSA). On April 7, 2014, ORSA transferred ownership of the Property back to the City pursuant to a directive from the California State Controller.

B. Disposition Offering History

On July 14, 2015, the City released an NOA for the Property, which was sent to local public entities, housing sponsors, and additional requestors. The City Council instructed staff that their preference was for a proposal that provided at least 25 percent of the units at below market rate (BMR), maximized the total number of units, and maximized community benefits. A team consisting of a market-rate developer and EBALDC was selected through this process.

The previously proposed project consisted of 360 residential units across two buildings built atop a parking garage, with a shared common hallway. The market-rate developer was responsible for the construction of a tower including 252 market-rate units and 18 moderate-income units and the parking garage. EBALDC's affordable housing component included a mid-rise, 6-story building with 91 units affordable to very low and low-income households earning 30 percent to 60 percent of AMI.

By June 2020, EBALDC had secured all of its project financing, including federal and state tax credits, a bond allocation, and \$21.2 million in State AHSC and IIG funds. By November 2020,

EBALDC was prepared to close on construction financing. While the project's layout involved a legally separated, EBALDC-controlled development condominium, the design included podium parking and common spaces shared with the market-rate project, which made the teams reliant on each other's timing and sequencing for closing and construction. The overall project ultimately did not move forward.

C. Current Project and Potential Future Project

EBALDC has now requested to construct the same affordable program as planned previously, but as a standalone, 91-unit, 100 percent affordable housing building on a portion of the site. The new layout entails constructing the affordable building at grade, rather than atop a parking garage. Moving forward with this standalone project will allow EBALDC and the City to preserve approximately \$21.2 million in State affordable housing funding.

Once EBALDC is underway with a project on Parcel 1, the City plans to issue an NOA to select a developer to build another 100 percent affordable housing project on the remaining portion of the site (Parcel 2). It is anticipated that a building on this other portion of the site could yield an additional 80-100 units.

ANALYSIS AND POLICY ALTERNATIVES

A. Exemption of the Surplus Land Act

Staff recommends that the City Council make a finding that declares a portion of the Property exempt from the SLA. Under Government Code Section 54221, surplus land may be exempt from the SLA guidelines if City Council declares the property to be "exempt surplus land" meeting certain exemption criteria. A property may be exempt if it is County or City surplus land that is transferred for the development of affordable housing at less than fair market value, with restrictions as described in Government Code Section 25539.4 or 37364.

The Phase I Project proposed by EBALDC will meet the requirements under Section 37364 as follows:

- It will provide housing affordable to persons and families of low or moderate income, as defined by Section 50093 of the Health and Safety Code;
- Not less than 80% of the area of the parcel will be used for the development of housing;
- Not less than 40% of the total number of those housing units will be affordable to households whose incomes are equal to or less than 75% of the maximum income of lower-income households, and at least half of which shall be affordable to very low-income households, as defined in Sections 50079.5, 50093, and 50105 of the Health and Safety Code; and
- Dwelling units will be restricted by regulatory agreement to remain affordable for at least 30 years, which must be recorded on the land, with a provision making the covenants and conditions of the agreement binding upon successors.

B. Waiver of Competitive Process

Staff recommends that the City Council make a finding and determination that it is in the best interests of the City to waive the competitive process per Section 2.42.170 of the Oakland Municipal Code (OMC) and enter an ENA to negotiate the terms of a future LDDA and ground lease for a 100 percent affordable project on Parcel 1. Staff is making the recommendation that this action is in the best interest of the City for the reasons outlined below.

EBALDC is an Oakland-based nonprofit organization, with 47 years of community development experience owning and operating affordable housing buildings in Oakland. They have deep experience building affordable housing and serving the Oakland community. EBALDC has developed more than 2,300 units of affordable housing and 300,000 square feet of community-serving retail and office space – and serves more than 4,000 families annually through its service programs. In response to the pandemic, EBALDC provided 10,300 meals and grocery runs and 1,700 wellness calls to needy residents.

EBALDC has already invested \$5 million to cover predevelopment costs to build the planned 91-unit affordable housing project and secured \$21.2 million in State funding, including approximately \$3.1 million in IIG funds and approximately \$18.1 million in AHSC grant funding. EBALDC's AHSC application had included as co-applicants and sub-grantees the City of Oakland, BART, and AC Transit, and of the \$18.1 million in AHSC funding, \$2.5 million will directly support sustainable transportation infrastructure and related amenities including:

- City of Oakland street improvements, street lights, and bike share system;
- BART faregate and bike channels; and
- AC Transit bus and bike share passes.

If the Phase 1 Project does not move forward, ***the City will lose the approximately \$21.2 million in State funding for affordable housing*** and transportation improvements that EBALDC and the City have secured over several years of submitting competitive applications to the State. This is a significant amount of funding, which is nearly double the amount of funds projected to be available annually for Housing Notices of Funding Availability starting in 2023.

Finally, EBALDC is positioned to complete this affordable housing project much more quickly than a new project. EBALDC has already completed the design for the Phase 1 Project and secured some of the financing. If the City does not move forward with EBALDC, it would take at least an additional three or more years to issue an NOA, select another development team, and undertake the level of design and site investigation work that EBALDC has already conducted, likely delaying the time to occupancy for any affordable housing on the site by three years or longer.

C. Exclusive Negotiating Agreement

Staff recommends that the City Council direct staff to enter into an ENA with EBALDC with:

- A term of 12 months;
- An option for one, six-month administrative extension;
- A \$25,000 exclusive negotiation payment to the City for the right to exclusive negotiations; and

- Certain time and performance milestones, as detailed in a Schedule of Performance.

Staff recommends that the ENA contain the following key performance milestones:

- Hold at least two (2) public meetings to discuss the development plans with major stakeholders, including OUSD.
- Submit conceptual and refined project development schedules and proformas.
- Work with the City to evaluate potential design and maintenance scenarios for the adjacent stormwater retention area.
- Submit updated schematic design plans for the Parcel 1 Project, as required.
- Complete any additional required Parcel 1 Project environmental review pursuant to the California Environmental Quality Act (CEQA).
- Obtain any additional necessary planning approvals.
- Obtain additional letters of intent or commitment for financing from lenders and equity partners.
- Negotiate the terms and conditions of a Lease Disposition and Development (LDDA) and ground lease (Ground Lease) with the City, such as the economic and other parameters of the project, a performance schedule, any public improvements, and potential community benefits.

Attachment B contains a draft Schedule of Performance that provides more detail about the required performance milestones and would be attached to the ENA. Upon successful completion of all ENA milestones staff would return to the City Council with a recommendation that the City enter into an LDDA and Ground Lease with EBALDC.

Approval of the requested action advances the **citywide priority of housing, economic, and cultural security**.

FISCAL IMPACT

Aside from staff time, there is no fiscal impact on the City for the development and execution of an ENA with EBALDC.

EBALDC will bear sole responsibility for all costs associated with developing the Parcel 1 Project for approval, including consultant fees, permitting fees, legal fees, financing expenses, etc. In addition, the ENA will require EBALDC to make a \$25,000 exclusive negotiation payment (Exclusive Negotiation Payment) to the City for the right to exclusive negotiations. The \$25,000 Exclusive Negotiation Payment from EBALDC will be accepted and appropriated to Miscellaneous Capital Project Fund (5999), Central District Redevelopment Organization (85245), in a new Project to be established.

The eventual lease and development of Parcel 1 is expected to yield residual lease payment revenues and the eventual return of Parcel 1 to the City after the lease term. Any ongoing property tax revenue to the City from a 100 percent affordable project would be minimal due to such units being exempt from property tax. The exact level of fiscal impact will be dependent upon the terms of the LDDA negotiated with EBALDC and the City.

Moving forward with the ENA also allows the City to retain the commitment of \$21.2 million in affordable housing funds from the State. Should the City not move forward with the ENA, the City would give up \$21.2 million in critical State grant funds for affordable housing at this site.

PUBLIC OUTREACH / INTEREST

The ENA process for EBALDC's Parcel 1 Project will include opportunities for full public review with at least two (2) community meetings. All these activities will be requirements in the ENA and are part of the Schedule of Performance. If the City and EBALDC successfully complete negotiations and satisfy all ENA requirements, staff will recommend approval of an LDDA between the City and EBALDC at public hearings before the City Council.

COORDINATION

The Economic and Workforce Development Department has coordinated on this agenda item with the City Administrator's Office, the Housing and Community Development Department, the Planning and Building Department, the Office of the City Attorney, and the Budget Bureau.

SUSTAINABLE OPPORTUNITIES

Economic: EBALDC's proposed project will transform vacant underutilized land into a residential development that will provide much-needed affordable housing units and further stimulus to the local economy. Development of the site is expected to generate construction jobs and permanent jobs.

Environmental: Development of Parcel 1 is expected to maximize the potential use of Parcel 1 while being environmentally sensitive with its design, use of materials and operations. The proposed development next to a regional transportation hub will encourage residents to use BART and AC Transit and reduce automobile reliance, which will decrease the use of fossil fuels and resulting greenhouse gas emissions. Additionally, as part of the AHSC grant award, Oakland Department of Transportation (OakDOT) will benefit from \$1,065,053 for pedestrian improvements along 10th Street and a new bike share station, in partnership with Motivate, an operations and logistics support organization in the micro-mobility industry.

Race & Equity: The project will provide 91 units of deeply affordable housing for low-income residents, who are disproportionately people of color nationally and in the Bay Area. The project additionally will bring investment to an underserved neighborhood, reducing blight through a high-quality development. The AHSC award will include funds for pedestrian improvements along 10th Street, a new bike share station, and will further contribute \$460,000 in pedestrian-scale lights along International Blvd., between 1st and 5th Avenue, which will improve pedestrian safety throughout Downtown, Uptown and East Oakland.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

Nothing in this action to authorize the City Administrator to enter into an ENA should be interpreted as an approval or a pre-commitment to approve, now or in the future, the disposition of the City's interest in the Property, to any particular party, on any particular terms, or for any particular purpose. Any proposed disposition of the Property and any development project on the Property, will require further discretionary actions of the City Planning Commission and City Council, and the City retains full discretion, following conclusion of the negotiation period set forth in ENA to proceed with disposition of its interest in the Property in compliance with CEQA. As such, this action will not result in a direct or indirect physical change in the environment and does not in-and-of-itself constitute a "project" pursuant to CEQA Guidelines Section 15378.

ACTION REQUESTED OF THE CITY COUNCIL

Staff Recommends That The City Council Adopt A Resolution Declaring A Portion Of The 12th Street Remainder Parcel Located At East 12th Street And 2nd Avenue (Property) As Exempt Surplus Land Under The State Surplus Land Act As An Affordable Housing Project, Meeting The Criteria Under Government Code Section 54221(f)(1)(A); (2) Waiving The Competitive Process For Disposition Of Property For Development; and (3) Authorizing The City Administrator To Negotiate And Enter Into An Exclusive Negotiation Agreement With East Bay Asian Local Development Corporation, For Twelve Months With One Optional Six-Month Administrative Extension, For The Potential Lease Disposition and Development Of A Portion Of The Property And Development Of An Affordable Housing Project, Subject To The Completion Of A California Environmental Quality Act Determination

For questions regarding this report, please contact Jens Hillmer, Development Area Manager, at 510-238-3317.

Respectfully submitted,



ALEXA JEFFRESS
Director, Economic & Workforce Development

Reviewed by:

Kelley Kahn, Director of Real Estate and
Public/Private Development
Economic & Workforce Development

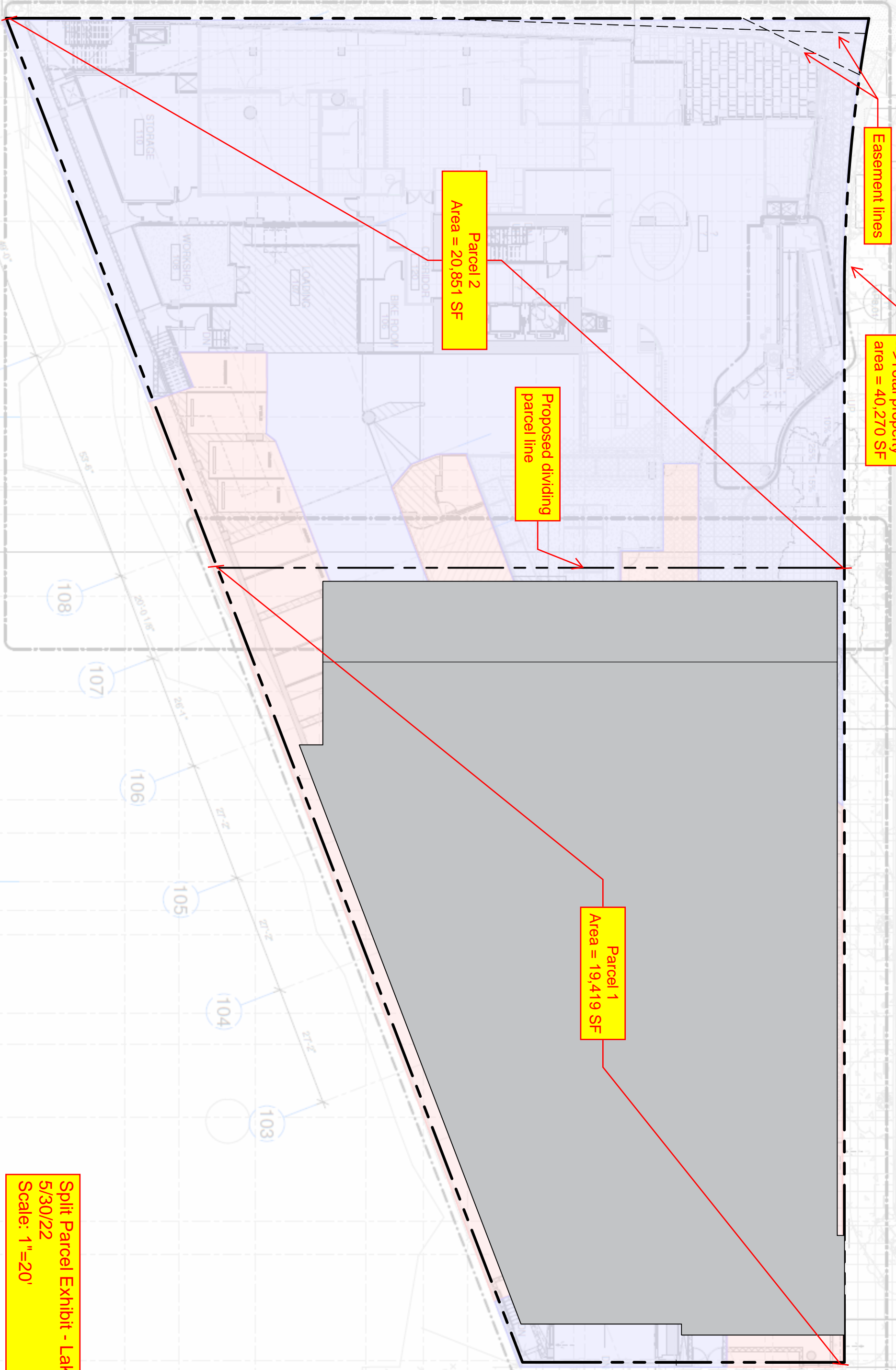
Christina Mun, Deputy Director
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Jens Hillmer, Development Area Manager
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Prepared by:
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Attachments (#): 2
Attachment A: Property Depiction
Attachment B: ENA Schedule of Performance

ATTACHMENT A: PROPERTY DEPICTION



Easement lines

Property line
--> Total property area = 40,270 SF

Parcel 2
Area = 20,851 SF

Proposed dividing parcel line

Parcel 1
Area = 19,419 SF

Split Parcel Exhibit - Lakehouse
5/30/22
Scale: 1"=20'

ATTACHMENT B: EXCLUSIVE NEGOTIATING AGREEMENT - DRAFT SCHEDULE OF PERFORMANCE

		<i>Developer:</i>	East Bay Asian Local Development Corporation
		<i>Negotiation Period:</i>	12-month period
		<i>Project Expense Payment:</i>	\$25,000
ENA SCHEDULE OF PERFORMANCE			
1	TEAM	Developer identifies all members of the project team and respective responsibilities	Within 30 days of ENA approval
2	DESIGN	Developer retains design team to prepare conceptual plans	Within 60 days of ENA approval
3	CEQA & PERMITS	Developer retains environmental consultants to prepare documents for CEQA review of Project. Developer's CEQA consultant shall compare proposed development project with previously approved project.	Within 60 days of ENA approval
4	CEQA & PERMITS	Identify any additional necessary zoning and land use approvals and submit applicable permit pre-applications and a schedule of approvals.	Within 90 days of ENA approval
5	COMMUNITY ENGAGEMENT	First public meeting on proposed development plan	Within 90 days of ENA approval
6	CEQA & PERMITS	Developer's CEQA consultant shall identify whether any additional environmental review is required to complete CEQA clearance, and if so, prepare a draft scope of work, based upon the City's "Guidelines for Environmental Consultant Contracts Concerning Private Development Projects" (dated 1/5/12), for City review and approval.	Within 90 days of ENA approval
7	FINANCING	Submit updated budget, sources & uses of funds, 10-yr cash flow, operating budget	Within 120 days of ENA approval
8	FINANCING	Submit project development schedule	Within 120 days of ENA approval
9	DESIGN	Submit schematic design Plans, plan for public art, and list of public improvements	Within 150 days of ENA approval
10	CEQA & PERMITS	Submit any applicable zoning and land use permit applications and a schedule of approvals.	Within 150 days of ENA approval
11	COMMUNITY ENGAGEMENT	Second public meeting on proposed development plan	Within 180 days of ENA approval
12	FINANCING	Submit LOIs from lenders and equity partners to finance project	Within 180 days of ENA approval
13	CEQA & PERMITS	Complete any required CEQA review. Developer: Complete environmental assessment, ID site mitigations. City: complete enviro review, file Notice of Determination.	Within 210 days of ENA approval
14	CEQA & PERMITS	Complete any required zoning and land use approvals	Within 210 days of ENA approval
15	FINANCING	Submit final letters of commitment from lenders and equity partners to finance project	Within 300 days of ENA approval
16	LDDA	Complete LDDA negotiations	Within 330 days of ENA approval