



FILED
OFFICE OF THE CITY CLERK
OAKLAND

2016 JUN 17 AM 9:16

AGENDA REPORT

TO: Sabrina B. Landreth
City/Successor Agency Administrator

FROM: Mark Sawicki
Director, EWD

SUBJECT: MacArthur BART Transit Village –
Consent to Property Conveyance

DATE: May 27, 2016

City/Successor Agency Administrator Approval _____ Date: _____

6/16/16

RECOMMENDATION

Staff Recommends That Oakland Redevelopment Successor Agency (“ORSA”) And The City Council (The “City”) Adopt:

A Resolution Authorizing The Agency Administrator Or Designee To Execute A Consent To The Conveyance By MacArthur Transit Community Partners, LLC (“MTCP”) To A Joint Venture Between Boston Properties, LP, Or A Related Entity, And McGrath Properties, Inc., Or A Related Entity, Of Parcels B-1 and B-2 Of The MacArthur BART Transit Village For Development Of One Residential Mixed-Use Project, Pursuant To The Terms Of An Owner Participation Agreement Currently Between The Oakland Redevelopment Successor Agency And MTCP, As Such Conveyance Is Not A Project Under The California Environmental Quality Act (“CEQA”), And Separately And Independently Relying On The Previously Certified 2008 Environmental Impact Report Per CEQA Guidelines Sections 15162-15164, 15183, 15183.3, And 15168 And 15180; And

Resolution Authorizing The City Administrator Or Designee To (1) Execute A Consent To The Conveyance By MacArthur Transit Community Partners, LLC (“MTCP”) To A Joint Venture Between Boston Properties, LP Or Related Entity, And McGrath Properties, Inc., Or Related Entity, Of Parcel B-1 And B-2 Of The MacArthur Bart Transit Village For Development Of One Residential Mixed-Use Project, Pursuant To The Terms Of A Development Agreement (“DA”) Between The City Of Oakland And MTCP, And (2) Consent To The Partial Assignment Of The DA, As Such Conveyance And Assignment Are Not Projects Under The California Environmental Quality Act (“CEQA”), And Separately And Independently Relying On The Previously Certified 2008 Environmental Impact Report Per CEQA Guidelines Sections 15162-15164, 15183, 15183.3, And 15168 And 15180

EXECUTIVE SUMMARY

Upon the dissolution of the Redevelopment Agency of the City of Oakland (“Agency”), The Oakland Redevelopment Successor Agency (“ORSA”) became party to an Owner Participation Agreement dated February 24, 2010 (“OPA”) with MacArthur Transit Community Partners, LLC (“MTCP”) for the development of the MacArthur BART Transit Village (the “Project”), a

Item: _____
CED Committee
June 28, 2016

residential and retail mixed-use project located at the San Francisco Bay Area Rapid Transit ("BART") MacArthur Station. Previously, the City and MTCP entered into a Development Agreement (DA) to vest MTCP's rights in the planning approvals necessary for the Project. The Project site consists of five parcels that will be developed in several phases. A map of the parcels is attached to this report as **Attachment A**.

Pursuant to the terms of the OPA and DA, MTCP is required to secure ORSA's and the City Council's consent to 1) the partial assignment to and assumption of the OPA, 2) a conveyance of MTCP's option to purchase Parcels B-1 and B-2 (hereinafter collectively referred to as "Parcel B" since the two properties will be combined to develop one project) from BART, and 3) the partial assumption of the DA related to Parcel B and assignment of MTCP's development rights under the DA for Parcel B to a qualified non-affiliated third-party developer. MTCP would like to partially assign the OPA, convey its option to purchase Parcel B and its development rights under the DA to a joint venture between Boston Properties LP, or a related entity, and McGrath Properties, Inc., or a related entity ("BPMP"). BPMP has the requisite development experience and financial capacity to meet the qualifications required for a transferee as delineated in the OPA and DA (the DA references and incorporates the approval guidelines for transferees included in the OPA).

Staff recommends that ORSA and the City Council adopt legislation authorizing the Successor Agency Administrator or designee to consent to the partial assignment of the OPA and to the conveyance of MTCP's option to purchase Parcel B from BART, and authorizing the City Administrator or designee to consent to the partial assignment of MTCP's development rights under the DA for Parcel B to BPMP for the development of a mixed-use project at the MacArthur BART Transit Village. MTCP will be liable for all obligations under the DA not expressly assigned to BPMP. BPMP has not yet completed the final development program for Parcel B, but will develop at least 137 residential units, including at least 5 units affordable to households earning no more than 80 percent of area median income ("AMI") and approximately 3,000 square feet of retail on Parcel B per the requirements of the OPA.

BACKGROUND / LEGISLATIVE HISTORY

On July 21, 2009, the City and MTCP entered into a DA, which vested City planning approvals and fees in place for a 15-year period pursuant to Ordinance No. 12959 C.M.S. dated July 21, 2009. As such, any new City regulations and fees enacted after the execution and delivery of the DA do not apply to the Project, except for new health and safety and new building and construction code regulations.

On February 24, 2010, the Agency entered into an OPA with MTCP for the development of MacArthur BART Transit Village pursuant to Resolution No. 2009-0073 C.M.S. dated July 7, 2009. After dissolution of the Agency, the OPA became an enforceable obligation of ORSA.

On July 29, 2010, MTCP and San Francisco BART entered into a Purchase and Lease Option Agreement to purchase and ground lease certain parcels at the Project site from BART.

MacArthur BART Transit Village

MacArthur BART Transit Village is a mixed-use, transit-oriented project that is being developed in five phases and includes:

- At least 624 residential units (approximately 520 market-rate units and 104 below market-rate units)
- Approximately 42,500 square feet of commercial/neighborhood serving retail space
- Approximately 5,000 square feet of community space
- 480 replacement parking spaces for BART in a new public garage
- Two new public roads running through the BART parking lot and the reconfiguration of the existing BART Frontage Road
- A new public plaza located across from the existing BART plaza

The Development Site

MacArthur BART Transit Village is located at the MacArthur BART Station in North Oakland, within the area bounded by 40th Street, Telegraph Avenue, West MacArthur Boulevard, and State Route 24. Originally, the Project site included the BART parking lot, the BART plaza, Frontage Road between West MacArthur Boulevard and 40th Street, and six privately-owned parcels on Telegraph Avenue and MacArthur Boulevard which were acquired by MTCP.

The Project site was divided into six new development parcels and associated streets and driveways: Parcel A, Parcels B-1 and B-2 (which will be combined into one Parcel B), Parcels C, Parcel D and Parcel E. As part of the BART Parking Structure/Phase 1 Final Development Plan ("FDP"), Parcel C was reconfigured and split into two parcels (Parcels C-1 and C-2) because MTCP was having significant difficulties in its negotiations over the acquisition of the Surgery Center property located on Parcel C-2 at 3875 Telegraph Avenue. This reconfiguration of Parcel C ensured that MTCP could proceed with development of a smaller project on Parcel C-1. In the end, MTCP was unable to buy the Surgery Center property and will therefore not be able to develop Parcel C-2. As a result, the Project's residential and retail component will have to be reduced to reflect the loss of Parcel C-2. (Please refer to Attachment A.)

BART owns a portion of Parcel A, and Parcel B, C-1, and E. MTCP owns the remaining portion of Parcel A. Parcel D, which is the site of the Mural Apartments, is under a long-term ground lease between BART and MTCP. Parcel E is the site of the new BART Parking Garage.

Project Status

Parcels D and E

MTCP started construction of the first Project phase in July of 2012 and completed the BART Parking Garage on Parcel E in September of 2014. The garage includes approximately 5,200 square feet of commercial space at the corner of MacArthur Boulevard and Frontage Road. The second phase of the Project, a 90-unit affordable housing development (the "Mural

Apartments”) and related infrastructure was completed on Parcel D in December of 2015. The Mural Apartments includes approximately 1,100 square feet of community space.

Parcel A and C-1

On May 19, 2015, the City Council, pursuant to Resolution No. 85603 C.M.S., authorized the adoption of FDPs for Parcels A and C-1 of the Project, as recommended by the City Planning Commission. The FDP for Parcel A includes 287 residential units and 22,287 square feet of retail space, while the proposed portion of the FDP for Parcel C-1 includes 96 apartment units and 1,202 square feet of retail. MTCP is currently negotiating with Hines, Inc., a private development company, over the conveyance of Parcels A and C-1. If these negotiations are successful and the requirements of the OPA have been satisfied, staff will return with a recommendation for the City Council to consent to the conveyance of Parcel A and C-1 from MTCP to Hines, Inc. at a later date.

Parcel B

BPMP has not yet completed the final development program for the site, but will develop at least 137 residential units, including five units affordable to households earning no more than 80 percent of area median income, and 3,000 square feet of retail on Parcel B.

ANALYSIS AND POLICY ALTERNATIVES

MTCP desires, with respect to Parcel B, to partially assign the OPA and transfer its option to purchase Parcel B from BART to BPMP. Pursuant to the terms of the OPA and DA (the DA references and incorporates the approval guidelines for transferees included in the OPA), MTCP must secure ORSA’s and the City Council’s consent to a conveyance of Parcel B to BPMP. Specifically, the OPA requires that the prospective developer meet the following criteria:

- The developer must be a nationally or regionally recognized real estate development company with a good business reputation, which has, within the preceding ten-year period, on its own or through its assembled development team, successfully developed a major high quality urban mixed-use project similar to the phase or phases being transferred to such Vertical Developer,
- The developer, either alone or in combination with its members (or their constituent members or partners) or guarantors, has a demonstrated net worth of not less than \$10,000,000 (which is to be adjusted for inflation based on the Engineering News Record’s San Francisco Bay Area Construction Cost Index) per phase in the event that any one phase of the Project is to be transferred; and
- The developer nor any of its principals, members or partners have been convicted, found or admitted or assumed (including any plea of no contest) criminal or civil liability for any felony, fraud, misrepresentation or any act of moral turpitude (excluding only civil liability for construction defect claims of fraud or misrepresentation arising out of the sale, construction, warranty or repair of real property and improvements thereto) or has been a party adverse to the City or Agency in any lawsuits, claims or other actions within the preceding five years and has disclosed in writing any lawsuits or other actions as to

which the proposed Vertical Developer or any of its principals, members or partners has been adverse to the City or Agency during any prior period.

Boston Properties and McGrath Properties

At the time of executing the OPA with the City in 2010, MTCP was a partnership between McGrath Properties, Inc. (formerly known as “Aegis Equity Partners”) and BUILD (“BRIDGE Urban Infill Land Development, LLC”). However, McGrath Properties, Inc. withdrew from the partnership with the understanding that it would be entitled to receive MTCP’s option to purchase Parcel B from BART. BRIDGE Economic Development Corporation, which is a nonprofit wholly owned and controlled by BRIDGE Housing Corporation, is now the sole entity controlling MTCP. McGrath Properties, Inc. marketed its rights to Parcel B and identified Boston Properties LP as a qualified joint venture partner for the development of a project on Parcel B.

Boston Properties, Inc. a Real Estate Investment Trust (REIT), and its subsidiary, Boston Properties LP, are based in Boston, Massachusetts, and is one of the largest owners, managers and developers of first-class office properties in the United States, with a significant presence in four markets: Boston, New York, Washington, DC and San Francisco. Boston Properties LP is the entity through which Boston Properties, Inc. conducts substantially all of its business and owns, either directly or through subsidiaries, all of its assets. Boston Properties LP acquires, develops and manages its properties through full-service regional offices. Its property portfolio is comprised primarily of Class A office properties and also includes five retail properties, four residential properties and one hotel.

The joint venture between Boston Properties LP and McGrath Properties, Inc. has clearly delineated roles and responsibilities for the development of a project on Parcel B. Boston Properties LP will be the managing member in the joint venture and contribute all capital required to complete the development. McGrath Properties, Inc. will contribute its option to purchase the land from BART to the joint venture in exchange for an equity interest in the project. Boston Properties LP will have full decision-making power on the design, development and operation of the asset. As a result of the specific roles that each member of the joint venture will play, staff and its consultant focused the assessment of financial capacity and development experience on Boston Properties, Inc., and its affiliate, Boston Properties LP.

Experience of the Firm

As of December 31, 2015, Boston Properties LP had a portfolio of 168 commercial real estate assets of which four are residential properties including one under construction. Boston Properties LP also has three residential projects in pre-development. While Boston Properties LP has not completed any residential projects in the San Francisco Bay Area, it currently owns four sizeable office buildings in San Francisco and 25 office and industrial properties in the Silicon Valley area. A list of the residential projects is shown in **table 1** below.

Table 1: Boston Properties LP Residential Projects

Project Name	Location	Number of Units	Retail	Office	Year Built	Total Project Cost
The Lofts at Atlantic Wharf	Boston, MA	88	30,000 sf	750,000 sf	2011	\$625 million
Avant at Reston Town Center	Reston, VA	359	27,000 sf	-	2011	\$128 million
Residences on the Avenue	Washington, DC	335	49,000 sf	-	2011	\$120 million
Signature at Reston Town Center	Reston, VA	508	25,100 sf	-	Under Construction	\$228 million
Hub on Causeway	Boston, MA	440	0 sf	384,000 sf	In Pre-development	TBD
88 Ames Street	Cambridge, MA	241	9,000 sf	-	In Pre-development	\$105 million
Back Bay Station	Boston, MA	600	8,500 sf	-	In Pre-development	TBD

Based on a third-party consultant's review of the firm and project team's experience, Boston Properties LP has demonstrated that it has the in-house capabilities and qualifications to successfully entitle, design and develop an institutional quality urban mixed-use project similar to the proposed project. Furthermore, the consultant is of the opinion that the project team provides sufficient staffing resources to complete the proposed project on Parcel B.

Financial Capacity

Pursuant to the second transfer criteria of the OPA, Boston Properties, Inc. and its subsidiary Boston Properties meet the net worth condition. Boston Properties LP has stated that it will provide the completion guaranty required pursuant to the terms of the OPA. Staff submitted Boston Properties, Inc.'s (which includes its subsidiary, Boston Properties LP) consolidated financial statements to an economic consultant for review to determine whether Boston Properties, Inc. and Boston Properties, LP satisfy this OPA requirement. Given Boston Properties Inc. and Boston Properties LP's substantial balance sheet, the consultant evaluated Boston Properties, Inc. and Boston Properties LP's ability to meet the OPA's net worth requirement (as adjusted by Engineering News Record's San Francisco Bay Area Construction Cost Index) of \$11.5 million.

Boston Properties, Inc. and Boston Properties LP's consolidated financial statements indicate a net worth with cash and cash equivalents on its balance sheet as of December 31, 2015 that significantly exceeds the minimum net worth requirement required by the OPA. Boston Properties Inc. and Boston Properties LP have averaged over \$1 billion in cash and cash equivalents over the past five years and, according to the consultant, there is no reason to believe the publicly traded REIT would not have sufficient capital to develop Parcel B.

Legal Representation

BPMP has represented to staff that none of the criteria pertaining to any past criminal or civil liabilities apply to the development team, and that they have not been a party to any legal action adverse to the City or ORSA.

Project Development Schedule

The OPA includes a development schedule for each Project phase. The schedule for Parcel B calls for construction to commence one year after FDP approval or in July of 2019. Pursuant to the terms of the OPA, BPMP has to submit its FDP application by July of 2017, secure FDP approval by July of 2018, and commence construction by July of 2019. It is anticipated,

however, that BPMP will make every effort to expedite the development of Parcel B and likely start project construction sooner than required by the OPA. The assignment of the OPA is necessary to meet this schedule.

FISCAL IMPACT

The actions under consideration by ORSA and the City Council will not result in any direct fiscal impacts to ORSA or the City. The project on Parcel B will generate property taxes, business license taxes and utility taxes for the City.

PUBLIC OUTREACH / INTEREST

The developer has conducted a couple of community meetings regarding the Project. There will be several additional opportunities for public outreach and community participation. The developer's FDP application will have to be approved by the Planning Commission and the City Council.

COORDINATION

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

- Office of the City Attorney;
- Planning and Building Department; and
- City Controller's Bureau.

SUSTAINABLE OPPORTUNITIES

Economic: The proposed conveyance of MTCP's option to purchase Parcel B from BART to BPMP will result in a mixed-use development that will provide further stimulus to the local economy. The project's mix of residences and ground floor retail opportunities, and location next to MacArthur BART station will promote visits, shopping by businesses and residents alike, and ultimately foster future economic development activities in the neighborhood.

Environmental: The proposed development next to a major regional transportation hub will reduce automobile reliance, and thus decrease the use of fossil fuels and resulting greenhouse gas (GHG) emissions. Additionally, actions to maximize water conservation will be reflected in the project's landscaping practices. The proposed mix of uses would bring residents closer to needed services, while the adjacent BART Station's transit nodes would expand options for non-auto commuting. The developer will ensure that the project will comply with the City's Green Building Ordinance and endeavor to receive Leadership in Energy and Environmental Design ("LEED") certification.

Social Equity: The affordable housing component of the proposed project and the Mural Apartments will result in housing accessible to low and moderate income households. The location of the Project adjacent to a regional transit station and multiple transit nodes will allow for a wide range of access to employment, and also accommodate diverse commuters, including those for whom extended auto commuting is unaffordable.

CEQA

On July 1, 2008, the City Council certified an Environmental Impact Report (EIR) for the MacArthur Station Project (SCH No. 2006022075).

With regard to the conveyance Parcel B, under California Environmental Quality Act Guidelines ("CEQA") Guidelines Sections 15162-15164, no subsequent or supplemental environmental review is required unless there are new or substantially more severe significant impacts resulting from (1) substantial changes to the project; (2) the circumstances surrounding the project; or (3) new information not known and which could not reasonably have been known at the time of the prior EIR.

In reviewing the currently proposed transfer of interests, staff has determined that none of the circumstances necessitating further environmental review are present. The reasons for this determination include, among others, the following: (1) the currently proposed transfer of interest does not affect the physical development previously reviewed in the EIR and is not a change in the project that involves any new significant effects or a substantial increase in the severity of previously identified significant effects; (2) circumstances under which the project is undertaken have not occurred that will involve new significant environmental effects or a substantial increase in the severity of previously identified significant effects; and (3) no new information has come to light that would involve new or substantially more severe effects or feasible alternatives or mitigation measures. Accordingly, no further environmental review is required for this project at this time. The 2008 EIR identifies impacts and requires mitigation measures, and any project on Parcel B will continue to be required to incorporate the mitigation measures.

Separately and independently, the City finds and determines, after independent review and consideration, that the conveyance of Parcel B is not a project under CEQA and also complies with CEQA because it is consistent with the development density established by existing general plan policies for which an EIR was previously certified, pursuant to CEQA Guidelines Section 15183 and also complies with CEQA Guidelines section 15183.3, and 15168 and 15180.

BPMP has not yet submitted a development application for Parcel B. At such time that an application is submitted, appropriate CEQA review will be conducted.

The 2008 EIR was provided under separate cover to the City Council, and is available for review at 250 Frank Ogawa Plaza, Suite 3315, Oakland, CA 94612 during normal business hours. The 2008 EIR can also be found on the City's website at:
<http://www2.oaklandnet.com/Government/o/PBN/OurOrganization/PlanningZoning/DOWD008406>

ACTION REQUESTED OF THE CITY COUNCIL

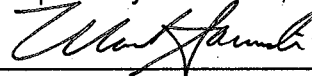
Staff recommends that ORSA and the City adopt the following legislation to approve the conveyance of Parcel B of MacArthur Station from MTCP to a Joint Venture between Boston Properties, LP and McGrath Properties, Inc. for development of a mixed-use project:

A Resolution authorizing the Successor Agency Administrator or designee to execute a consent to the conveyance by MacArthur Transit Community Partners, LLC to a joint venture between Boston Properties, LP, or a related entity, and McGrath Properties, Inc., or a related entity, of Parcel B of the MacArthur BART Transit Village for development of one residential mixed-use project, pursuant to the terms of an Owner Participation Agreement between the Oakland Redevelopment Successor Agency and MacArthur Transit Community Partners, LLC; and

A Resolution authorizing the City Administrator or designee to execute a consent to the conveyance by MacArthur Transit Community Partners, LLC to a joint venture between Boston Properties, Inc., or a related entity, and McGrath Properties, Inc., or a related entity, of Parcel B of the MacArthur BART Transit Village for development of one residential mixed-use project, pursuant to the terms of a Development Agreement between the City of Oakland and MacArthur Transit Community Partners, LLC.

For questions regarding this report, please contact Jens Hillmer, Urban Economic Coordinator, at 238-3317.

Respectfully submitted,



MARK SAWICKI, Director
Economic & Workforce Development
Department

Reviewed by:
Patrick Lane, Redevelopment Manager

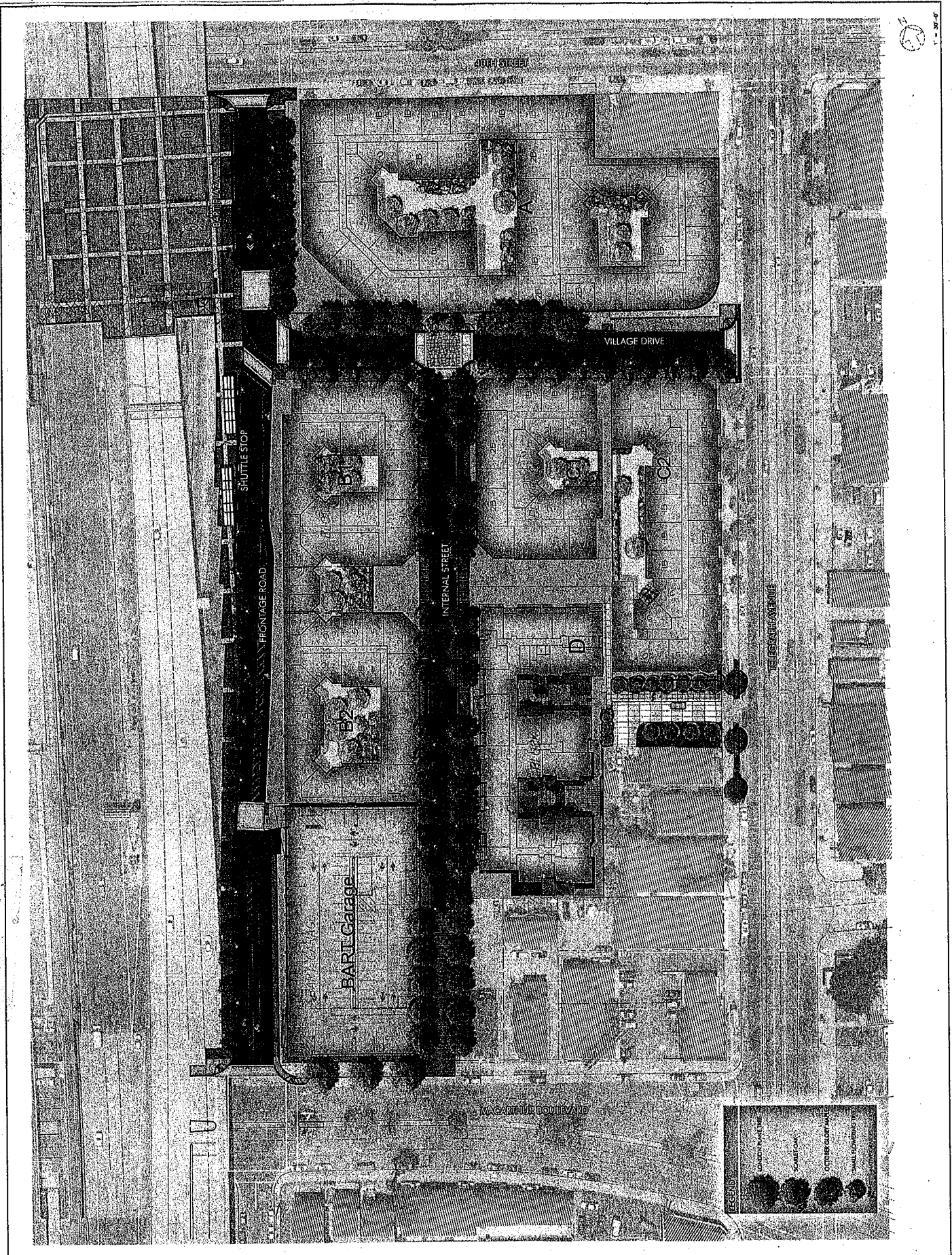
Prepared by:
Jens Hillmer, Urban Economic Coordinator
Project Implementation Division

Attachments (1):

A - Site Map

Attachment A

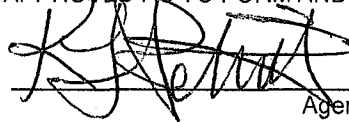
MacArthur BART Transit Village



FILED
OFFICE OF THE CITY CLERK
OAKLAND

2016 JUN 17 AM 9:16

APPROVED AS TO FORM AND LEGALITY:



Agency Counsel

OAKLAND REDEVELOPMENT SUCCESSOR AGENCY

Resolution No. 2016-_____

RESOLUTION AUTHORIZING THE AGENCY ADMINISTRATOR OR DESIGNEE TO EXECUTE A CONSENT TO THE CONVEYANCE BY MACARTHUR TRANSIT COMMUNITY PARTNERS, LLC TO A JOINT VENTURE BETWEEN BOSTON PROPERTIES LP, OR RELATED ENTITY, AND MCGRATH PROPERTIES, INC., OR RELATED ENTITY, OF PARCELS B-1 AND B-2 OF THE MACARTHUR BART TRANSIT VILLAGE FOR DEVELOPMENT OF A RESIDENTIAL MIXED-USE PROJECT, PURSUANT TO THE TERMS OF AN OWNER PARTICIPATION AGREEMENT CURRENTLY BETWEEN THE OAKLAND REDEVELOPMENT SUCCESSOR AGENCY AND MACARTHUR TRANSIT COMMUNITY PARTNERS, LLC, AS SUCH CONVEYANCE IS NOT A PROJECT UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT ("CEQA"), AND SEPARATELY AND INDEPENDENTLY RELYING ON THE PREVIOUSLY CERTIFIED 2008 ENVIRONMENTAL IMPACT REPORT PER CEQA GUIDELINES SECTIONS 15162-15164, 15183, 15183.3, AND 15168 AND 15180

WHEREAS, Pursuant to Redevelopment Agency of the City of Oakland ("Agency") Resolution No. 2009-0073 C.M.S. adopted on February 24, 2010, the Agency entered into an Owner Participation Agreement ("OPA") with MacArthur Transit Community Partners, LLC ("MTCP"), for the development of the MacArthur Transit Village ("Project"); and

WHEREAS, on July 29, 2010, MTCP and San Francisco Bay Area Rapid Transit District ("BART") entered into a Purchase and Lease Option Agreement for the sale or lease of BART-owned Property, including Parcels B-1 and B-2 (hereinafter collectively referred to as "Parcel B" since the two parcels will be combined to create one parcel for development) located on Frontage Road, for the development of the Project; and

WHEREAS, on February 1, 2012, the Agency dissolved and was succeeded by the Oakland Redevelopment Successor Agency ("ORSA") established pursuant to California Health and Safety Code Sections 34171(j) and 34173; and

WHEREAS, the OPA requires ORSA's consent to the transfer of any property interest to non-affiliates of MTCP, subject to certain criteria defined in the OPA, which include, among other things, development experience and adequate financial capacity; and

WHEREAS, MTCP submitted a request to convey its option to purchase Parcel B of the MacArthur Transit Village from BART and convey it to a different developer; and

WHEREAS, MTCP identified a joint venture between Boston Properties LP, or related entity, and McGrath Properties, Inc., or related entity, as the new developer; and

WHEREAS, staff has determined that the joint venture between Boston Properties, LP and McGrath Properties, Inc., has the requisite development experience and adequate financial capacity for delivery of the planned development of MacArthur BART Transit Village Parcel B; and

WHEREAS, the requirements of the California Environmental Quality Act (CEQA), the CEQA guidelines as prescribed by the California Secretary of Resources and the provisions of the Environmental Review Regulations of the City of Oakland have been satisfied; now therefore be it

RESOLVED: That, pursuant to the OPA, ORSA consents to the partial assignment to and assumption of the OPA and the conveyance of MTCP's option to purchase Parcel B to a joint venture between Boston Properties LP, or related entity, and McGrath Properties, Inc., or related entity; and be it further

RESOLVED: That the Agency Administrator or designee is hereby authorized to execute a written consent to the partial assignment to and assumption of the OPA and the conveyance of MTCP's option to purchase Parcel B from BART to a joint venture between Boston Properties LP, or related entity, and McGrath Properties, Inc., or related entity; and be it further

RESOLVED: That ORSA finds and determines, after independent review and consideration, that this action complies with CEQA because it is not a project under CEQA, and separately and independently ORSA is relying on the previously Certified 2008 EIR per CEQA Guidelines Sections 15162-15164, 15183, 15183.3 and 15168 and that none of the circumstances that require a supplemental or subsequent EIR have occurred; and be it further

RESOLVED: That the Agency Administrator or designee shall cause to be filed with the County of Alameda a Notice of Determination and/or Exemption for this action; and be it further

RESOLVED: That the Agency Administrator or designee is further authorized to take whatever action is necessary with respect to the consent to the partial assignment to and assumption of the OPA and the consent to the conveyance of MTCP's option to purchase Parcel B to a joint venture between Boston Properties LP, or related entity, and McGrath Properties, Inc., or related entity, consistent with this Resolution and its basic purposes; and be it

RESOLVED: That all documents necessary to effect the partial assignment to and assumption of the OPA and the consent to the conveyance of MTCP's option to purchase Parcel B pursuant to this Resolution shall be reviewed and approved by the City Attorney, and copies shall be placed on file with the City Clerk.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 2016

PASSED BY THE FOLLOWING VOTE:

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

NOES-

ABSENT-

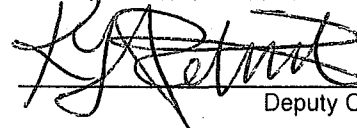
ABSTENTION-

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

FILED
OFFICE OF THE CITY CLERK
OAKLAND

2016 JUN 17 AM 9:16

APPROVED AS TO FORM AND LEGALITY:


Deputy City Attorney

OAKLAND CITY COUNCIL

RESOLUTION No. _____ C.M.S.

RESOLUTION AUTHORIZING THE CITY ADMINISTRATOR OR DESIGNEE TO (1) EXECUTE A CONSENT TO THE CONVEYANCE BY MACARTHUR TRANSIT COMMUNITY PARTNERS, LLC ("MTCP") TO A JOINT VENTURE BETWEEN BOSTON PROPERTIES, LP OR RELATED ENTITY, AND MCGRATH PROPERTIES, INC., OR RELATED ENTITY, OF PARCEL B-1 AND B-2 OF THE MACARTHUR BART TRANSIT VILLAGE FOR DEVELOPMENT OF ONE RESIDENTIAL MIXED-USE PROJECT, PURSUANT TO THE TERMS OF A DEVELOPMENT AGREEMENT ("DA") BETWEEN THE CITY OF OAKLAND AND MTCP AND (2) CONSENT TO THE PARTIAL ASSIGNMENT OF THE DA, AS SUCH CONVEYANCE AND ASSIGNMENT ARE NOT PROJECTS UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT ("CEQA"), AND SEPARATELY AND INDEPENDENTLY RELYING ON THE PREVIOUSLY CERTIFIED 2008 ENVIRONMENTAL IMPACT REPORT PER CEQA GUIDELINES SECTIONS 15162-15164, 15183, 15183.3, AND 15168 AND 15180

WHEREAS, on June 4, 2008, the City of Oakland Planning Commission (the "Commission") certified the MacArthur Transit Village Environmental Impact Report ("EIR") and recommended approval of the MacArthur Transit Village Planned Unit Development ("PUD"); and

WHEREAS, on July 1, 2008, pursuant to Resolution No. 81422 C.M.S., the Oakland City Council ("City Council") approved the MacArthur Transit Village PUD; and

WHEREAS, pursuant to Ordinance No. 12959 C.M.S., dated July 21, 2009, the City Council adopted the "Development Agreement ("DA") by and between City of Oakland ("City") and MacArthur Transit Community Partners, LLC ("MTCP") Regarding the Property and Project Known as "MacArthur Transit Village" ; and

WHEREAS, the DA and Oakland Planning Code require City Council consent to the transfer of development rights to "Non-Exempt Transferees," as defined in the DA; and

WHEREAS, in December 2015, MTCP submitted a request to transfer interest in MacArthur Transit Village Parcels B-1 and B-2 (hereinafter referred to as "Parcel B", since the two parcels will be combined to create one Parcel B for development) to a different developer; and

WHEREAS, MTCP has identified a joint venture between Boston Properties LP, or related entity, and McGrath Properties, Inc., or related entity, as the proposed new developer, and staff has determined that the joint venture has the financial capacity and development experience to deliver the proposed development on Parcel B; and

WHEREAS, MTCP desires to assign certain of its rights, interests and obligations relating to Parcel B under the DA, to the proposed new developer and the City desires to consent to and approve of such assignment; and

WHEREAS, the requirements of the California Environmental Quality Act ("CEQA") and the CEQA guidelines as prescribed by the Secretary of Resources have been satisfied; now therefore be it

RESOLVED: That, pursuant to the DA, the City consents to the partial assignment and assumption of the DA relating to Parcel B and the transfer and assignment of development rights under the DA for Parcel B to a joint venture between Boston Properties LP, or related entity, and McGrath Properties, Inc., or related entity; and be it further

RESOLVED: That, pursuant to the DA, the City Administrator or designee is hereby authorized to execute a written consent to the partial assignment and assumption of the DA relating to Parcel B and the transfer and assignment of development rights under the DA for Parcel B to a joint venture between Boston Properties LP, or related entity, and McGrath Properties, Inc., or related entity; and be it further

RESOLVED: That the City finds and determines, after independent review and consideration, that this action complies with CEQA because it is not a project under CEQA, and separately and independently the City is relying on the previously Certified 2008 ER per CEQA Guidelines Sections 15162-15164, 15183, 15183.3 and 15168 and that none of the circumstances that require a supplemental or subsequent EIR have occurred; and be it further

RESOLVED: That the City Administrator or designee shall cause to be filed with the County of Alameda a Notice of Determination and/or Exemption for this action; and be it further

RESOLVED: That the City Administrator is further authorized to take whatever action is necessary with respect to the consent to the transfer and assignment of development rights under the DA consistent with this Resolution and its basic purposes; and be it further

RESOLVED: That all documents necessary to effect the consent to the partial assignment and assumption of the DA related to Parcel B and the assignment and transfer of the development rights under the DA with regards to Parcel B pursuant to this Resolution shall be reviewed and approved by the City Attorney, and copies shall be placed on file with the City Clerk.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 2016

PASSED BY THE FOLLOWING VOTE:

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

NOES-

ABSENT-

ABSTENTION-

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