

# OAKLAND OVERSIGHT BOARD

## MEMORANDUM

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**TO:** Oakland Oversight Board                   **FROM:** Fred Blackwell  
**SUBJECT:** Approval of Oakland Army Base Disposition                   **DATE:** December 20, 2012  
   **ITEM:** #

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### **EXECUTIVE SUMMARY**

The Oakland Redevelopment Successor Agency (“ORSA”) is requesting approval from the Oakland Oversight Board of: (1) ORSA’s action approving the disposition of the former Oakland Army Base (“OARB” or “Army Base”) to the City to develop public infrastructure and lease portions to Prologis CCIG Oakland Global, LLC, in accordance with the Lease Disposition and Development Agreement and related agreements (“LDDA”) to construct the public infrastructure and lease for development a mixed-use project on approximately 130 acres of former Army Base (“OAB Project”) and (2) ORSA’s plan to obtain State Lands Commission approval of the transfer of Parcel E (defined below) to the City and enter into a Quitclaim Agreement with the City to quitclaim ORSA’s interest, if any, in the remainder of the OARB. ORSA is seeking approval of these dispositions now because failing to approve them now and deferring the approval until the long-range property management plan is approved under AB 26/AB 1484 will render the OAB Project infeasible and will mean the loss of millions of dollars in state grant funds and private investment funds, defeating the ability of the taxing entities to reap the benefit of millions of dollars in increased annual real property tax revenues, as well as other projected tax revenues and causing defaults under the remediation and reinvestment enforceable obligations to the State and Federal government, as described below.

In 2003, to enable local economic redevelopment and ease the economic hardship on the local community caused by base closure, the U.S. Department of the Army (“Army”) transferred via a No-Cost Economic Development Conveyance (“EDC”) 366 acres of the former Army Base to the Oakland Base Reuse Authority (“OBRA”), a joint powers authority composed of the City, the Redevelopment Agency of the City of Oakland (the “Redevelopment Agency”), and the County of Alameda. The terms of the conveyance were set forth in the EDC Memorandum of Agreement (“EDC MOA”) and the Environmental Services Cooperative Agreement (“ESCA”) with the Army and the Consent Agreement with the State of California (together, the “EDC Agreements”). In return for the OARB, OBRA agreed to complete the environmental remediation of the property, and to use all proceeds received during the Reinvestment Period from the sale, lease, use, exchange or other disposition of the OARB (“EDC Property Proceeds”) toward the economic redevelopment of the former Army Base. No Redevelopment Agency funds were expended in obtaining the OARB.

The Reinvestment Period commenced with the conveyance of the OARB to OBRA in 2003 and expired in August 2012. All amounts of the EDC Property Proceeds that had not been reinvested

at the end of the Reinvestment Period would be payable to the Army. In 2006, OBRA's assets, liabilities, rights and obligations, including OBRA's obligations under the EDC Agreements, transferred to the Redevelopment Agency as OBRA's successor in interest, and the Redevelopment Agency took on the redevelopment and remediation activities required by the EDC Agreements. On September 24, 2010, the Redevelopment Agency submitted to the Army a Reinvestment Plan that committed EDC Property Proceeds to the completion of environmental remediation, master planning, CEQA documentation, site preparation, and infrastructure development, and a schedule for completion. Proceeds encumbered for these long-term improvements are considered as reinvested even though the funds may be disbursed after the Reinvestment Period has expired.

In the face of pending legislation (AB 26) that would require the Redevelopment Agency to dissolve and dispose of all of its assets in a fire sale, to continue to meet the enforceable obligations stemming from the EDC and the need to continue redevelopment activities, on March 3, 2011, the Redevelopment Agency and the City appropriately entered into a Purchase and Sale Agreement ("Agency-City PSA"), approved by City Council Ordinance No. 83254 C.M.S. and Redevelopment Agency Resolution No. 2011-0025 C.M.S. (the "Agency-City PSA"), whereby the Redevelopment Agency agreed to sell and convey portions of the OARB to the City under its own auspices, and the City agreed to accept assignment of all agreements related to the property. On January 31, 2012, the City closed escrow on the transaction per the Agency-City PSA and took title to the Redevelopment Agency-owned portions of the OARB and assumed all of the Redevelopment Agency's rights and obligations under the EDC Agreements with respect to the OARB.

On October 23, 2012, the City entered into a Lease Disposition and Development Agreement and related documents ("LDDA") with Prologis CCIG Oakland Global, LLC ("Prologis"), authorized by City Council Ordinance 13131 C.M.S. and ratified and approved by ORSA Resolution 2012-006, for the lease and development of a mixed-use project on approximately 130 acres of the former OARB ("OAB Project"). (The City Council Report, including the site plan for the OAB Project is attached as **Attachment A** to this report and the Ordinance and Resolution are attached as **Attachments B** and **C**.) While most of the property within the OAB Project area is land that transferred from the Redevelopment Agency to the City, Parcel E, an approximately 16.7-acre shoreline strip of land in the OARB, is owned by ORSA. This parcel is Public Trust land that was patented to the Redevelopment Agency through the Oakland Army Base Title Settlement and Exchange Agreement. Any change in ownership is subject to the State Lands process. Due to the uncertain timeframe to effect a change in ownership, Parcel E remained with the Redevelopment Agency and was transferred to ORSA upon the dissolution of the Redevelopment Agency.

ORSA's approval and ratification of the LDDA is required for the development of Parcel E. While ORSA confirmed that ownership of the rights and obligations otherwise rest with the City, as a precautionary measure, ORSA's approval was secured for the rest of the OAB Project as well should all of the property in the project area be transferred to ORSA. There is the risk of such a transfer as a result of an order from the State Controller, per the Controller's clawback authority under the dissolution statute. While the Controller has not issued a clawback order for the Army Base property to date, the Controller's letter has generated uncertainty about the City's title to the Army Base property, thereby discouraging any title company from issuing a title policy for the property and hindering the City's ability to subdivide and develop the land and

meet its enforceable obligations to the Army and the State to complete remediation and redevelopment of the property. Staff recommends adoption of the proposed legislation securing Oversight Board approval of the LDDA in order to move forward with the deal and allow the City to satisfy its existing obligations stemming from the EDC Agreements. Given the approval of the Oversight Board and the following concurrence of the State Department of Finance, it is the intent of the City to have ORSA quit claim its interest in the OARB, thereby clearly vesting title in the City. The City will subsequently also work with the State Lands Commission to vest the 16.7 acre shoreline strip of land with the City.

The LLDA is critical to the redevelopment of the OARB and to the economic growth of Oakland and the region. The LDDA helped the City preserve an allocation of \$242.1 million from the Proposition 1B Trade Corridor Improvement Fund (“TCIF”), and offers to provide up to \$172 million in private investment as match funding for the TCIF monies. The City anticipates that development resulting from the LDDA will bring \$3,000,000 per year in lease and participation revenues, and create 1,840 – 2,330 jobs on-site and an additional 3,140 – 4,225 jobs throughout the region. Depending on the build-out program, the completed development is estimated to generate between \$1.68 million to \$2.90 million in property taxes for the taxing agencies.

## **OUTCOME**

Future investment depends on the removal of ambiguity with respect to the City’s title to the property. Approval of the proposed legislation moves the City closer to having clear title to the OARB property and enables the City to proceed with a development that will generate significant financial benefits for the taxing agencies from property taxes, business license taxes, sales taxes, and utility taxes.

## **BACKGROUND/LEGISLATIVE HISTORY**

### **Development Requirements**

When the Department of Defense Base Closure and Realignment (“BRAC”) Commission recommended the OARB for closure in June 1995, OBRA was charged under BRAC law with planning and implementing the conversion of the former Oakland Army Base. OBRA undertook numerous planning processes to identify an economically viable direction for reuse of the OARB to meet Oakland’s economic and community development objectives. The planning culminated in the *Final Reuse Plan for the Oakland Army Base* adopted on July 31, 2002 (and amended in 2007 and 2012). The *Final Reuse Plan* contains a conceptual vision for the site and a broad policy framework for the site’s development, and it presents a menu of acceptable land uses that are meant to be refined based on market conditions and demands when the Army Base is ready to be developed.

As a result of the planning process and negotiations, 226 acres of the former Army Base were conveyed to the Port of Oakland (“Port”) for its Port Development Area (“PDA”), and 140 acres along with the 20-acre Subaru Lot, which was not part of the EDC conveyance, were conveyed to the Redevelopment Agency for its Gateway Development Area (“GDA”). The two areas constitute the OARB. In January 2008, following conveyance of the GDA, the Redevelopment Agency initiated an RFQ/RFP process to identify a master developer for the GDA. The process

resulted in the selection of AMB/California Capital Group (reorganized as Prologis/CCIG) and a development strategy for the GDA. Prologis proposed, and the Redevelopment Agency agreed, to align GDA development with the Port's operations and long-term expansion plans in order to leverage the opportunities and assets of the property, give the GDA regional or national reach, and better position it to obtain regional and national support.

On June 11, 2011, the Redevelopment Agency and the Port entered into a Cost Sharing Agreement which committed the Redevelopment Agency to invest up to \$32 million on eligible Trade Corridor Improvement Fund (TCIF) expenditures on the former Army Base in return for up to \$62 million of the Port's \$242.1 million TCIF allocation. Eligible expenditures include site remediation, planning and design, and construction of backbone infrastructure. On June 19, 2012, the City and the Port executed an Amended and Restated Cost Sharing Agreement which committed the City to invest up to \$54.5 million on TCIF eligible expenditures in return for up to \$176.3 million of the TCIF allocation.

Based on the Amended and Restated Cost Sharing Agreement, which identified the sources of funding that will provide the required match for TCIF funds, and the City's approval of the LDDA, which included CEQA clearance for development, on August 22, 2012, the California Transportation Commission ("CTC") amended its Project Baseline Agreement with the Port for the TCIF Program to include the City as a party and signatory to the agreement and to revise the project scope to reflect that the bulk of the TCIF allocation will be used by the City for site preparation and backbone infrastructure. Access to the TCIF funds depends on starting construction by the end of 2013 and demonstrating to CTC prior to that date that the stated match funding will be available. Most of the required match is coming from private investment, which will be secured when the City enters into ground leases. If the City is unable to resolve the title issue, the LDDA can be terminated, and we will not be able to enter into the ground leases and assure CTC of the financial feasibility of infrastructure improvements proposed for the OARB. Feasibility must be assured in time to enter into the design-build contract for the public infrastructure by June 2013 in order to commence the construction of the OAB Project by the TCIF grant statutory start date of December 31, 2013. If the LDDA is terminated, the TCIF monies will be lost (a net loss of \$120 million to the City and the \$172 million in private investment ).

### **Reinvestment and Redevelopment Obligations**

The EDC MOA required OBRA (and subsequently the Redevelopment Agency) to reinvest all EDC Property Proceeds during the Reinvestment Period toward the economic redevelopment of the OARB. The proceeds can only be reinvested in specified uses, which include the following:

- (1) Road construction
- (2) Transportation management facilities
- (3) Storm and sanitary sewer construction
- (4) Police and fire protection facilities and other public facilities
- (5) Utility construction
- (6) Building rehabilitation
- (7) Historic property preservation
- (8) Pollution prevention equipment or facilities

- (9) Demolition
- (10) Disposal of hazardous materials generated by demolition
- (11) Landscaping, grading, and other site improvements
- (12) Planning for or the marketing of redevelopment and reuse of the former OARB
- (13) Environmental remediation
- (14) Relocation of the Homeless Collaborative
- (15) Acquisition of the Subaru Lot

The Army has performed annual audits to ensure proper use of the funds and progress with redevelopment activities. Proceeds that have been encumbered for improvements will have to be returned to the Army if the City cannot demonstrate progress with redevelopment of the OARB.

## **Environmental Obligations**

To address environmental contamination from past Army Base activities and older industrial uses, OBRA commissioned a Remedial Action Plan and Risk Management Plan (“RAP/RMP”), which was approved by California’s Department of Toxic Substances Control (“DTSC”) in 2002. To complete the transfer, the State of California entered into a Consent Agreement with the OBRA and the Redevelopment Agency on behalf of the City in 2002, and the Governor issued a Finding of Suitability to Transfer. The Consent Agreement requires implementation of the RAP/RMP and includes a DTSC-approved Covenant to Restrict Use of Property (“CRUP”). Together the EDC Agreements establish the cleanup goals, reporting procedures, and schedule for cleanup; restrict the uses of OARB property; and are binding on eventual developers and future owners of the property.

The former Army Base is currently being remediated under a joint City-Port program to commercial and industrial standards under the RAP/RMP. These procedures were designed with site development in mind, so the most costly RMP projects remain to be mitigated as part of the master site preparation mobilization effort to be performed by the City as part of the public infrastructure construction under the LDDA. While the closure of some RMP locations may be deferred due to unforeseen considerations, the ESCA and Consent Agreement generally require all identified site-specific RMP sites to be closed by July 31, 2013.

In June 2003, OBRA, the Redevelopment Agency, the City and the Port of Oakland entered into a Memorandum of Agreement for Oakland Army Base. The agreement, which was amended and restated in February 2008 (“ARMOA”), memorializes each party’s responsibilities with respect to the OARB conveyance and redevelopment program. Although the Army provided \$13 million in ESCA funds for the remediation of the OARB, the parties acknowledged and agreed in the ARMOA that \$13 million would be insufficient for all the costs associated with remediation, and that up to \$11.6 million would be needed to cover the anticipated shortfall. In 2010, as the ESCA funds were nearing depletion, the Redevelopment Agency established the Joint Environmental Remediation Account Fund (“JERAFF”) by way of Redevelopment Agency Resolution 2010-0049 C.M.S. to be able to continue remediation activities. The parties each agreed to contribute up \$5,741,477 to the JERAFF in \$500,000 increments.

While the Port is a partner in the cleanup of the OARB, under the ESCA, the ultimate responsibility for completing environmental remediation activities and achieving regulatory

closure rests with OBRA and its designated successor. This obligation survives without regard to the potential for portions of the OARB to be transferred to future owners or tenants.

## **COST SUMMARY/IMPLICATIONS**

To understand the implications of the LDDA to the taxing entities, Keyser Marston Associates (“KMA”) evaluated the annual property tax revenues and economic impacts that would be generated by the OAB Project. (KMA analyzed three alternative development scenarios:

**Scenario 1:**

Completion of the OAB Project -in accordance with the LDDA

**Scenario 2:**

Completion of the entire Oakland Global program, including the Port Logistic area and the Seventh Street grade separation improvements, which would be enabled by the LDDA

**Scenario 3:**

Maintaining the status quo with no project moving forward and retention of existing tenants which are predominately storage and trucking related and generate a nominal amount of property taxes.

Projected economic benefits are as follows:

**Scenario 1:**

\$1.7 million in local property taxes

1,840 full-time permanent on-site jobs

3,140 to 4,225 indirectly supported jobs throughout the region

annual payroll of approximately \$228 million for on-site jobs and induced jobs

approximately \$909 million in gross receipts for on-site and induced economic activity

**Scenario 2:**

\$2.9 million in local property taxes

2,335 full-time permanent on-site jobs

4,980 to 6,560 indirectly supported jobs throughout the region

annual payroll of approximately \$302 million for on-site jobs and induced jobs

approximately \$1,217 million in gross receipts for on-site and induced economic activity

**Scenario 3:**

\$0.03 million in local property taxes

500 full-time permanent on-site jobs

460 indirectly supported jobs throughout the region

annual payroll of approximately \$40 million for on-site jobs and induced jobs

approximately \$140 million in gross receipts for on-site and induced economic activity

The complete analysis is attached as ***Attachment D***.

The analysis clearly demonstrates the economic benefits the OAB Project will bring to Oakland and to the region. In order to move forward with the Project, the Oakland Redevelopment

Successor Agency (“ORSA”) requests the Oversight Board’s approval of the disposition of the Army Base to the City to implement the LDDA and satisfy the enforceable obligations to the federal government and the State of California.

Respectfully submitted,

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Fred Blackwell,  
Assistant City Administrator

***Attachment A:*** Prior City Council Report and OAB Project site map

***Attachment B:*** Adopted Ordinance regarding the OAB Project

***Attachment C:*** Adopted ORSA Resolution regarding the OAB Project

***Attachment D:*** KMA Evaluation of the OAB Project’s Property Tax and Economic Impacts