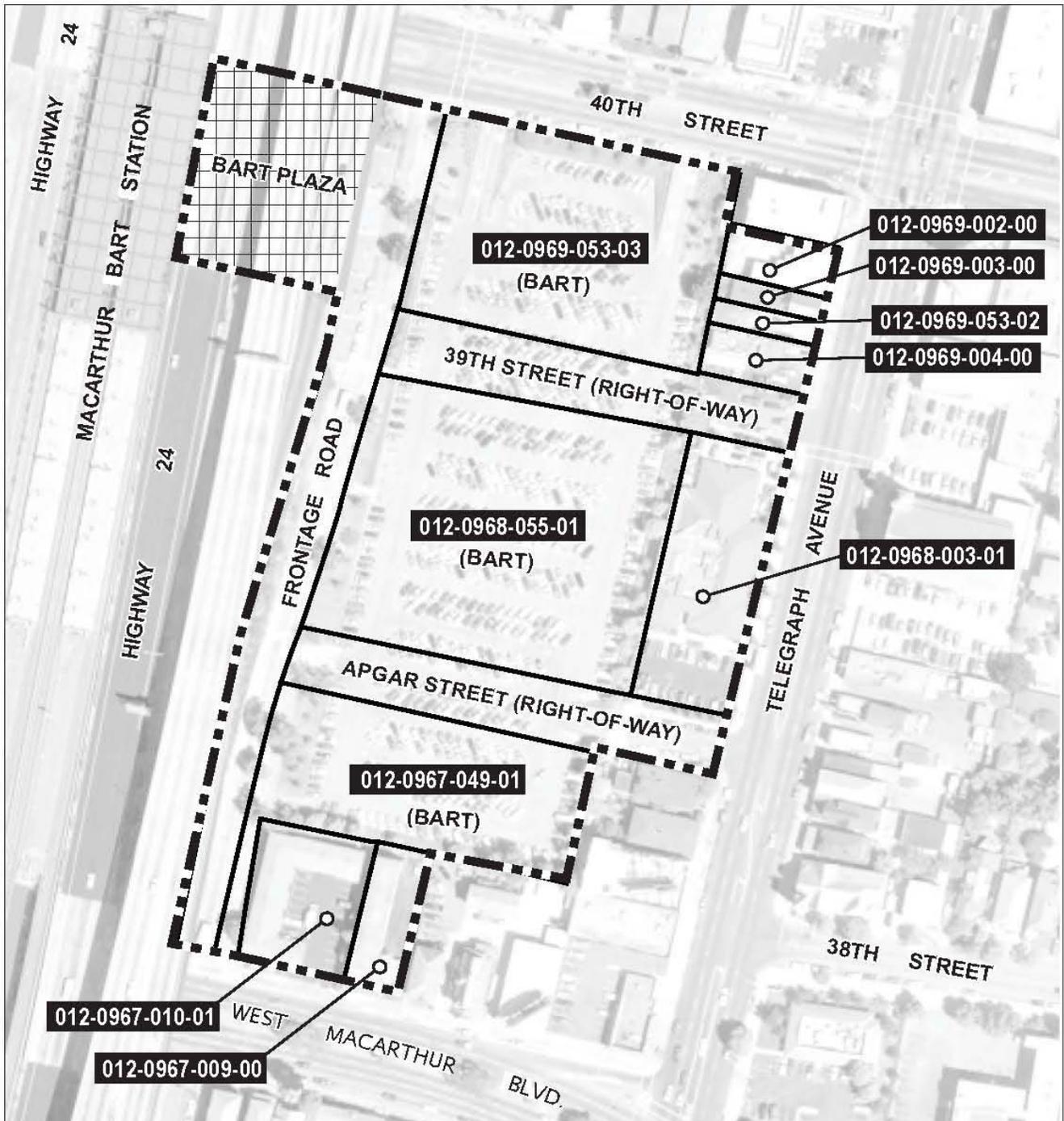


| | |
|-------------------------------------|--|
| Location: | Multiple parcels immediately adjacent to the MacArthur BART Station; on the west side of Telegraph Avenue Street between 40th Street and West MacArthur Boulevard (see map on reverse) |
| Assessors Parcel Numbers: | 012-0969-053-03, 012-0968-055-01, 012-0967-049-01, 012-0969-002-00, 012-0969-003-00, 012-0969-053-02, 012-0969-004-00, 012-0968-003-01, 012-0967-009-00 & 012-0967-010-00 |
| Proposal: | Recommend to the City Council approval of a Development Agreement (In July 2008, the City Council certified the EIR, and adopted a Rezoning, Zoning Text Amendment, PUD, Design Review, CUP and Tree Removal Permits for the MacArthur Transit Village Project, based upon a recommendation from the City Planning Commission) |
| Applicant: | MacArthur Transit Community Partners (MTCP) |
| Contact Person | Joseph McCarthy (510) 273-2009 |
| Owner: | Multiple property owners |
| Planning Permits Required: | Development Agreement |
| General Plan: | Neighborhood Center Mixed Use |
| Zoning: | S-15 Transit Oriented Development Zone |
| Environmental Determination: | Reliance on previously certified EIR and no further CEQA review is required. |
| Historic Status: | No CEQA historic resources are affected by the project; none of the existing buildings on-site are considered CEQA historic resources and none of the buildings on the project site are within, or are contributors to, a historic district. |
| Service Delivery District: | Service District 2 |
| City Council District: | 1 |
| Status: | Pending |
| Action to be Taken: | Take public testimony and issue decisions/recommendations |
| Staff Recommendation: | Recommend to the City Council approval of a Development Agreement Approval subject to attached findings and conditions of approval |
| For Further Information: | Contact the case planner, Charity Wagner , at (415) 730-6718 or by e-mail at clwagner@rrmdesign.com |



SUMMARY

Staff is recommending the Planning Commission forward to City Council a recommendation to approve an ordinance authorizing the City Administrator to enter into a Development Agreement (DA) with MacArthur Transit Community Partners, LLC to extend the vesting permit life of the MacArthur Transit Village project in exchange for certain community benefits (see summary of major DA deal points below).

The Commission's action on this item is a recommendation to the City Council. Such recommendations of the Planning Commission would be automatically forwarded to the City Council for hearing and action. These actions are currently scheduled for review by the CED Committee on June 23, 2009 and it is expected that the City Council will hold public hearings to consider the items on July 7, 2009 (first reading of ordinance) and July 21, 2009 (second reading of ordinance).

BACKGROUND

Since 1993, the City has been working with BART and the MacArthur BART Citizens Planning Committee ("CPC"), comprised of community residents and representatives of neighborhood organizations, in a planning process for the development of the MacArthur Transit Village. The Agency selected a development team for this project in April 2004 through a competitive Request for Proposals process. The development team, MacArthur Transit Community Partners, LLC (MTCP), is a limited liability company that consists of a partnership between McGrath Properties (formerly known as Aegis Equity Partners) and BUILD (BRIDGE Urban Infill Land Development, LLC).

In early February 2006, MTCP submitted a development application to construct a mixed-use transit village including residential and commercial development with the majority of residential units located on the MacArthur BART surface parking lot and a few surrounding parcels (see map on page 2). MTCP worked closely with the Redevelopment Agency, Planning staff and the community to refine the proposal to address concerns raised through review of the application submittal. MTCP submitted a revised development application on October 6, 2007.

The Planning Commission reviewed and provided a favorable recommendation to the City Council for the first round of development permits for MacArthur Transit Village on June 4, 2008. This first round of approvals included certification of the MacArthur Transit Village Final EIR and approval of Rezoning, a text amendment to the S-15 Zone, a Planned Unit Development (PUD) Permit, a Major Conditional Use Permit, and Design Review.

On July 1, 2008, the City Council certified the Final EIR and approved the Rezoning, a text amendment to the S-15 Zone, a Planned Unit Development (PUD) Permit, a Major Conditional Use Permit, and Design Review per City Council Ordinance No. 12883 C.M.S.¹ and Resolution No. 81422 C.M.S.

The MacArthur Transit Village is an example of the City's strong support for development for mixed-use, housing/transit-oriented development at the City's BART stations. In addition to MacArthur BART, the City has multiple existing BART station development projects underway including: 1) West Oakland - units built and planned in the S-15 Transit District; 2) Lake Merritt - Specific Plan process currently underway; 3) Fruitvale - Phase I complete, Phase II EIR being prepared; and 4) Coliseum - Coliseum Garden Phases built, final phases approved and under construction.

Since the City Planning Commission and City Council approved this project last summer:

¹ City Council Ordinance No. 12833 C.M.S. was introduced on July 1, 2008 and adopted at the second reading of the ordinance on July 14, 2008.

- The project was awarded \$37.3 million dollars from the State’s Prop 1C grant program and MTCP is currently working to execute a contract with the State to utilize these funds.
- MTCP continues to work with BART to finalize the option agreement for the land and lease agreements for the affordable parcel and garage site.
- MTCP has completed option agreements on 5 of the adjacent properties and are in discussion on 2 others.
- MTCP has submitted for the first phase of review under the LEED ND Pilot Program
- City Staff and MTCP have negotiated this Development Agreement for consideration by the Planning Commission at this meeting (and the City Council on July 7, 2009)
- The Redevelopment Agency and MTCP have negotiated an Owner Participation Agreement (which will be also be considered by the Agency on July 7, 2009).

PROJECT DESCRIPTION

The project site is located in North Oakland, within the area bounded by 40th Street, Telegraph Avenue, West MacArthur Boulevard, and State Route 24. The project site includes the BART parking lot, the BART plaza, Frontage Road between West MacArthur Boulevard and 40th Street, and seven privately owned parcels. The project area includes the majority of the block on Telegraph Avenue between West MacArthur Boulevard and 40th Street; however, several parcels within this block are not included within the project site (see map on page 2).

The MacArthur Transit Village project includes demolition of the existing BART surface parking lots and all existing buildings within the project site to allow for the construction of a new mixed-use, transit village development project. Below is a brief description of the development program that was approved by the City Council in July 2008:

- 624 residential units (516 market rate units and 108 below market rate units)
- 42,500 square feet of commercial/neighborhood serving retail space
- 5,000 square feet of community space (most likely to be used as a childcare center)
- 400 replacement parking spaces for BART in a new parking structure and a commitment to park an addition 110 BART patrons through either an expanded parking garage, shared parking, satellite lots, and/or attended parking in the garage

SUMMARY OF KEY DEVELOPMENT AGREEMENT TERMS

Following is a summary of key development agreement terms and conditions. A complete copy of the Development Agreement is included as Attachment A.

Term of Development Agreement

The DA would vest the right to develop the property for a 15 year term. The 15 year-term was established as a reasonable estimate of the time required to carry out the project, develop the project, and obtain the public benefits of the project. The DA also includes provisions for extension of the term should a development moratorium prevent, prohibit or delay the construction of the project or a lawsuit involving any such development approvals or permits is pending. (Section 2.2)

Vesting City Regulations & Fees

The DA vests the current City regulations and fees in place at the time of the adoption of the DA. New City regulations and fees enacted after the adoption of the DA shall not apply to the project, except for new health & safety regulations and new building & construction code regulations. The project shall be subject to increases in existing fees, but not new fees enacted after the adoption of the DA. (Sections 3.6 and 3.6.5)

Phasing

The DA commits the developer to the phasing plan shown in the following table. The phasing plan in the Development Agreement is different from the project conditions of approval (Condition of Approval 2). Condition of Approval 2 triggered timing from the date of the project entitlements, whereas, the DA triggers timing from the date of DA and OPA adoption. However, no changes are required to the conditions of approval. Staff anticipated that the phasing may be modified as part of the DA and included language in Condition of Approval 2 to ensure that should the DA phasing and construction timeframes shall supersede the condition of approval. (Section 3.3.3). The Phasing Plan is subject to a number of extensions, including without limitation the Developer and BART’s ability to execute a ground lease for the BART garage, the disbursement of Prop 1C funds, and delay in performance caused by war, flood, earthquake or other acts of God.

| Project Phase | Description | Commence Construction On or Before | Complete Construction On or Before |
|----------------------|--|---|---|
| 1 | Construction of Building E, the replacement BART parking garage with 5,000 square feet of commercial space, site remediation, Internal Drive, the Frontage Road improvements, and the portion of Village Drive that extends from the Frontage Road to the Internal Drive. | 2012 | 2014 |
| 2 | Construction of Building D, consisting of a minimum of 90 below market rate rental units. | 2014 | 2016 |
| 3 | Construction of Building A, consisting of up to 213 ownership residential units and 23,500 square feet of commercial space. All street improvements, including the completion of Village Drive and any new traffic signals required by the project, will be completed in this phase. This phase will also include the completion of a public plaza directly across Frontage Road from the existing BART Plaza. | 2014 | 2016 |
| 4 | Construction of Building B, consisting of up to 132 ownership residential units and 5,000 square feet of commercial space. | 2019 | 2021 |
| 5 | Construction of Building C, consisting of up to 189 ownership residential units and 14,000 square feet of commercial space. This phase will also include the construction of a community center use on the ground floor of Building C. | 2021 | 2023 |

Community Benefits

West MacArthur Boulevard Underpass and Greenscape Improvements. Developer will fund 1.45 million toward design and implementation of improvements to include lighting, street furniture and improved sidewalks to increase safety and improve connection to Martin Luther King Jr. Way and west side of station and greenscape improvements along West MacArthur to the corner of Telegraph Avenue. Developer shall submit a plan showing said public improvements to City and Agency for review and approval prior to commencing construction. (Section 4.2(i))

Public Open Space Improvements. Developer to provide \$25,000 for improvements to Mosswood Park or Grove Shafter Park or for improvements to the “path of travel” between the Project and either park prior to issuance of building permits for Phase 3. Use of the funds for these improvements shall be subject to the discretion of the Redevelopment Agency. (Section 4.2(ii))

LEED certification. Developer shall obtain certification under the LEED-ND pilot program to at least a gold level and building certification under Buildit Green’s Green Point Checklist to a minimum of 70 points. Should the LEED-ND pilot program not become a certified LEED program, the Project shall still be required to incorporate the relevant energy and environmental design measures from the LEED-ND pilot program. (Section 4.2(iii))

Remnant Residential Permit Parking ("RPP") Funds. Should any of the \$150,000 required to fund an RPP program for the neighborhood (per Condition of Approval 21) not be utilized, all remaining fees shall be used to supplement the Community Benefits listed above. (Section 4.2(vi))

It should also be noted that as part of the project term sheet previously negotiated with the Redevelopment Agency, the project will also provide the following benefits: development of affordable housing (17% of the total unit count); compliance with the Agency’s Small/Local Business Enterprise, Local Employment, Apprenticeship, Prevailing Wage, First Source Hiring and Living Wage Programs; and execution of a Project Labor Agreement.

FINDINGS

Pursuant to Oakland Planning Code Sections 17.138.050 and 17.138.060, the City Planning Commission finds and determines the following:

- a) The Development Agreement contains all information required by State Law and by the Oakland Planning Code, including all information referenced in Chapter 17.138; and
- b) The Project is consistent with the General Plan and all applicable planning and zoning enactments; and
- c) The Development Agreement is desirable in order to facilitate the successful Project implementation; and
- d) The Project will have substantial economic and community benefits to the City, including generating permanent and construction jobs, providing housing, and revitalizing the Redevelopment Project Area; and
- e) The public safety, health, convenience, comfort, prosperity and general welfare will be furthered by the Development Agreement.

MINOR MODIFICATIONS

Staff requests that the Planning Commission authorize staff to make minor changes, clarifications and refinements to the proposed Development Agreement prior to submittal to the City Council. This may be required to clean up language, correct typing errors, or make other minor changes consistent with the Commission’s recommendations and to ensure consistency with relevant provisions of the Owner Participation Agreement. Though not anticipated, Staff proposes to bring any staff initiated significant or controversial changes back to the Planning Commission for further recommendation prior to submittal to the City Council.

ENVIRONMENTAL DETERMINATION

An Environmental Impact Report (“EIR”) was certified in 2008 for the MacArthur Transit Village project. There are no changes to the project, new information, or changes in circumstances that would result in new significant environmental impacts or substantially more severe impacts from those previously identified in the 2008 EIR. Therefore, no further environmental evaluation is required, and no Supplemental/ Subsequent EIR is needed pursuant to State CEQA Guidelines Section 15162. Moreover, the Mitigation Monitoring and Reporting Program approved in 2008 is still applicable.

CONCLUSION

Staff recommends that the Planning Commission forward a recommendation to the City Council to adopt the development agreement with MacArthur Transit Community Partners.

RECOMMENDATIONS:

1. Recommend to the City Council that they affirm the staff’s environmental determination;
2. Recommend to the City Council that they adopt the proposed Development Agreement.

Prepared by:



Charity Wagner
Contract Planner

Approved by:

GARY PATTON
Deputy Director of Planning and Zoning

Approved for forwarding to the
Planning Commission:

Walter Cohen
Director Community & Economic Development Agency

ATTACHMENTS:

[Attachment A: Master Development Site Plan](#)

NOTE: A copy of the Development Agreement was provided to the Commission under separate cover and is not attached hereto. Copies of the Development Agreement are available on the City’s website at: www.oaklandnet.com/government/ceda/revised/planningzoning/MajorProjectsSection/macarthur.html

and at City of Oakland Planning Division Planning and Zoning Division, 250 Frank H. Ogawa Plaza, Suite 3315, Oakland, CA 94612