



CITY OF HAYWARD
AGENDA REPORT

AGENDA DATE 12/12/06
AGENDA ITEM 5 (b)
WORK SESSION ITEM _____

TO: Mayor and City Council
FROM: City Manager
SUBJECT: Tax Exchange Agreement with the Alameda County Redevelopment Agency

RECOMMENDATION:

It is recommended that the City Council adopt the attached resolution authorizing the City Manager to finalize and execute a tax sharing agreement with the Alameda County Redevelopment Agency in connection with the Mt. Eden Annexation.

BACKGROUND:

The Mt. Eden unincorporated area includes five "islands" that are within the jurisdiction of Alameda County, but completely surrounded by the City of Hayward, located generally west of Hesperian Boulevard between West Winton Avenue and State Highway 92 (see map, attached). To determine the desirability and feasibility of annexing unincorporated lands in the Mt. Eden area into Hayward, the City initiated the Mt. Eden Annexation Study in the summer of 2003. As a result of that study, in 2004 the City Council authorized submittal of an application to the Local Agency Formation Commission to annex three of the five of the unincorporated islands: Saklan Road Island, Dunn Road Island and the Depot Road Island, which is commonly referred to as Phase 1. The other two islands (West-Mohr and Mohr-Depot) were initially considered for inclusion in the study area, but later dropped from the study area, due mainly to opposition to annexation expressed by residents. However, subsequent discussions with Supervisor Gail Steele, County staff and some residents in those islands indicated support for annexation of those islands. The Council agreed to process another annexation application at a later time for the two remaining islands, after adequate study and analysis is completed (i.e., Phase 2). All five islands are within Hayward's Sphere of Influence and Alameda County's Eden Area Redevelopment Project Area.

One of the main issues related to this annexation is identification of a funding source to pay for the cost to bring infrastructure up to City standards. The principal property owner, Dutra Enterprises, has agreed to provide financing to complete all the essential improvements in this area. Such improvements would entail the extension of new water and sewer mains, installation of new storm drain facilities, as well as construction of street improvements, including new curbs, gutters and sidewalks. Reimbursement of this financing to Dutra Enterprises would be accomplished through contributions by future developments based on establishment of a benefit district, or via tax increment funds that would be generated by future development in the area.

Phase 1

Staff, outside consultants and representatives from Dutra Enterprises and KB Homes have been working together to develop cost estimates for Phase 1 improvements, which is estimated to be \$9.5 million. Elsewhere on this agenda, the Council is being asked to authorize proceeding with the formation of a benefit district to fund sewer, water and storm drain improvements. Subtracting the cost of those improvements leaves a remainder of approximately \$7.2 million. Dutra Enterprises has agreed to advance up to \$6.9 million, with KB Home responsible for the difference.

Although the developers have agreed to advance the funds, the improvements are above and beyond what is associated with their project, which means that these improvements are not a direct obligation of the project. Consequently, the developers are entitled to be paid for this work. Over the last couple of years, City and County staff have been working together to identify a revenue source to reimburse the developers for these costs.

The agreement before you is the vehicle by which Dutra Enterprises and KB Homes are to be reimbursed. As noted above, the Mt Eden area is a County Redevelopment Project area, and annexation of the islands into the City will not alter this condition. As a result, tax increment funds will be generated as new development occurs. The County RDA has agreed to earmark new tax increment revenue, less the amounts related to 20% set-aside required by law to be used for housing, administrative costs, and required pass through to other agencies, to the City to reimburse the developers. This method means that the improvements can be funded at no direct cost to the City nor to residents of the area. Solving this funding challenge was critical to allowing the annexation application to move forward.

Phase 2

Assuming an application will be filed at a later date for the remaining two islands, staff also worked on identifying a way to fund the infrastructure improvements that will be needed in that area. Although smaller, the two islands have many of the same infrastructure problems. Correcting these problems will entail costs of approximately \$5 million. Unlike Phase 1 parcels, development opportunity here is limited. Thus, the prospect of identifying another applicant to advance funds is problematic. Consequently, discussions were initiated with Dutra Enterprises to ascertain its willingness to also provide funds to fund the improvements. Dutra Enterprises agreed to do so, but indicated it could only provide \$3.6 million. The County is willing to provide one-half of the difference, if the City will provide the other half. This would represent an obligation of \$700,000 to each agency. Again, the Dutra Enterprises contribution would constitute an advance for which reimbursement is expected. Likewise the County and City portions would be an advance, a loan if you will, subject to repayments. This tax sharing agreement contemplates and provides for this reimbursement.

As noted, new tax increment revenue will be generated as a result of the KB development already approved by the City. Additional development opportunities within the Phase 1 islands will generate additional tax increment revenue as well. For Phase 2, this is not likely, so where

will the additional funds come from to pay for those improvements? The Russell City Energy Center is proposed to be constructed on lands within the City. However, about 20% of the improvements will be sited in the Depot Island. Although this will become part of the City if the annexation is approved, the island will remain within County Redevelopment. As a result, this will generate sufficient tax increment revenue to meet the obligations associated with Phase 2 infrastructure improvements. (Contractually, RCEC will also pay an amount equivalent to the property taxes it would have paid the City if the Depot Island were not within County Redevelopment.)

Additional Agreement Highlights

As described above, tax increment revenue projections indicate that sufficient funds will be generated in the aforementioned islands to pay for needed infrastructure improvements. The agreement also provides other important features which I would like to highlight.

The City has identified a project to extend Whitesell to Cabot to improve circulation into and out of the industrial area. Under this tax sharing agreement, the City will be reimbursed up to \$10 million for the cost of these improvements, via receipt of tax increment revenue.

Under redevelopment law, a project area is obligated to produce a certain amount of affordable housing in relation to the number of market rate housing constructed. The agreement acknowledges this, and notes that the County will be entitled to receive credit in two ways. It will be entitled to receive credit for up to 38 units in the Saklan project and for up to 100 moderate units as a result of new market rate development. It is expected that units that are built as a result of compliance with the City's inclusionary housing units will yield the needed units.

Redevelopment law includes a provision requiring jurisdictions which normally receive a portion of the property tax dollar to continue to receive it following creation of a redevelopment project area (called pass-through payments). The rate of distribution is established by formula, and generally is small in the early years and then increases in later years. In the case of the Mt. Eden area, because the islands were in the County and not in the City, the City never received a portion of the property tax dollar. Yet, if the islands are annexed, it could create a situation whereby the requirement for a pass-through payment is triggered. As written, the agreement calls for the City to waive receipt of pass-through payments. This is based on the fact that, on a cumulative basis, the amount of tax increment funds that will accrue to the City for public improvements will far exceed the amount the City could ever expect to receive via pass-through payments.

Concluding Remarks

The Mt. Eden islands represent one of the remaining vestiges of unincorporated islands within the boundaries of the City. For over a decade, various efforts have been initiated by both the City and County to find a solution that would allow the islands to be annexed into the City, without creating a cost burden to the residents or public agencies. Although it has taken a considerable amount of time to find a solution, the agreement before the Council represents such a solution. It allows orderly development to occur, it provides for the construction of needed public

improvements, and it provides a revenue stream to pay for them. On balance, it is beneficial to the residents as well as the City and the County. Its approval is therefore recommended.

The Board of Supervisors is to consider the agreement at its December 19 meeting. Assuming both agencies approve the agreement, following its execution it will be forwarded to LAFCO. The annexation application is expected to be heard by LAFCO in early February.

Owing to the length of the agreement it is not attached, but a copy is on file with the City Clerk's office.

A handwritten signature in black ink, appearing to read "Jesús Armas", written over a horizontal line.

Jesús Armas
City Manager

Attachment

**DUE TO THE LENGTH OR COLOR
OF THE REFERENCED EXHIBIT,
IT HAS BEEN ATTACHED AS A
SEPARATE LINK.**

DRAFT

HAYWARD CITY COUNCIL

RESOLUTION NO. _____

Introduced by Council Member _____

me
12/8/00

RESOLUTION AUTHORIZING TAX SHARING AGREEMENT
WITH THE ALAMEDA COUNTY REDEVELOPMENT
AGENCY AND THE COUNTY OF ALAMEDA IN
CONNECTION WITH MT. EDEN ANNEXATION

WHEREAS, the Mt. Eden unincorporated area includes five "islands" that are within the jurisdiction of Alameda County, located generally west of Hesperian Boulevard, between West Winton Avenue and State Route 92; and

WHEREAS, these five islands are all within the County of Alameda's Eden Area Redevelopment Project Area; and

WHEREAS, Dutra Enterprises, the principal property owner in the Saklan Road island area, has agreed to provide financing to complete the essential public improvements in the island areas, including water and sewer mains and the installation of new storm facilities, as well as construction of street improvements, including new curbs, gutters and sidewalks, beyond that which would be required for its own development projects; and

WHEREAS, reimbursement to Dutra Enterprises of this financing for the additional public improvements would be accomplished through contributions by future developments based on establishment of a benefit district or via tax increment funds generated by future development in the County's Eden Area Redevelopment Project Area; and

WHEREAS, a proposed Mt. Eden Sub-Area Annexation and Public Improvements Agreement (the "Agreement") by and among the City of Hayward (the "City"), the County of Alameda (the "County"), and the Redevelopment Agency of the County of Alameda (the "County RDA") provides, among other matters, for the County RDA to reimburse to the City and the County the costs to acquire right-of-way for, design, and construct specified public improvements in and of benefit to the Mt. Eden Sub-Area of the Eden Area Redevelopment Project (the "Mt. Eden Sub-Area Public Improvements Costs"); and

WHEREAS, the County RDA proposes to provide reimbursement to the City and County of the Mt. Eden Sub-Area Public Improvements Costs pursuant to authority granted under Health and Safety Code Section 33445(a); and

WHEREAS, in connection with its approval of the Agreement, the City Council,

as the legislative body of the City, desires to make the findings set forth below in this resolution in accordance with the requirements of Health and Safety Code Section 33445(a), as interpreted by the court case of Dave Meaney v. Sacramento Housing and Redevelopment Agency (13 Cal.App. 4th 566, 1993).

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Hayward that, based on the information and analysis contained in the recitals to this resolution and in the accompanying staff report, and in accordance with Health and Safety Code Section 33445(a), the City Council hereby finds as follows:

1. That the buildings, facilities, structures or other improvements are of benefit to the project area or the immediate neighborhood in which the project is located; and
2. That there are no other reasonable means available to the community, including the City and the private sector, of financing the ultimate Mt. Eden Sub-Area Public Improvements Costs, except for the proposed long-term funding by the County RDA as provided in the Agreement; and
3. That the payment of the funds for the acquisition of land or the cost of buildings, facilities, structures or other improvements will assist in the elimination of one or more blighting conditions inside the project area or provide housing for low- or moderate-income persons and is consistent with the implementation plan adopted pursuant to Health and Safety Code Section 33490.

BE IT FURTHER RESOLVED by the City Council of the City of Hayward that the City Manager is authorized to finalize and execute the proposed Mt. Eden Sub-Area Annexation and Public Improvements Agreement and any and all related documents, in a form to be approved by the City Attorney.

IN COUNCIL, HAYWARD, CALIFORNIA _____, 2006

ADOPTED BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS:

MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ATTEST: _____
City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward