



DATE: June 21, 2016

TO: Mayor and Members of the City Council

FROM: Andrea Ouse, Community and Economic Development Director
Kathleen Diohep, Economic Development Manager
Alea Gage, Economic Development Project Manager

SUBJECT: ADOPT RESOLUTIONS 1) APPROVING AND AUTHORIZING EXECUTION OF A FIFTH AMENDED AND RESTATED WATERFRONT DISPOSITION AND DEVELOPMENT AGREEMENT (FIFTH RESTATEMENT) AND 2) ACCEPTING A RELEASE OF HISTORIC RESERVATIONS ON TITLE ON THE NORTHERN WATERFRONT TITLE FROM THE FEDERAL GOVERNMENT

RECOMMENDATION

Adopt resolutions 1) approving and authorizing execution of a Fifth Amended and Restated Waterfront Disposition and Development Agreement (Fifth Restatement) and 2) accepting release of deed reservations on the Northern Waterfront title from the federal government.

REASONS FOR RECOMMENDATION

The City of Vallejo considers economic development among its highest priorities. This City-owned Waterfront property is instrumental to achieving the City's objective of focusing future growth in the Downtown/Waterfront District and to foster the Waterfront as a vibrant, mixed use and transit-oriented environment.

The Waterfront Project is governed by a Disposition and Development Agreement (DDA), a real estate contract between the City and Callahan Property Company (the Developer). The City Council approved the Fourth Amended and Restated Waterfront Disposition and Development Agreement (Fourth Restatement) on December 16, 2013, which called for the negotiation of a subsequent DDA to facilitate revitalization of the waterfront and reduce City liabilities.

An obstacle to development of the Northern Waterfront is a historic Quitclaim Deed from the federal government recorded on title to a portion of that site, which reserves a right of re-entry for the federal government under a national emergency. The General Services Administration has agreed to release all reservations in the Quitclaim Deed, helping the City to meet its obligation for clear title of the Northern Waterfront. The City Council must accept the release of reservations on title by resolution.

BACKGROUND AND DISCUSSION

EXECUTIVE SUMMARY

Since 2000, the Waterfront DDA has outlined the process to realize redevelopment of the Waterfront area to accomplish the following objectives:

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- Revitalization of Vallejo's waterfront area and, in conjunction with the Downtown Specific Plan, help to revitalize the adjacent historic downtown
 - Revitalization is financially feasible
 - The waterfront and downtown regain their historic place as the cultural heart of the community
 - The waterfront and downtown are revitalized with quality development that is pedestrian- and transit-friendly and that includes higher-density commercial, office and residential uses with innovative public spaces for cultural and recreational activities

In 2013, the City Council approved the Fourth Restatement, which modified the DDA to address the loss of redevelopment in California and recognized the need to renegotiate the terms to reflect the approach for moving development forward. The proposed Fifth Amended and Restated Waterfront Disposition and Development Agreement (Fifth Restatement) revises the terms of the real estate transaction for the Waterfront sites by: 1) reducing City obligations to reflect the loss of redevelopment and recognizes the City's financial capacity and 2) establishing defined contract performance obligations. However, the proposed Fifth Restatement does not affect or modify the current Waterfront Project land use entitlements, including the Waterfront Planned Development Master Plan (PDMP).

The primary terms of the proposed Fifth Restatement, ATTACHMENT 3, are summarized below:

- **SITE:**
 - Northern Waterfront is east of the municipal marina between Mare Island Way and the Mare Island Causeway
 - Central North (also known as Parcel J) is the block north of Georgia Street west from City Hall and the JFK Library to Mare Island Way
 - Central South (also known as Parcel L) is the block south of Georgia Street where the United States Postal Service facility and the Vallejo Station Parking Garage are located
 - Removed sites that were not subject to Developer obligations
- **TERM:** Term ends on December 31, 2020. Developer has opportunity to pay for two 1-year extensions.
- **PRICE:** Fair market value at the time of unit plan submission. The Developer's deposits under previous DDAs and future funding of the City's third party costs are pre-payments towards the purchase of any private development parcel.
- **SITE CONDITION & PUBLIC IMPROVEMENTS:** The Developer is responsible for:
 - Remediation of any hazardous materials in the Central Waterfront North and Central Waterfront South Zones
 - Extraordinary conditions, such as need for foundation systems or increasing site elevations
 - Specified public improvements and infrastructure required by the PDMP. Per California law, the Developer can receive impact fee credits for infrastructure or public improvements beyond what is required to mitigate the impacts of the Project.

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- PHASE B GARAGE: The City and Developer will pursue a design that attracts transportation-related grant funds and enhances the pedestrian environment of the Central Waterfront Zones. Private development in Phase B of Vallejo Station (contemplated as vertical subdivision in the PDMP) is not guaranteed.

- DEFAULT & TERMINATION:
 - Distinct Scope & Schedule for each zone establishes City and Developer tasks and obligations as well as a timeline.
 - To facilitate bringing in partners into each, the Developer can default in one zone while maintaining rights to purchase another.

ORGANIZATION OF REPORT

The staff report and attachments herein provide an overview of the Fifth Restatement, including its relationship to the previous DDAs, existing plans and related agreements in place and how it facilitates realization of the Waterfront Project. In particular:

- The staff report presents the key terms, reasons for amending the DDA with Callahan Property Company and the next steps for implementation.
- Attachment 1 encompasses the resolution needed to execute the Fifth Restatement.
- Attachment 2 is comprised of the resolution clearing claims on the Northern Waterfront title and two exhibits: a) the 1960 quitclaim deed with the City of Vallejo resolution accepting roughly six acres on the Northern Waterfront and b) the proposed release of deed reservation to be executed following the City Council's adoption.
- Attachment 3 provides a summary of terms of the agreement.
- Attachment 4 compares the major provisions of the Fourth and Fifth Restatements.
- Attachment 5 provides the full text of the Fifth Restatement, including the "Scope and Schedule for Property Disposition and Development" for each zone, outlining the City and Developer's obligations and the activities necessary to implement the Waterfront Project.

Finally, the City's website includes a dedicated webpage to the Waterfront Project, providing additional information on the history of the project and the proposed development program under the PDMP. It can be accessed at: <http://www.cityofvallejo.net/cms/One.aspx?portalId=13506&pageId=1036631>. The DDA has been available for review on the Waterfront webpage since June 2, 2016. The City notified individuals who participated in previous community outreach activities related to the Waterfront Project, including members of the Vallejo Waterfront Coalition, veterans organizations, stakeholders of the Vallejo Station Parking Garage as well as tenants of City-owned land in the vicinity of the Waterfront Project, the Economic Vitality Commission, the General Plan Working Group, the Planning Commission and other interested parties.

FUNCTION OF A DDA

A disposition and development agreement (DDA) is utilized when a developer selected by a public agency to develop a site does not yet own or control the site in order to outline the process by which the developer will acquire the site. Typical DDA terms include:

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- The property to be purchased,
 - The purchase price,
 - The conditions to be satisfied prior to purchase (i.e. close of escrow), such as a financing plan showing commitments for construction and permanent financing and all land use approvals and building permits
 - The allocation of rights and obligations between buyer (developer) and seller (public agency), and
 - The timeline for each party to complete obligations and for the developer to take control of the site, including activities to clear title on the properties and land use and planning entitlements for the development itself.

For large parcels needing infrastructure and parcelization, a DDA typically functions to allow a Master Developer to conduct pre-development activities, primarily obtaining project entitlements, performing due diligence and purchasing the property. The Master Developer can create parcels and bring into partners for the vertical development of the property/properties. The Waterfront DDA was first executed in October 2000 and amended in 2002, 2003, 2004, 2005, 2007 and 2013.

OVERVIEW OF THE WATERFRONT PROJECT

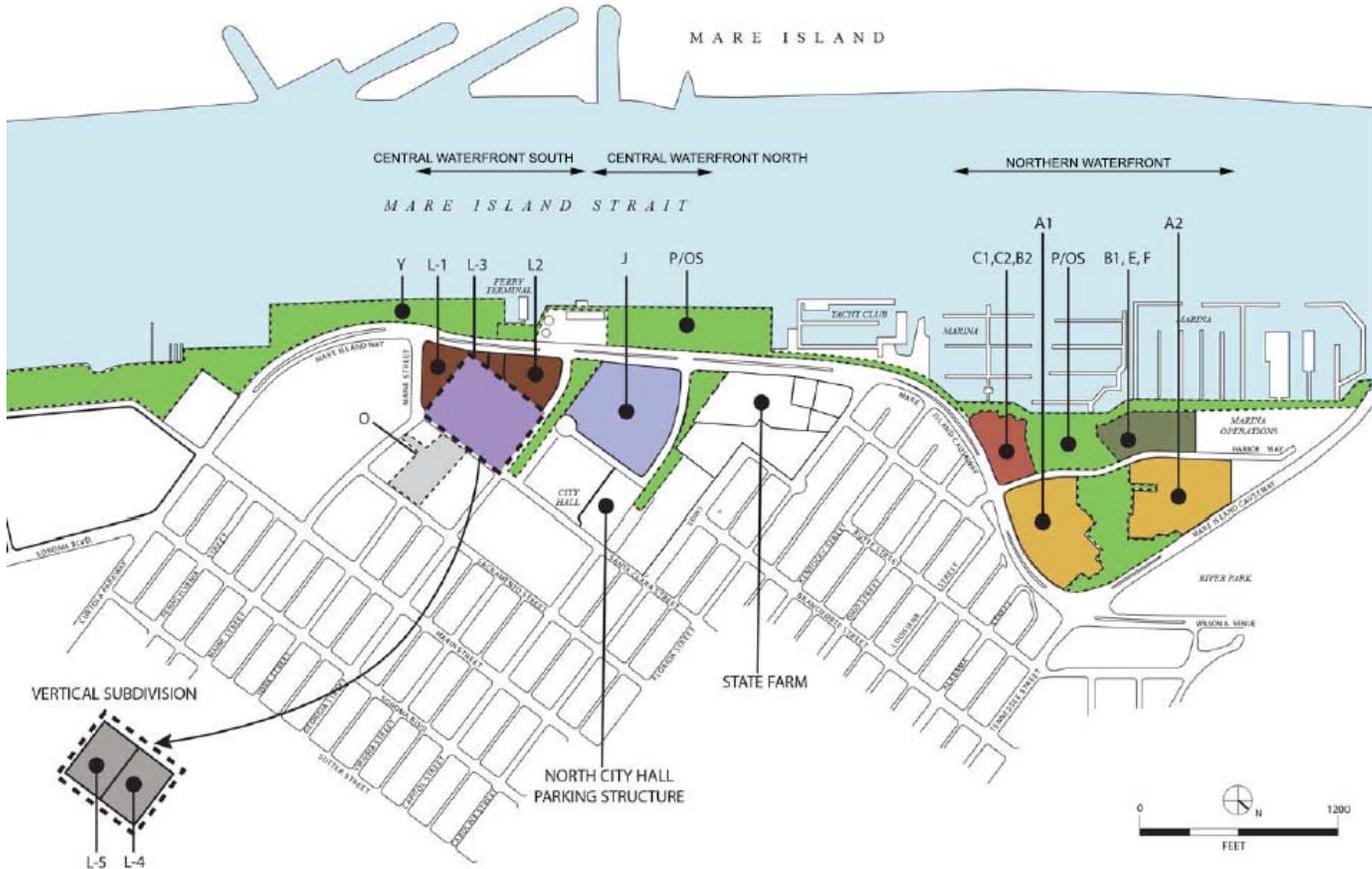
The Waterfront Project began in 1997 with an offering of 92 acres of City-owned land and the selection of a Master Developer, Callahan DeSilva Vallejo, LLC. The original DDA was with the former Redevelopment Agency. After several planning initiatives and two settlements (with the Napa-Solano Building Trades and the Vallejo Waterfront Coalition respectively), the project was stalled with the economic downturn in 2008. In 2011, shortly after the Dissolution Statutes eliminated redevelopment agencies, the DeSilva Group requested to divest and assign its interest to Callahan Property Company. The assignment was approved by the Successor Agency in December 2011 allowing Callahan Property Company to serve as master developer of the Waterfront Project. In 2013, the Fourth Restatement narrowed the Waterfront property to the property within the Northern and Central Waterfront areas (removing the Successor Agency-owned Southern Waterfront). See Figure 1 on the following page for a map of the areas subject to the Waterfront DDA.

As approved in 2007, the PDMP outlines a land use vision, involving the development of various retail, commercial, office and light industrial uses with the possibility of a combined hotel, conference/meeting center with a bar/restaurant and retail areas. The PDMP also includes medium and high density residential development, a bus transit facility and parking garage (the Vallejo Station Project) for the San Francisco Bay Ferry. The Vallejo Station and Waterfront Projects, as defined in the PDMP, are intended to revitalize the area with "quality development that is pedestrian and transit-friendly and that includes higher density commercial, office and residential uses with innovative public spaces for cultural and recreational activities" (page 4).

Since the adoption of the PDMP, incremental development consistent with the plan has taken place. This includes construction of the Vallejo Station Bus Transfer Facility on Parcel O completed in 2011, and Phase A of the Vallejo Station Parking Garage on Parcel L providing 750 of the 1,190 spaces for the San Francisco Bay Ferry, completed in June 2012. Further, fee title to the Post Office site located at 485 Santa Clara Street and part of Parcel L was acquired by the City on July 22, 2010. Construction of a new location of the United States Postal Service facility is currently underway with their relocation anticipated in fall 2016, freeing up the site purchased by the City for construction of Phase B of the Vallejo Station Parking Garage.

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FIGURE 1: MAP OF WATERFRONT PROJECT SUBJECT TO THE WATERFRONT DDA



CURRENT CONTRACT BETWEEN THE CITY AND CALLAHAN PROPERTY COMPANY

The 2013 Fourth Restatement revised the rights of the City and the Developer to accomplish the following major objectives:

- Eliminate the Redevelopment Agency’s obligation to fund approximately \$60 million of Waterfront Project public improvements and site improvements from future tax increment financing (pledging property tax revenue from the Waterfront Project Area to these improvements rather than allowing to flowing to the relevant taxing entities), to recognize the City’s financial position. The Fourth Restatement established that no City general funds are committed to the Waterfront Project, a provision that continues in the Fifth Restatement.
- Remove the Successor-Agency owned Southern Waterfront Area, east of Mare Island Way to the shoreline from Curtola Parkway to Solano Avenue, totaling 42.3 gross acres from the Waterfront DDA, thereby allowing those development parcels in the Southern Waterfront to remain under the Successor Agency’s jurisdiction until a cleanup of the site is completed.
- Cause all remaining obligations of the Successor Agency to be transferred to the City, removing the Successor Agency as a party to any subsequent revisions of the DDA.

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Approved by the City Council on December 16, 2013, the Fourth Restatement obligated the parties to negotiate a subsequent amended and restated DDA to address the loss of redevelopment tax increment funding and changed regulatory and market conditions. As such, the parties agreed to toll and suspend all obligations in the previous DDAs pending execution of a subsequent DDA amendment (the Fifth Restatement) that was to include a new schedule of performance and updated obligations for both parties.

Proposed Fifth Restatement

The Fifth Restatement sets a course for advancing the Waterfront Project that considers its complexity, while keeping intact the planning environmental documents of the Waterfront Project. The Fifth Restatement does not itself represent a change to the PDMP for the Waterfront Project, but rather sets forth the price, term (length of time) and process to accomplish the project.

Staff's negotiations resulted in the agreement described below. Staff and the Developer have worked in good faith to improve the clarity and function of the DDA, recognizing that unlike the former Redevelopment Agency, the City is in no position to fund remediation or significant public improvements. While the proposed Fifth Restatement supports the Developer in attracting investment and partnership, it also includes provisions that give the City more control and discretion to evaluate and approve transfer and assignment and gives the Developer a time-limited term to purchase the sites. ATTACHMENT 4 compares the provisions of the Fourth and Fifth Restatements in greater detail.

1. Existing planning approvals and legal agreements in place

The Fifth Restatement will not modify any existing plans, land use entitlements or legal settlements, but, understanding that the Developer may want to pursue modifications to existing plans in the future, sets up a process and timeline for revisiting the development program to improve its feasibility, re-engage the community and pursue high-quality, transit-oriented development. The following approvals and agreements remain valid under the Fifth Restatement:

Master Labor Agreement: Signed in November 2004, this agreement between the Developer and the Napa-Solano Building and Construction Trades Council and its affiliated local trade unions specifies that local union labor will be utilized for the construction of all the Developer Parcels within the Northern, Central and Southern Waterfront areas with due consideration for the protection of labor standards, wages and working conditions.

Waterfront Planned Development Master Plan & Design Guidelines (PDMP): Approved in March 2007, the PDMP represents the zoning and outlines key design criteria and districts of the Waterfront area.

The Settlement Agreement: With the execution of this agreement in November 2006, the Vallejo Waterfront Coalition withdrew its challenge to the Project's EIR. The provisions of this agreement are implemented in the PDMP and certified EIR. Under the Vallejo Waterfront Coalition Settlement Agreement, two public community design workshops are required to review and receive feedback on the architectural design of the residential product for the Northern and Central Waterfront. As such, those workshops are included in the "Scope and Schedule of Property Disposition and Development" for each Zone. Due to the intersections between the DDA's pre-development activities and the obligations of the Settlement Agreement, staff has kept the Vallejo

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Waterfront Coalition apprised of the negotiations of the Fifth Restatement.

Environmental Impact Report (EIR): The EIR made findings in accordance with the California Environmental Quality Act and was certified in 2005. Subsequent analysis was conducted after the Vallejo Waterfront Coalition's settlement action, and the EIR was finalized in April 2007 by Council action.

The Development Agreement: This agreement provides the Developer with a vested right to develop in accordance with the project approvals at the time of its execution in April 2007, including the General Plan land use designation and PDMP. The agreement expires in 2022.

The Transfer Agreement with WETA: Executed in May 2012, the agreement obligates the City to provide at least 1,200 parking spaces for ferry passengers. Phase A of Vallejo Station provides 750 spaces. The remaining spaces are currently provided by surface lots in the Central Waterfront North and Central Waterfront South Zones.

2. Three distinct zones and tracks

The implementation actions, product types, and potential partners for the three zones – Northern, Central North and Central South – are different. The Northern Waterfront requires specific regulatory approvals, due to the wetland areas present on the property and portions of the site being subject to the public trust doctrine and/or Bay Conservation & Development Commission (BCDC) jurisdiction. The Central Waterfront North Zone is expected to require substantial remediation of soil contamination, whereas the Central Waterfront South requires a lesser amount of remediation, but must be coordinated with the updated design and financing of Phase B of Vallejo Station, as described below. To reflect these different hurdles to development, the Fifth Restatement includes a separate "Scope & Schedule for Property Disposition & Development" with performance milestones and deadlines for each zone.

Due to the different development product types planned for the Northern and Central zones, they are likely to interest developers with different portfolios and expertise. Under the current DDA, the Developer is not well-positioned to attract partners who can delineate the provisions applicable to specific Developer parcels and clearly evaluate the potential risks and opportunities of investing in the project. Creating three tracks enables resolves this shortcoming and enables transfer by zone, while the transfer and assignment provisions ensure the City has the authority to approve transfers to a new developer before the close of escrow.

3. Process for revising the PDMP with opportunities for community input (including Developer sites and Vallejo Station)

Vallejo Station Parking Garage Phase B was planned for the area of the current USPS site provide parking to satisfy the City's obligation to WETA to provide up to 1,200 parking spaces for ferry passengers. In turn, the private development sites in the Central North and Central South Zones, which are being used as surface parking lots in order to fulfill the WETA obligation, would be available for private development. In addition, the PDMP and the most recent plans from 2010 included the opportunity for private development on vis-à-vis a vertical subdivision. Under earlier versions of the DDA, construction of the Vallejo Station Parking Garage required significant financial contributions from the RDA. Furthermore, the design developed in the PDMP

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reflected prior market conditions. In order to move forward with Phase B of Vallejo Station (and free up surface parking lots for development), refinements to the land use plan and garage design are needed to secure the needed grant funds and to attract the private sector capital required for the overall Central Waterfront project.

The Fifth Restatement does not revise any of the existing entitlements on the Project, but it does provide that the City will lead a process to evaluate options for improving the feasibility of the Project, particularly in the Central Zones with the goal of increasing the market feasibility of development, optimizing the value of the Central Waterfront and enhancing its urban design and transit- and pedestrian-oriented character. This planning process will also provide an opportunity to re-engage the community while implementing the vision of the “River & Bay City” developed during the General Plan process. An important goal of the Fifth Restatement is to ensure that the Vallejo Station Phase B garage and the surrounding private development are coordinated, but will be able to advance independent of one another.

4. Shift of City obligations

The Fourth Restatement required that the former RDA fund and perform any remediation of hazardous materials (anticipated in the Central Waterfront North and Central Waterfront South) and construct an array of open space improvements. With the dissolution of redevelopment, tax increment financing is no longer available to fund these obligations, and the City is not in a position to perform these obligations or provide funding.

Under the Fifth Restatement, the Developer will accept the sites “as-is,” taking responsibility for: 1) remediation of any hazardous materials and 2) extraordinary conditions, such as the need for soil stabilization, foundation systems or increasing site elevations as may be required due to soil conditions or to meet flood control regulations. Improvements to the open spaces across Mare Island Way from the Central Waterfront North & South Zones could be funded by park impact fees generated from the residential portions of the Waterfront Project.

In addition, the Developer will construct the following public improvements:

Zone	Improvements
Northern Waterfront	<ul style="list-style-type: none"> • Upgraded sanitary sewer and stormwater lines and pump station* • Upgraded public water mains* • Harbor Way realignment • Wetland Park • Northern Waterfront open space improvements, including Promenade Park
Central Waterfront North	<ul style="list-style-type: none"> • Relocation of Veterans Memorial* • Festival Green*
Central Waterfront South	None

* Public improvements that were previously RDA obligations

5. Timeframe for the DDA with opportunities for extensions at a cost to the Developer.

Currently, as long as the Developer is negotiating in good faith towards the Fifth Restatement, the Developer

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has an indefinite option to the land at no cost. The Fifth Restatement provides:

- Term to begin on the date of execution and to end on December 31, 2010.
- Two 1-year extensions at a cost of \$100,000 for each zone.
- Extensions of no more than 24 months per Zone in aggregate for delays caused by third party regulatory agencies, uncured City event of default or litigation.
- Any additional extensions must be through amendment approved by the City Council.

6. Transparent fair market land valuation and purchase price for land acquisition and ground leases. The Fourth Restatement has two land valuation methodologies to direct appraisals for the parcels, the greater of which would determine the purchase price. In addition, both methodologies allow for the Developer to deduct its prior costs dating back to 2000 (estimated at \$11 million) from the purchase price. The valuation methodologies were complex and unlikely to result in positive land value, if applied today.

The Fifth Restatement establishes that each parcel will be appraised at fair market value based on the condition of the site at the time that a complete Unit Plan application is submitted and based on the planning entitlements in place. As mentioned above, the Fifth Restatement differs from previous iterations in that the Developer would take the sites "as-is."

The Developer has also agreed to forego recovery of past costs with the exception of \$700,000 of deposits provided to the City under previous DDAs. The Fifth Restatement enable the Developer to apply previous and future deposits provided to the City towards the purchase price of any private development parcel under the agreement.

Next Steps for Implementing the DDA

Should the City Council approve the Fifth Restatement, the work effort between the City and the Developer would continue in earnest for the duration of the term of the agreement. The "Scope & Schedule of Property Disposition & Development" for each zone outlines the parties' activities in detail. In addition to the technical review and planning process described above, near term implementation actions also include clearing title for each of the respective sites, which will further the implementation of the Project by removing significant obstacles to financing and development. Should the Developer not realize the Project, this work would nevertheless be helpful in improving the marketability of the site.

GSA Right of Re-Entry

During title research, the First American Title Company discovered a Quitclaim Deed from the United States of America acting by and through the General Services Administration (GSA) from December 15, 1960 providing a 6-acre area of the Northern Waterfront to the City, provided that "the Grantor...shall have the right during the existence of any National emergency...to the full, unrestricted possession, control and use of the premises." This right appears to have terminated by the terms of the Quitclaim Deed, but continues to cloud title and potentially impair the Developer's ability to obtain financing. Under the DDA, the City has the obligation to provide clean and marketable title to all sites, necessitating the release of these reserved rights. The GSA has expressed a willingness to release this claim to the Northern Waterfront, pending a City Council resolution

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accepting the release. Therefore, staff recommends that the City Council adopt the attached resolution accepting the release of the GSA's right.

FISCAL IMPACT

The proposed FY 16/17 budget includes Measure B funding of staff salaries to manage the implementation of the Waterfront Project as well as \$100,000 of funding for the technical review and planning process described above for the Central Waterfront North and Central Waterfront South Zones.

The Fifth Restatement includes provisions for the Developer to pay for the City's costs for the services of third party architectural, engineering, consultant and legal fees and costs, and any application or permit fees for outside regulatory agencies incurred by the City to implement the Waterfront Project and carry out its obligations under this Agreement. As a result, no City general funds are committed as a result of the Fifth Restatement.

Under City ownership, there is no tax generated from these sites. Implementation of the Waterfront Project will bring the properties onto the property tax roll which. At present, there is no estimate of net fiscal benefit to the City, nor the net land value proceeds.

ENVIRONMENTAL REVIEW

Approval and implementation of the Fifth Restated Agreement does not affect any changes in the underlying physical activities or the resulting environmental impacts as described in the Final Environmental Impact Report relating to the Vallejo Station Project and the Vallejo Waterfront Project, certified on October 25, 2005, and an Addendum to the EIR, approved on February 13, 2007. No additional environmental analysis is required for the Fifth Restated Agreement for the following reasons:

a. The Fifth Restated Agreement is not a project under State CEQA Guidelines Section 15378(b)(4) because it comprises "government fiscal activities which do not involve any commitment to a specific project which may result in a potentially significant physical impact on the environment" and State CEQA Guidelines Section 15378(b)(5) as an "organizational or administrative activity of government that will not result in direct or indirect physical changes in the environment." The Fifth Restated Agreement clarifies the Developer's and City's financial obligations and performance schedules but does not revise the Project or the Approved Plans, and will not result in any direct or indirect physical changes in the environment.

b. The Fifth Restated Agreement is exempt under State CEQA Guidelines Section 15061(b)(3) because "it can be seen with certainty that there is no possibility that the activities in question may have a significant effect on the environment" under the analysis in *Muzzy Ranch Co. v. Solano County Airport Land Use Comm'n* (2007) 41 Cal. 4th 372, in that the Fifth Restatement simply incorporates and is consistent with the City's General Plan and the adopted Planned Development Master Plan and Design Guidelines and does not contain any changes to the underlying physical activities and so is consistent with a community plan, general plan, and zoning ordinance for which an environmental impact report was prepared and involves no environmental effects that were not analyzed in the prior EIR.

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ATTACHMENTS

1.	Resolution approving the Fifth Restatement
2.	Resolution releasing the federal government's deed reservation on the Northern Waterfront
3.	Summary of Terms for the Fifth Restatement
4.	Comparison of the Provisions of the Fourth & Fifth Restatements
5.	Proposed Fifth Restatement

CONTACT

Alea Gage, Economic Development Project Manager, (707) 649-5454
Alea.Gage@cityofvallejo.net