

Properties to Fulfill Enforceable Obligations

- Oakland Army Base -- no cost Economic Development Conveyance from the US Army;
- Forest City, Uptown Residential -- land: various TE/T Bonds, \$13.4 million, various unrestricted, \$2.7 million; monetary subsidies: City capital funds \$5.3 million, various TE/T Bonds \$7.9 million, restricted federal grant and other funds \$6.7 million and unrestricted funds \$5.3 million;
- Sears parcels -- Central District 2003 TE Bonds, \$1.6 million, and unrestricted, \$1.1 million;
- Rotunda Garage, 16th Street Remainder Site -- 54% Central District 1986 TE Bonds, 46% unrestricted;
- Fox Theater -- Central District 1986 TE Bonds; and
- UCOP Garage -- Central District 1986 TE Bonds.

Of the five sites purchased partially or wholly with unrestricted funds, the Wade Johnson Park parcels are clearly restricted to a governmental purpose; the City Center West Garage parcels are 73% financed with bonds; the Franklin 88 Garage has very low net revenue and long term maintenance issues, and so has nominal value; the Uptown parcels are 83% financed with bonds; and the Sears parcels are contracted to be sold for \$1. The taxing entities should therefore not expect to see any significant revenue from selling these assets.

OPERATIONAL COSTS

The Board asked whether the transfer of the properties from the City to ORSA would result in costs to ORSA. Should the properties be returned to ORSA, all costs and liabilities for the properties will then become the responsibility of ORSA, including the cost of maintaining and carrying the properties. For some of the proposed governmental use properties, this would eliminate all net positive revenue.

In the case of the Oakland Ice Center, the City has already committed to spend up to about half of the net revenue (\$150K/year with \$114K spent in FY 2011-12) on basic capital improvements per the management agreement and is planning to spend most of the remaining funds for the last year (\$200K) on additional capital improvements. These funds will be used to replace the special rubber floors that safely allow customers in both shoes and skates to safely move to and from the ice. For the last decade of operations at the Oakland Ice Center all of the net funds received by the Redevelopment Agency have gone back in to the facility, including three major upgrades and/or replacement projects: 1) solar panels added to electrical system; 2) replaced cooling system under the ice; and 3) purchased new ice resurfacing machines.

In the case of the Fox Theater, the Redevelopment Agency set up several entities to syndicate Historic Tax Credits and New Markets Tax Credits. Because of the deal structure, all of the revenue from the facility goes to loan repayments and operations for the next few years; and then there will be a balloon payment or new loan that will consume the revenue for additional years.

LEGAL ISSUES

The Board, City staff, and the respective attorneys for the Board and the City/ORSA, discussed a number of legal issues at length at the last meeting. To reiterate the City's and ORSA's positions:

- The Board has the legal authority to approve the transfer of the enforceable obligation properties to the City, as well as the governmental use properties. Section 34181(a) says that the Board has the authority to dispose of "all assets and properties of the former redevelopment agency", not just assets currently owned by ORSA. All of the properties at issue were properties of the former Oakland Redevelopment Agency.
- As the Board determined when it approved the disposition of the Foothill/Seminary property, the suspension of disposition authority in AB 1484 pending the finding of completion refers only to the forced disposition of property, and does not apply to cases where the successor agency requests approval of a disposition. Therefore, there is no legal reason why approval of these transfers needs to wait for the finding of completion and the long-range property management plan.
- This approval is being sought at the invitation of the State Controller's Office in order to facilitate their pending review of Oakland asset transfers. Controller staff have orally represented to City staff on several occasions that retroactive approval by the Oversight Board of the transfer of governmental use and encumbered property to the City would exempt those properties from clawback to ORSA.
- The clawback statute specifically exempts properties where the government agency that receives the property is contractually committed to a third party for the encumbrance of the property. On all of the enforceable obligation properties at issue here, the City (as the receiving agency) is contractually committed to third parties in various ways as detailed in the previous staff report (e.g., ground leases, lease options, purchase options, easements), and these commitments encumber the properties. There is nothing in the clawback statute that says that the exception only applies if the third parties would be harmed by the clawback.
- While the State Controller has the ultimate authority to determine whether a property should be transferred back to the successor agency, a key question in the clawback analysis is whether the property is encumbered by a contractual commitment to a third party. The Board has the authority to determine whether properties are encumbered by proper enforceable obligations -- in fact, it is a central function of the Board to evaluate the enforceability of former redevelopment agency obligations; for instance, Section 34181(e) specifically provides that the Board has the authority to determine whether contracts of the former redevelopment agency should be honored, terminated, or renegotiated.

- The Board has an adequate legal basis to find that the public parking garages are governmental uses of the City, based on state law defining public parking as public uses and purposes and governmental functions, the fact that most public parking structures in Oakland are government-owned, and the public purposes served by the garages in terms of serving the parking needs of the City and encouraging economic development downtown. DOF has not categorically rejected the characterization of public parking facilities as a governmental use, but has said that they will review the status of public parking facilities on a case-by-case basis.

CONCLUSION

The initial staff report, this supplemental report and the legislation explain how the various properties meet the governmental use and third party obligation requirements and have limited value to the taxing entities. The Oversight Board is therefore asked to find that the properties included in the legislation meet these requirements and to approve the transfers.

Respectfully submitted,

/s/

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