OAKLAND OVERSIGHT BOARD
MEMORANDUM

TO:	Oakland Oversight Board	**FROM:**	Fred Blackwell
SUBJECT:	Approval of Revised Long Range Property Management Plan	**DATE:**	May 22, 2014
		ITEM:	#3

RECOMMENDATION

The Oakland Redevelopment Successor Agency ("ORSA") and the City of Oakland recommend that the Oakland Oversight Board adopt an Oversight Board resolution approving a revised Long-Range Property Management Plan addressing the disposition and use of former Redevelopment Agency properties, and approving the disposition and transfer of those properties identified in the revised Plan as governmental use or future development sites to the City of Oakland in conformance with the Plan and the dissolution law.

EXECUTIVE SUMMARY

Per Assembly Bill 1484 ("AB 1484"), successor agencies are allowed to move ahead with disposition of property and the transfer of property to their sponsoring jurisdictions once a "finding of completion" is received from the California Department of Finance ("DOF"). Before any transaction can be undertaken, the successor agency is first required to prepare and obtain approval of a "long-range property management plan" addressing the disposition and use of real properties previously owned by the redevelopment agency. The long-range property management plan must be submitted to the oversight board and DOF for approval no later than six months following receipt of the finding of completion.

Last July, the Oakland Oversight Board approved a Long-Range Property Management Plan submitted by ORSA. DOF rejected the Plan in February. City staff subsequently met with DOF, and prepared a revised Long-Range Property Management Plan to address DOF's recommendations.

As before, the revised Plan lists the former Redevelopment Agency properties in four categories: 1) properties to be conveyed to the City for continued governmental use; 2) properties to be retained by ORSA to fulfill existing enforceable obligations; 3) properties to be conveyed to the City for future development; and 4) properties slated for immediate sale by ORSA. The properties addressed in the Plan are listed as ***Exhibit A***, which includes complete descriptions for each site within these categories. As of the writing of this report, approval of the revised Property Management Plan by the City Council acting as the ORSA governing body is expected on May 20, 2014.

OUTCOME

Adoption of the Oakland Oversight Board resolution approving the revised Long-Range Property Management Plan will allow ORSA to submit the revised Plan to DOF for approval. The resolution would also allow ORSA to transfer those properties identified in the Plan as governmental use or future development properties to the City in conformance with the Plan once it is approved by DOF.

BACKGROUND/LEGISLATIVE HISTORY

Once a finding of completion is received by a successor agency, AB 1484 allows the successor agency to prepare and submit for approval a long-range property management plan addressing the disposition and use of real properties previously owned by the redevelopment agency. Once approved, the plan allows the successor agency or the city to move forward with real property dispositions for future development or other uses. The property management plan must be submitted to the oversight board and DOF for approval no later than six months following receipt of the finding of completion. A successor agency is eligible to receive a finding of completion upon making three payments: the July 2012 "true-up" payment, the Housing Due Diligence Review ("DDR") payment and the Other Funds and Accounts DDR payment. ORSA has made all three payments and received a finding of completion on May 29, 2013.

ORSA prepared and approved the original Long-Range Property Management Plan on July 2, 2013, ORSA Resolution No. 2013-022. The Oakland Oversight Board approved the Plan on July 15, 2013, OOB Resolution No. 2013-14, and it was then submitted to DOF. On February 28, 2014, ORSA received a letter from DOF rejecting the original Plan, see ***Exhibit B:*** DOF Letter. The rejection letter highlighted some technical deficiencies, suggested some changes in the classification of sites, and directed that the Plan must indicate the City's intent to enter into compensation agreements with the affected taxing entities (i.e., the other agencies that receive a share of property tax revenue) prior to the City's subsequent disposition of property that it receives from ORSA. City staff subsequently met with DOF staff, and prepared a revised Long-Range Property Management Plan based on DOF feedback; a version of the revised Plan redlined against the original Plan is attached to this report, see Exhibit A: Revised Long Range Property Management Plan, and a clean version of the revised Plan is attached to the accompanying resolution. The revised Plan has been informally reviewed and approved by the assigned DOF analyst, so the City expects that the revised Plan will be approved by DOF.

For informational purposes, staff is also attaching a draft of the compensation agreement that the City will likely propose to the taxing entities, see ***Exhibit C***: Compensation Agreement. This would be a master agreement that applies to all taxing entities and all properties included in the revised Plan. Generally, the agreement provides that, if the City sells a property that it receives from ORSA pursuant to the Plan, the net unrestricted proceeds from the sale will be distributed to the taxing entities in proportion to their respective shares of the property tax base. The issue of compensation is discussed further below.

As required by AB 1484, the revised Property Management Plan proposed by ORSA divides the former Redevelopment Agency properties into four categories:

> There are six parcels assembled into four sites in the category of **governmental use**. They include: a street right-of-way parcel, the Amtrak Station near the Oakland Coliseum, the entry to the 12th Street BART station, and a right-of-way/open space parcel at Leona Creek in East Oakland. Please note that several properties listed in other categories can also be considered governmental use properties, but, in part pursuant to DOF direction, they are listed in other categories. These properties include the Fox Theater (listed as an enforceable obligation property, although it is used as a public charter school and a cultural center), the UCOP, Telegraph Plaza and City Center West Public Garages (listed as future development sites, although they provides parking to governmental employees and the general public) and the Franklin 88 Garage (listed as a sale property, although it provides parking to the general public).
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> There are three parcels assembled into two sites in the category of **properties needed to fulfill an enforceable obligation.** These include the parcels encumbered by the Sears Disposition and Development Agreement and the Fox Theater Disposition and Development Agreement. The revised Plan provides for ORSA's retention of these properties until the enforceable obligations are satisfied, at which time the properties will be transferred to the City for future development purposes. The original Plan called for the transfer of these properties to the City pending satisfaction of the enforceable obligations; the revised Plan conforms to DOF's recommendation that ORSA retain the properties while the enforceable obligations are in place.
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> There are 67 parcels clustered into 25 development sites in the category of **future development properties.** These include seven sites in the Central City East project area, ten sites in the Central District project area, six sites in the Coliseum project area, one site in the Oak Knoll project area and one site in both the Coliseum and Central City East project areas. The Amtrak Station, included in the governmental use category, is also a potential future development site.
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> Finally, there are 12 parcels clustered into five sites in the category of **sale properties.** They include both developable or otherwise useable sites with market value and small remainder sites that have little or no value.

As the Oversight Board knows, the State Controller's Office has conducted its review of asset transfers from the former Redevelopment Agency to the City per state law and has ordered the return of a number of properties to ORSA by the City. Therefore, these properties are included in the revised Property Management Plan, even though they are currently owned by the City.

<u>Governmental Use Properties</u>

The properties discussed in this section are proposed for continuation in governmental use pursuant to Health and Safety Code Section 34191.5(c)(2). Under Sections 34191.5(c)(2) and

34181(a), they will be transferred to and retained by the City of Oakland for the City's governmental use.

These properties include a street (Sunshine Court), the Amtrak Station near the Oakland Coliseum, an entry to a BART station, and creek right of way (Leona Creek Drive). Per DOF direction, two properties listed in the original Property Management Plan as governmental use properties (the City Center West parking garage and the Oakland Ice Center) are now listed as future development properties. Although DOF determined that these two properties should not be classified as governmental use properties, the Department recommended that they be categorized as future development properties and transferred to the City. Although there are no current plans to redevelop or sell those facilities, the Plan provides that in the event that the City determines to sell these properties at some time in the future, the net unrestricted sale proceeds will be distributed to the taxing entities in accordance with the compensation agreement.

Properties to Fulfill Enforceable Obligations

The two properties discussed in this section are proposed to be retained by ORSA to fulfill existing enforceable obligations pursuant to Health and Safety Code Section 34191.5(c)(2). All of the enforceable obligations are in the form of recorded encumbrances that are covenants running with the land significantly restricting the possible uses and disposition of the properties. The enforceable obligations that encumber each of these properties are listed below, and are further discussed in the inventory:

- Sears -- Thomas L Berkley Way (20th St) and Telegraph Avenue site.
    - Lease Disposition and Development Agreement with Sears
    - Option to Purchase by Sears

- Fox Theater.
    - Disposition and Development Agreement with Fox Theater Landlord, LLC
    - Ground Lease with Fox Theater Landlord, LLC

Once the enforceable obligations are satisfied, the properties will be transferred to the City and retained by the City as future development properties, as further set forth below.

Note that both of these properties were acquired and/or improved using tax allocation bond proceeds. See the discussion below regarding restrictions on the use or revenues from properties acquired with bond proceeds.

Pursuant to DOF direction, three properties previously listed as enforceable obligation properties under the original Plan have been moved to the category of future development properties in the revised Plan. These include Forest City-Uptown, the Rotunda Garage, and the UCOP Garage. Although these properties are subject to enforceable obligations that restrict their use and there are no current plans to redevelop these facilities, DOF determined that these properties should be categorized as future development properties since they are included in applicable redevelopment and community plans.

Properties for Future Development

The properties discussed in this section are proposed for future development pursuant to Health and Safety Code Section 34191.5(c)(2). Under Section 34191.5(c)(2)(A), they will be transferred to the City of Oakland for eventual disposition to a developer. There are 67 parcels clustered into 25 properties in this category. This category includes sites that are designated for future development in applicable community plans, and also includes the sites described above that were categorized as governmental use properties or properties to be retained to satisfy enforceable obligations under the original Plan. This category includes seven sites in the Central City East project area, ten sites in the Central District project area, six sites in the Coliseum project area, one site in the Oak Knoll project area, and one site that straddles both the Coliseum and Central City East project areas.

ORSA interprets the dissolution law to mean that compensation agreements with taxing entities are not required in connection with the disposition of future development properties. Health and Safety Code Section 34191.3 specifically provides that, once approved, a long-range property management plan governs the disposition of property and supersedes all other provisions of the dissolution law addressing property disposition, including the requirement for compensation agreements in Health and Safety Code Section 34180(f). However, DOF takes the contrary position that compensation agreements are required before future development properties may be sold by a city to a developer (although agreements are not required to be executed prior to a transfer from a successor agency to a city pursuant to the plan). Therefore, pursuant to DOF direction, the revised Plan provides that the City will enter into a compensation agreement or agreements with the affected taxing entities prior to disposition of these properties by the City. The agreement(s) will specify that any net unrestricted proceeds from the sale of the parcels will be distributed to the affected taxing entities on a pro rata basis in proportion to each entity's respective share of the property tax base. The calculation of net unrestricted proceeds will take into account the transaction costs incurred by the City in marketing the property and processing the sale or lease, as well as the costs incurred by the City in carrying or maintaining the property and in preparing and improving the site for development. The revised Plan provides that the requirement to enter into a compensation agreement will not be operative if a court order or decision, legislation or DOF policy reverses DOF's directive regarding such agreements.

Under the revised Plan, the City will be responsible for marketing the properties to potential developers through either a competitive process (such as a Request for Proposals, a Request for Qualifications, or a Notice of Development Opportunity) or a negotiated transaction. The City will follow applicable law governing the approval of any property disposition. The properties may be sold at their fair market value or their fair reuse value, based on the dictates of market conditions and the development climate at the time of disposition. The determination of fair market value will consider the property's highest and best use. The determination of fair reuse value will consider the proposed use of the property and the value of the property with the conditions, covenants and development costs associated with the negotiated disposition.

The revised Plan further provides that the City may also choose to dispose of properties by means other than a fee sale, such as a long-term ground lease. Any disposition of a property shall be governed by a negotiated disposition and development agreement or lease disposition and development agreement that will govern the terms of the disposition, the development of the property, and the use of the property following development. Any such agreement shall obligate the developer to develop and use the property consistent with the applicable redevelopment plan, its five-year implementation plan, the City's General Plan and any applicable specific plans.

Many of these properties were acquired or improved using tax allocation bond proceeds, and any revenue generated by these properties are considered "recycled bond proceeds". As the City has noted to the Oversight Board on a number of occasions, federal tax law and bond covenants restrict the use of such revenues to uses consistent with the bond covenants in the indenture, such as retiring the bonds or investing in other capital projects meeting a redevelopment purpose within the applicable redevelopment project area. For properties funded with tax-exempt bond proceeds, IRS regulations also require that revenues and proceeds be used for another tax-exempt purpose within two years. The revised Plan notes that proceeds restricted by law will not be available for redistribution to taxing entities.

Properties for Immediate Sale

The properties discussed in this section are proposed for sale by ORSA pursuant to Health and Safety Code Section 34191.5(c)(2). The only changes from the original Plan were to move three parcels acquired with bond funds – 8280 MacArthur, 8296 MacArthur and 73rd & International – from this category to the category of future development properties. Since the sales proceeds from these properties cannot be distributed to the taxing entities as would be required if these were for sale properties, they needed to be removed from this category. Most of the remaining properties for immediate sale are currently owned by ORSA, though the ones that are owned by the City will be transferred to ORSA for sale. The properties will be sold for fair market value at their highest and best use. ORSA will follow the City of Oakland's rules and procedures for disposing of surplus properties, as those rules may be modified for ORSA. The net proceeds from the sale will be distributed as property tax to each affected taxing entity in an amount proportionate to each entity's share of property tax revenues pursuant to Health and Safety Code Section 34188, to the extent permitted under bond covenants and federal law. Please note that there are several remainder parcels that are small, narrow, land locked or have other problems that limit or prevent their development. If buyers cannot be found for these properties on the open market, ORSA will try to negotiate sales or transfers to adjacent property owners in order to dispose of the properties and eliminate any future costs and liabilities to ORSA.

COST SUMMARY/IMPLICATIONS

The transfer of governmental use properties and properties for future development from ORSA to the City pursuant to the revised Plan will result in a reduction in management and maintenance costs that would otherwise be expenses of ORSA payable from Real Property Tax Trust Fund monies. Therefore, the transfer of these properties will result in increased immediate revenue to the taxing entities. Upon the future sale of these properties, the taxing entities will be entitled to share in the net unrestricted sale proceeds pursuant to the compensation agreement. However, as noted above, most of these properties were bought or financed with bond funds, and therefore there will be restrictions on the use of sale proceeds.

In addition, several of the contemplated deals with developers have terms that will result in little or no net revenue that could be distributed to the taxing entities. For example, the Seminary Point Project, as previously approved by the Oversight Board, provides for a sales price based on the residual land value of only $6,000 and a contribution of $150,000 in ORSA bond funds to pay for site remediation costs in order to make the project financially feasible; and the 1800 San Pablo project, planned for approximately 120,000 square feet of retail and entertainment uses, requires that sales proceeds and a substantial amount of bond funds, $6.4 million, be invested in public parking to provide parking for the project and other property in the area. But these projects will need to be renegotiated and approved by the City after the Long-Range Property Management Plan by ORSA, the Oversight Board and DOF.

However, there will be substantial long-term positive fiscal benefits flowing to the taxing entities from development of the future development sites, which will likely offset any immediate loss in revenue. For example, in the Seminary Point transaction, while the sales price leaves little sales proceeds that could be split by the taxing entities, the fiscal benefits to the taxing entities from development of the site are substantial, including approximately $85,372 per year in property taxes and $320,625 per year in sales taxes. For the 1800 San Pablo project, while the land sales price and the investment of bond funds for parking leaves no revenue that could be split by the taxing entities, the fiscal benefits for the taxing entities are also substantial, including approximately $305,315 per year in property taxes and $2.9 million per year in sales taxes. Both projects will also provide jobs and retail opportunities, which will have spillover fiscal benefits to the taxing entities.

Finally, the taxing entities will receive direct financial benefits from the sale of 12 separate parcels at five different sites slated for immediate sale that were purchased with non-bond funds. The revised Plan provides that net proceeds from the sales will be distributed as property tax to each taxing entity in an amount proportionate to each entity's share of property tax revenues pursuant to AB 1484.

Respectfully submitted,

/S/

FRED BLACKWELL
City Administrator

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Exhibit A: Revised Long Range Property Management Plan (redlined)
Exhibit B: California Department of Finance Letter
Exhibit C: Draft Compensation Agreement