CITY OF OAKLAND
REDEVELOPMENT AGENCY
SUPPLEMENTAL AGENDA REPORT

OFFICE OF THE CITY CLERK
2006 OCT 26 PM 4:30

TO: Office of the City Manager / Agency Administrator
ATTN: Deborah Edgerly
FROM: Community and Economic Development Agency
DATE: October 31, 2006

RE: **A Supplemental Report On:**

A Resolution Authorizing the Issuance and Prescribing The Terms, Conditions and Form Of Not To Exceed $37,000,000 Principal Amount Of The Redevelopment Agency of the City of Oakland Central District Redevelopment Project Subordinated Tax Allocation Bonds, Series 2006T (Federally Taxable), Approving The Form Of And Authorizing The Execution And Delivery Of A Second Supplemental Indenture Of Trust And A Bond Purchase Contract, Approving The Form Of And Authorizing The Distribution Of A Preliminary Official Statement And Authorizing Execution And Delivery Of An Official Statement; Approving The Selection And Retention Of A Financing Team; Authorizing Payment of Costs of Issuance; Allocating Bond Proceeds To Finance Redevelopment Activities In The Redevelopment Project Area; And Authorizing And Approving Necessary Action In Connection Therewith

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SUMMARY

On October 24, 2006, the Finance Committee considered a Redevelopment Agency ("Agency") resolution authorizing the Agency to issue and prescribe the terms, conditions and form of not to exceed $37,000,000 principal amount of the Redevelopment Agency of the City of Oakland Central District Redevelopment Project Subordinated Tax Allocation Bonds, Series 2006T (Federally Taxable) (the "2006T Bonds"). It is proposed that $7.0 million of the 2006T Bond proceeds be allocated to the Uptown Project to substitute for previously expended tax-exempt bond financing for the project. At the hearing, Finance Committee members requested additional information about the use of the proposed $7.0 million of 2006T Bonds funds and the reasons justifying the proposed allocation. Finance Committee members also wanted to know whether the proposed $7.0 million represented an additional subsidy to the Uptown Project.

BACKGROUND

In 2003 and 2005, the Agency issued *tax-exempt* bonds under Central District Tax Allocation Bond Series 2003 (the "2003 Bonds") and Central District Tax Allocation Bond Series 2005 (the "2005 Bonds") generating new bond proceeds in the respective amounts of $25 million and $46 million for redevelopment activities in the Central District Redevelopment Project Area. The Agency allocated 2003 Bond proceeds in the amount of $18,691,931 for site acquisition and gap financing, and 2005 Bond funds in the amount of $5,500,000 for site acquisition and hazardous materials abatement to the Uptown Project pursuant to a Lease Disposition and Development

Agreement with Uptown Housing Partners, LLC, an affiliate of Forest City Residential West, Inc. (FC).

These allocations and related legal documents were reviewed and approved by various legal staff. Tax law provides that municipal bonds must finance projects that benefit the general public and have very limited private use. Agency staff had been advised by the City Attorney's office that assignment of all payments to the City would not trigger "private activity" issues. Upon subsequent review by outside counsel, prompted by the sale of Parcel 4 to FC, staff learned that the use of portions of the 2003 and 2005 Bond proceeds is incompatible with the LDDA business terms and the fair market value sale of Parcel 4 to FC, and could jeopardize the bonds' tax exempt status.

Specifically, staff was advised that certain business terms included in the LDDA with Uptown Housing Partners, as well as the approved sale of Parcel 4 to Forest City (FC) raise certain "private activity", or non-governmental use issues, which are not permitted when using tax-exempt bond proceeds. These issues are: 1) the ground lease payment provision in the LDDA, 2) the option to purchase in the LDDA, and 3) the recently approved fair market value sale of Parcel 4 to FC. Therefore, taxable bond proceeds and tax increment funds must be substituted for certain portions of the tax-exempt 2003 and 2005 Bonds.

KEY ISSUES AND IMPACTS

The proposed allocation of 2006T Bond proceeds in the amount of $7 million to the Uptown Project will replace a portion of the 2003 Bonds that were designated for site assembly in the amount of $1,463,000 and gap financing in the amount of $5,537,000. Therefore, this reallocation does not represent additional financial assistance to Uptown Housing Partners. In addition, the Agency will propose to use tax increment in the amount of $6,276,000 from its Central District Operating Fund to allocate to the Uptown Project.

Reasons for Substitution of Taxable for Tax-exempt Debt

1.) The LDDA between the Agency and Uptown Housing Partners includes a provision requiring annual lease payments from Uptown Housing Partners equal to the nominal amount of the Agency's gap financing and net property tax reimbursement contribution to the Uptown Project. These lease payments in the total nominal amount of $24,415,000 commence in 2016, end in 2034, and are to be made directly to the City of Oakland in consideration of its financial contribution of $6,300,000 ($5,300,000 for infrastructure and $1,000,000 for the public park) to the Uptown Project. According to bond counsel, these lease payments could be construed as repayment of a loan or an advance of funds and constitute "private payments" in excess of allowable amounts.

2.) The LDDA also provides Uptown Housing Partners with an option to purchase the land for a price determined pursuant to a formula involving a fixed price (the nominal costs of all land assembled by the Agency) annually adjusted by the Consumer Price Index. According to bond counsel, any purchase option, other than a fair market value (FMV) purchase option, can also be interpreted as a private business use by the holder of the option.

3.) The direct fair market value sale of Parcel 4 to FC also constitutes "private activity", since the Agency used tax-exempt bonds to acquire the property that it now desires to sell to FC, a non-governmental person or entity, for more than a nominal amount.

In order to preserve the tax-exempt status of the 2003 and 2005 Bonds, staff has been directed to 1) allocate only 10 percent of each bond issue ($2.5 million of the 2003 Bonds and $4.6 million of the 2005 Bonds) to the Uptown Project as this is allowed under the tax code, 2) retain only those 2003 Bond proceeds in the amount of $3,815,389 that were used to acquire those portions of the land serving a qualified public purpose - e.g., the new public streets and the public park; and 3) allocate other funds in addition to the 2006T Bonds from *non-tax-exempt* sources to take out the remaining, non-qualified balance of 2003 and 2005 Bonds currently assigned to the Uptown Project and Parcel 4. Staff has identified the Agency's Central District Operating Fund as the source for that new allocation. The Agency will need to allocate a total of $13,276,000 to the Uptown Project to replace existing, ineligible 2003 and 2005 Bonds with $7,000,000 of 2006T Bonds and $6,276,000 from the Agency's Central District Operating Fund. The following table illustrates the original and proposed allocations:

Table 1 – Original and New Allocation by Use

Source	Use	Original	New
2003 Bonds	Site Assembly	$13,154,839	$6,315,839
2005 Bonds	Site Assembly	$4,000,000	$4,600,000
Subtotal		**$17,154,839**	**$10,915,839**
2003 Bonds	Gap Financing	$5,537,000	$0
Subtotal		**$5,537,000**	**$0**
2005 Bonds	HazMat Abatement	$1,500,000	$0
Subtotal		**$1,500,000**	**$0**
Total Original Funds		**$24,191,839**	**$10,915,839**
Central District Operating Fund	Site Assembly	**$0**	$4,776,000
Central District Operating Fund	HazMat Abatement	**$0**	$1,500,000
Subtotal		**$0**	**$6,276,000**
2006T Bonds	Site Assembly	$0	$1,463,000
2006T Bonds	Gap Financing	$0	$5,537,000
Subtotal		**$0**	**$7,000,000**
Total New Funds		**$0**	**$13,276,000**
Grand Total		**$24,191,839**	**$24,191,839**

If the Agency does not approve the proposed $7 million of 2006T Bonds for allocation to the Uptown Project, the tax-exempt status of the 2003 and 2005 Bond issues is jeopardized, which would have negative consequences for the Agency and the bond holders. Lastly, issuing taxable debt is more expensive than issuing tax-exempt debt. Actual costs will not be available until the 2006T Bonds have been priced.

The unallocated portions of the 2003 and 2005 Bonds will be assigned to other redevelopment projects and programs in the Central District Redevelopment Project Area as the Council deems appropriate during the next budget cycle.

Staff will return to the City Council on December 19, 2006, to request authorization of legislation effecting the recommended allocation of 2006T Bond and the Agency's Central District Operating Fund.

RECOMMENDATION

Staff is recommending that the Agency authorize the proposed issuance of $7 million in 2006T Bonds for allocation to the Uptown Project.

Respectfully submitted,

for

Daniel Vanderpriem,
Director of Redevelopment, Economic Development, and Housing and Community Development

APPROVED AND FORWARDED TO
THE CITY COUNCIL/REDEVELOPMENT AGENCY

Deborah Edgerly
City/Agency Administrator