OAKLAND COALITION TO STOP GOLDMAN SACHS

April 25, 2012

COALITION MEMBERS

ACCE - Alliance of Californians for Community Empowerment

Bay Natives for Peace and Justice

Decolonize Oakland

ILWU Local 10

Interfaith Tent @ Oakland

Oakland CAN (Community Action Network)

Occupy Oakland Labor Solidarity Committee

Occupy Oakland Research Working Group

ROOTS - Reclaiming Oakland Organizing Through Solidarity (formerly Occupy the Hood)

SEIU Local 1021

Individual Concerned Oakland Residents

To the Members of the Finance Committee of the Oaldand City Council:

We are church leaders, union members, community organizers, activists, and concerned Oakland residents, who have come together to confront our city's economic crisis. The Oakland Coalition to Stop Goldman Sachs (which participated in the Coalition for Economic and Social Justice presentation at the February 21, 2012 City Council meeting) is committed to community education, mobilization and non-violent direct action around Oakland's financial dealings in general, and with Goldman Sachs in particular. We are also committed to assertively engaging with our elected officials to express community concerns, and create effective and just solutions.

In preparation for the upcoming May 8th meeting of the Finance Committee we submit the following documents:

1. Oakland Coalition to Stop Goldman Sachs' Demands and Position Statement
2. Steps the City can and should take to end its relationship with Goldman Sachs
3. Supporting research and articles

We look forward to this opportunity to meet and work together with you to address this and other challenges facing Oakland.

Respectfully,
The Oakland Coalition to Stop Goldman Sachs

Email: stopgoldmansachs2gmail.com Phone: 510.250.7222

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Demands and Position Statement

This document addresses the "Interest Rate Swap" agreement between the City of Oakland and Goldman Sachs Mitsui Marine Derivative Products that was originally entered into in 1997. The swap was associated with the Oaldand Joint Powers Financing Authority Lease Revenue Bonds, 1998 Series A1 and A2. This swap agreement is in effect until the end of 2021. (1)

Our Demands

First and foremost, we demand that the City Council cancel the Swap Agreement between the City of Oakland and Goldman Sachs, and do so without triggering the onerous penalty, now valued around $16 million dollars.

Second, that the City Council secure from Goldman Sachs the more than $30 million dollars that Oaldand has been forced to pay so far as a result of this deal.

Third, that Oakland use this money to reverse lay-offs and restore services and agencies that were cut for financial reasons.

Our Position

We know that the City Council has leverage with Goldman Sachs because of other business the City and the Port conduct with this bank. We also know that the City Council has choices, and is not simply trapped into making these payments. Our city's leaders need to vigorously pursue all options.

The City of Oakland had already paid off the underlying bond that the swap was originally designated to cover. It is an outrage for Oakland to continue to pay Goldman Sachs any additional money.

We believe the City Council has a moral as well as financial duty to prioritize the budget. In this time of falling tax revenues, how will the City spend its dollars? Will Oakland continue to pay one of the wealthiest banks in the world, where executives make tens of millions yearly in compensation? Or will Oakland choose to fund its schools, libraries, parks, and fire services?

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Under current economic conditions – which show no signs of improving – Goldman Sachs wins and Oakland loses. This arrangement is intolerable. It is all the more outrageous because Goldman Sachs has received billions in federal assistance since 2008, while Oakland's federal and state assistance has actually been slashed. While the federal government took action to relieve Goldman Sachs of its "toxic assets" in 2008 and 2009, Oakland was stuck with its similarly toxic holdings. The Swap Agreement is among Oakland's most toxic financial deals.

We find this arrangement all the more intolerable because it was the financial institutions such as Goldman Sachs that are responsible for the economic collapse that began in 2008, and which continues to negatively affect us all. (2)

The rate swap Oakland entered into with Goldman Sachs is essentially a contract that says that on a regular basis, between now and 2021, either the city will pay Goldman Sachs, or Goldman Sachs will make payments to the city. Who pays, and how much they pay has been determined by a complex formula based on the fluctuation of different indexes, first the Bond Market Association index, and from 2003 to the present the London Inter-Bank Offered Rate.

Oakland may have originally agreed to this arrangement because rate swaps seemed to be a reasonable means of reducing the long-term costs of borrowing money for cities. By swapping payments on fixed and floating rates between two parties who have different comparative advantages in municipal and corporate bond markets, Goldman Sachs promised many cities access to cheaper money. Oakland is not alone, of course. Hundreds of cities and counties in the US and globally have entered into similar swap deals.

Oakland entered into this specific swap to reduce the borrowing costs associated with the Oakland Joint Powers Financing Authority Lease Revenue Bonds, 1998 Series A1 and A2. The reasoning of the City Council and staff at the time was that the city needed to protect itself against the possibility of spiking interest rates on floating-rate bond debt

Unfortunately when the Federal Reserve began to ratchet down its Discount Rate and Fed Funds Rate in 2007, and other lending rates such as LIBOR followed by dropping to less than one percent, the swap deal began to cost Oakland. The completely unprecedented reduction of these rates by the Fed to below one percent in 2008 has left Oakland holding an extremely toxic asset

Many cities and counties across the US and countries around the world are stuck in a similar trap set by financial corporations and central banks.

As the Wall Street Journal reported in March of 2010, "Hundreds of U.S. municipalities are losing money on interest-rate bets they made during the bull market in hopes of protecting themselves from higher rates. The deals backfired when rates fell, shriveling the sums paid to municipalities." Little has changed since this report was written.

Los Angeles, Philadelphia, Portland, Birmingham, New Orleans, Denver, Chicago – the list goes on and on. Our neighbor city Richmond must pay the Royal Bank of Canada under terms of a swap agreed to in 2009. Public agencies that operate in Oakland like EBMUD, and the Peralta Community Colleges District, have both been harmed by rate swap agreements turned toxic.

A 2010 report by the SIEU measured the costs to American taxpayers of these toxic assets at $1.2 billion. (3) A more recent analysis of municipal swap deals by Bloomberg News say that in fact the real cost of these swap agreements to the people of America's cities is closer to $20 billion. (4)

This constitutes a second bailout for the same large banks that received TARP funds from the federal government Banks like Goldman Sachs were relieved of their "troubled assets" by the federal government Specifically, Goldman Sachs was given a $10 billion infusion by the federal government in 2008 under TARP. In 2009 Goldman Sachs borrowed upwards of another $30 billion from the US Treasury, much of it at interest rates as low as 0.01%. This was virtually free money that the bank used to make enormous profits at the height of the crisis. Cities like Oakland were left holding their troubled assets, with no relief. We are still without relief.

The transfer of wealth from the people of Oakland to Goldman Sachs is a crime against our community, our families, our children, our neighbors, and our city.

By putting a stop to Oakland's toxic relationship with Goldman Sachs, the City of Oakland has the opportunity to join with hundreds of communities in the United States and throughout the world, who are demanding financial accountability and economic justice for their cities.

Stand with us for what is right.
Refuse to pay.
Recoup what has already been paid.

Notes

1. The most recent information about this specific swap agreement is contained in the City's "Comprehensive Annual Financial Report," FY Ended 2011, http://www.oaklandnet com/government/fwawebsite/accounting/cafr.htm.

2. It is not only our opinion that large banks like Goldman Sachs caused the financial crisis of 2008. Even the Congressional Commission on the financial crisis drew this conclusion in its exhaustive report of the causes of the economic collapse beginning in 2007-2008: "Final Report of the National Commission on the Causes of the Financial and Economic Crisis in the United States," Public Affairs, 2011, http://fcic.law.stanford.edu/report/. The US Senate's Permanent Subcommittee on Investigations has drawn even harsher conclusions

stating that Goldman Sachs "profited from the collapse of the mortgage market and engaged in troubling and sometimes abusive practices that raise multiple conflict of interest concerns." See United States Senate, Permanent Subcommittee on Investigations, Committee on Homeland Security and Governmental Affairs, "Wall Street and the Financial Crisis: Anatomy of a Financial Collapse," April 13, 2011.

3. http://www.seiu.org/images/pdfs/Interest%20Rate%20Swap%20Report%2003%2022%202010.pdf

4. http://www.bloomberg.com/news/2012-01-13/americans-clueless-paying-wall-street-20-billion-for-bad-swaps.html

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Steps the City Can and Should Take to End its Relationship with Goldman Sachs

We, the Oakland Coalition to Stop Goldman Sachs (OCSGS), understand interest rate swaps to be an instrument of capital accumulation that transfers wealth from the poorest communities to the 1%. We stand with Oakland's poor and working class residents to decry these swaps, which are unfair and unjust by any measure. Across the world, interest rate swaps are producing huge profits for Wall Street banks like Goldman Sachs and Morgan Stanley, while cities and municipalities can no longer afford to provide needed services to their residents.

In addition to our specific demands to immediately terminate the City of Oakland's swap with Goldman Sachs, we call upon the City Council to take creative and bold actions to end this relationship.

Some City Council members have expressed concern that, while they agree that it is unjust for Oakland to continue to pay Goldman Sachs as part of this toxic swap, they do not see options to be able to end the payments. We respectfully disagree.

Here are a nine specific actions the City Council can and should take to end Oakland's toxic deal with Goldman Sachs:

1. Direct the City Attorney to investigate legal statutes regarding the "Doctrine of Hardship," as well as those pertaining to contracts where the performance has become "impracticable," both of which may be used to end contracts when a fundamental change in the circumstances surrounding the contract has rendered performance much more burdensome, so that continued performance by the party affected would amount to an undue hardship. These legal statutes may provide the City with a route to end the swap contract with Goldman Sachs. [1] [2]

2. Hold a press conference on the steps of Goldman Sachs' offices to strongly condemn Goldman Sachs and demand that they release the City of Oakland from the toxic swap. During the press conference, City officials can counterpose the increasing poverty of the residents of Oakland – highlighting in particular the City's home foreclosure rates in poor neighborhoods – with the massive wealth of Goldman Sachs. For example, more than 28,000 homes have been foreclosed

on in Oakland since 2008. After receiving a taxpayer-funded bailout of $53 billion dollars, Goldman Sachs has made profits of over $26 billion dollars since 2009. [3] [4]

3. Immediately stop paying the $5 million in annual debt to Goldman Sachs, while the City investigates options to end the swap. The City could place these funds in an escrow account until such time as the matter is adjudicated, when the funds would either be available to pay Goldman Sachs or to re-fund Oakland city services.

4. Demand relief from the Federal Government, by passing a resolution calling on President Obama, Representative Barbara Lee and Congress, to consider a bailout for municipalities, designed to terminate swap agreements. The Federal Reserve's policy to keep interest rates at historic low levels is helping Wall Street banks reap mega-profits off of swap agreements. The Federal Government bailed out the banks, now it's time to bail out our cities from these toxic swap deals. Through this proposed legislation, banks would receive some payment from the Federal Government and cities and counties would have onerous swaps terminated. Such a federal bill would amount to a widely distributed federal stimulus program, since it would:

a. Alleviate a fiscal burden on local and state governments;
b. Allow many local gove mments to forego or reduce planned tax increases that were necessary due to fiscal burdens exacerbated by swap payments and termination fees; and
c. Free up monies to issue new debt for infrastructure, libraries, after school programs, etc.

5. Empanel a special committee to investigate the banks, officials and advisors who signed the swap deals. This committee should particularly focus on the "revolving door" relationship of former Oakland Treasurer, Jan Mazyck, who sealed the swap deal in 1997 and returned to Oakland in 2003 to advise on the swap restructure in her new position as Senior Partner at PFM Group, a private firm the City paid to draft the restructure amendment The City of Philadelphia has empanelled just such a special committee. [5]

6. Direct the City Attorney to contact California Attorney General Kamala Harris to lead an investigation of Goldman Sachs, PFM Group, and other rate swap dealers and advisers, on the grounds that these parties misrepresented or conspired to sell Oakland fraudulent products. [6]

7. Direct the City attorney to investigate any possible legal action that could be brought against Goldman Sachs to invalidate the swap. The grounds that could be considered and investigated include any potential conflicts of interest, potential price-fixing or antitrust violations, and whether the enforcement of the terms of the swap constitutes an undue hardship to the City of Oakland, particularly in light of the Federal Reserve Board's policy of maintaining artificially low interest rates. The City Attorney should also look into allegations of manipulation of the LIBOR rate by the panel of banks that contributes to determination of US Dollar LIBOR rates (the "US Dollar Panel"). While Goldman Sachs is not on this Panel, any price manipulation that kept (or keeps) LIBOR below market rates

would have resulted in excess payments from Oakland to Goldman Sachs, and Goldman should make Oakland whole. [7]

8. Direct the City Administrator to formally give notice to Goldman Sachs that the bank will lose future business opportunities with the city, such as bond underwriting, unless the bank agrees to terminate the swap at no cost to Oakland. (Since 1989, Oakland has selected Goldman Sachs to underwrite at least half a billion dollars in city debt As underwriter to this debt, Goldman Sachs made millions in profits from upfront fees as well as the "discount," the difference between the price Goldman Sachs purchased the bonds from the city, and the price Goldman Sachs re-sells the bonds to third-party investors.) If Goldman Sachs does not respond positively, the City Council could pass an ordinance banning the City from doing business with Goldman Sachs on the grounds that the bank is harming the fiscal health of the city and refuses to engage the city in a good faith effort to ensure Oakland's fiscal health and ability to serve its residents. Upon passing such an ordinance, the City would undertake a process of informing other municipalities of its action. [8]

9. Request that Oakland's two legacy pension systems, PFRS and OMERS, consider pulling any monies invested in Goldman Sachs. While we understand that the City cannot direct the pension systems to pull funds from Goldman Sachs, the City can ask the pension systems to consider such a move.

Thank you for your prompt attention to this matter, which is of crucial importance to the health and welfare of our City and its residents. Oakland's families can no longer afford to subsidize the billion dollar profits of Goldman Sachs while our schools are shuttered, services are slashed and city employees continue to lose their jobs. Goldman Sachs has invested in Oakland's failure. It's time for the City Council to invest in Oakland's success.

Notes

[1] Fucci, Frederick R., "Hardship and Changed Circumstances as Grounds for Adjustment or Non-Performance of Contract Practical Considerations in International Infrastructure Investment and Finance." American Bar Association Section of International Law Spring Meeting (April 2006]. http://www.cisg.law.pace.edu/cisg/biblio/fucci.html

[2] Atkins, Alden L. and Cigarroa Keck, Teresa, "Overseas Investors Beware: Hardship May Upset Pacts." First appeared in Law360, September 22, 2010. http://www.velaw.com/resources/OverseasInvestorsBewareHardshipMayUpsetPacts.aspx

[3] Alliance of Californians for Community Empowerment and California Reinvestment Coalition, "The Wall Street Wrecking Ball: What Foreclosures Are Costing Oakland Neighborhoods." September 2011. http://www.calorganize.org/wreckingball

[4] Gustin, Sam, "Goldman Sachs Only Made $1 Billion Profit Last Quarter." Time. January 19, 2012. http://business.time.com/2012/01/19/goldman-sachs-only-made-1-billion-profit-last-quarter/

[5] Distefano, Joseph N., "Kenney: Probe lawyers, advisors, bankers on Philadelphia finances." Philly.com, February 29, 2012. http://www.philly.com/philly/business/140911143.html

[6] This is not the only questionable investment that the City of Oakland has found itself holding. When the Department of Justice, SEC and the IRS investigated numerous financial institutions for antitrust and other violations with respect to Guaranteed Investment Contracts ("GICs"), the City of Oakland joined with other local municipalities to sue providers of GICs (another form of derivative related to municipal bond issues) to them (City of Oakland v. AIG Financial Group, et al., <http://www.lieffcabraser.eom/media/pnc/0/media.720.pdf>, <http://www.lieffcabraser.com/media/pnc/9/media.719.pdf>).

[7] Raymond, Nate, "Judge Appoints Interim Counsel in Trillion-Dollar Libor Class Action" Law.com, December 5, 2011. http://www.law.com/jsp/cc/PubArticleCC.jsp?id=1202534215495

[8] Bond Graham, Darwin, "Oakland Ponders Dropping Its Toxic Interest Rate Swap." March 9, 2012. http://darwinbondgraham.wordpress.com/2012/03/09/oakland-ponders-dropping-its-toxic-interest-rate-swap-7/

East Bay Express

NEWS February 15, 2012

Oakland's Toxic Deal with Wall Street

The city has already paid $26 million to Goldman Sachs, and local activists say the deal fs unfair gift of public funds and should be tenntnated.

By Darwin BondCraham

Although last week's $26 billion settlement between the Obama administration, attomeys general from 49 states, and five large banks over unscrupulous lending practices appears lo have been deeply flawed, it may provide a modicum of rciief for two million homeowners nationwide, inciuding a half-million Califomians. The agreement, however, does nothing for cities like Oakland that are trapped in expensive and toxic financial deals with some of Wall Street's biggest players. Oakland's bad lending deal is with Goldman Sachs, and it's already cost the city $26 million. By 2021, the total pricetag for local taxpayers could reach $46 million.

Oakland's debt to Goldman Sachs has angered progressives In part because the Wall Street giant received multibilhon-dollar bailouts from the federal govemment, and yet refuses to renegotiate expensive financial instruments with cities that are costing local taxpayers millions more. During a meeting last June on Oakland's budget, Councilwoman Rebecca Kaplan fired off a letter to Goldman Sachs' CEO: "Many of us stood united as leaders supporting federal action that used taxpayer funds to save your company from economic disaster," Kaplan wrote to Lloyd Blankfein, whose pay topped $40 million in 2008. "These actions — to use taxpayer dollars in order to salvage private, for-profit corporations — was justified to the public on the grounds that it would enable companies such as youu s to then be able to operate in a manner that would be beneficial to the public.

"Unfortunately," she conciuded, "that half of the deal has not taken place."

Kaplan's letter followed research by the Service Employees Intemational Union and the Alliance of Califomians for Community Empowerment that exposed the unfairness of so-called rate-swap agreements between cities and investment banks across Califomia. Last June SEIU members picketed the Califomia Street offices of Goldman Sachs in San Francisco, demanding renegotiation of the deal's terms. "The $26 million the city has already paid is half of Oakland's deficit this year," activists said at the time, "hut only 1 percent of Goldman Sachs' profits for the first quarter of 2011." But this campaign, as well as a resolution for the Oakland City Council to seek termination of the swap deal, later fell by the wayside.

The toxic rate-swap agreement in question dates to 1997 when Goldman Sachs convinced Oakland officials that it would protect taxpayers against the possibility that interest rates would rise on variable rate bonds that the city planned to issue the next year. Rate swaps — essentially contracts between two parties — allow govemments to transform variable-rate debt payments into fixed-rate debt. Oakland's deal with Goldman Sachs converted floating rates on $187 million of bond debt into a fixed 5.6 percent.

The problem for Oakland, however, was that floating interest rates only briefly exceeded 5.6 percent in the past fifteen years; first between 1998 and

2001, and again at the height of the housing bubble between 2006 and 2008. During the economic recession that followed 9/11, interest rates plummeted below 2 percent, forcing Oakland to make much higher payments to Goldman Sachs than it would have had it never signed the deal. Then, with the collapse of the economy in 2008, the US Federal Reserve reduced its lending rates to virtually zero, with variable rates in markets trailing close behind. Yet Oakland was still stuck paying more than 5 percent.

If rates stay artificially depressed due to the Federal Reserve's decisions, Oakland will owe Goldman Sachs another $20 million between now and 2021. That's on top of the $26 million the city has already paid.

Beyond labor and community groups, mainstream business publications also have pointed out how unfair these swap deals have become for cities since the crash in 2008. The *Wall Street Journal* reported on the subject two years ago, while reporters for Bloomberg News noted last month that US municipalities have paid more than $20 billion on rate swaps during the past five years.

Locally, pressure is now building again to do something about the Goldman Sachs deal. Leaders of some of Oakland's largest churches are uniting with community organizers, Decolonize Oakland, and Occupy Oakland activists to focus on how "predatory" banks are draining Oakland's budget and causing cuts to vital city services. They plan to bring the issue up with the city council on February 21, and say that many future actions are in the works.

Reverend Daniel Buford, head of the Prophetic Justice Ministry at Allen Temple Baptist Church in East Oakland, said the rate-swap deal with Goldman Sachs is an injustice. "Oakland should end its relationship with Goldman Sachs," said Buford, "and Goldman Sachs should give back the money that's been paid to them by our city."

One challenge this coalition faces, however, is that the legal terms of the agreement will require Oakland to pay a hefty penalty — the "fair market value" of the swap — if the city unilaterally terminates the agreement before its expiration date in 2021. That penalty is around $16 million, according to Oakland's most recent comprehensive annual financial report. "Goldman Sachs has gotten millions from Oakland each year from this swap. They've also gotten bailed out by taxpayers under the TARP program," Buford said. "The swap should be terminated without penalty to the city."

Members of Occupy the Hood and Decolonize Oakland, groups created to bring greater focus to racial justice issues within the larger Occupy movement, have researched Oakland's swap agreement with Goldman Sachs. They say the city has strong moral and political justifications to demand cancellation without penalty. "It's a second bailout for the big banks," Yvonne Michelle of Decolonize Oakland said of the millions that investment banks are making off cities in the toxic rate-swap deals. "They were first bailed out by the administration when the market crashed. Now we're in limbo with one foot in recovery and one foot in recession mode, and Goldman Sachs continues to prosper from our monies a second time over."

Luz Calvo, a faculty member at Cal State University East Bay and a member of Decolonize Oakland, noted that policies by the Federal Reserve that keep interest rates low also allow Goldman Sachs to reap big profits from rate-swap deals made before interest rates collapsed. "Federal policy keeping interest rates at historically low levels is helping to transfer wealth out of municipalities to Wall Street," Calvo explained. "The interest swap was set up so that if interest rates drop below a certain levci, the city pays Goldman Sachs. If it goes above a certain levci, Goldman Sachs pays the city." The problem, conciuded Calvo, is that "in normal times, the interest rate would fluctuate so that both sides would have good years and bad years. The Fed's policy to hold interest rates at extremely low levels since 2008 is helping the finatcial sector extract more wealth out of municipalities that are involved in these swaps."

Pciitical leaders in Washington are forcing cities and taxpayers to suffer financially, Buford and other organizers also argued. Meanwhile the federal government is keeping rules in place that benefit corporations. It's an onerous double standard that penalizes cities.

Under the Troubled Asset Relief Program of 2008, Goldman Sachs and other major financial corporations had their "troubled" derivatives (the ciass of financial products inciuding rate swaps) relieved from them with billions in taxpayer dollars. Goldman Sachs alone got $10 billion under TARP, plus another $30 billion in interest-free money from the Federal Reserve under a secretive program called the Single Tranche Open Market Operation.

Able to unload many of its toxic derivatives with this public assistance, the bank reaped large profits during the financial crisis. In 2010, Goldman Sachs paid its top five executives approximately $70 million in salaries and stock awards, according to the firm's most recent filings with the US Securities and Exchange Commission. Compensation is expected to have risen last year. In the same timeframe Oakland paid $5 million to Goldman Sachs because of the swap.

Goldman Sachs' deal with Oakland is by no means the only toxic swap that's bleeding Bay Area cities to the benefit of big banks. According to an SEIU study from February 2010, San Francisco must pay $19 million on swap deals with JP Morgan Chase, Goldman Sachs, and Bank of America, and the City of Richmond must hand over $6 million to the Royal Bank of Canada.

Other local agencies have been stung by swaps, too. The Peralta Community College District was forced to pay $1.6 million in 2011 on a swap with Morgan Stanley. "We find it unconscionable that while students, teachers, and staff go begging, Morgan Stanley — a recipient of $10 billion in federal bailout money — continues to collect millions from an impoverished community college district," wrote Peralfa Federation of Teachers President Matthew Goldstein in a letter sent to the executive director of Morgan Stanley's San Francisco ofBce. Goldstein's faculty union and students took this message to the Peralta's board of trustees last November. Peralta administrators have reportedly attempted to renegotiate the swap with Morgan Stanley. A spokesperson for Morgan Stanley declined to comment on the status of the swap agreement.

Last month San Francisco leaders successfully brought JP Morgan Chase to the table, convincing the bank to terminate a rate swap agreement that has been draining cash from the foundation that operates the Asian Art Museum. The swap was terminated without penalty.

Examples like this give hope to Oakland's community organizers who are aiming to terminate the city's swap with Goldman Sachs. These activists are also keen on pointing out that this is only the first step for them. 'These rate swaps are only the tip of a larger iceberg," said Jack Gerson of the Oakland Education Association. Gerson points to numerous other financial and tax and revenue arrangements that have Oakland paying off ballooning debts to banks and the state govemment

Reverend Buford said now is the time fca the Occupy movement to gain focus and ally itself with broader community csganizations to push for fundamental changes affecting Oakland's budget problems. "We have an opening, morally, socially, and politically, and we've got to seize it All the banks and corporations are vulnerable now to public pressure." Of the city council and other government bodies, Buford said, "Some leaders have wanted to do something about these financial injustices for a while now, but they lacked the power. We're going to give them the strength and bacidng to do right."

—Pueblo Lands

A blog about the political economy of the San Francisco Bay Area

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March 24, 2012
Uncategorized
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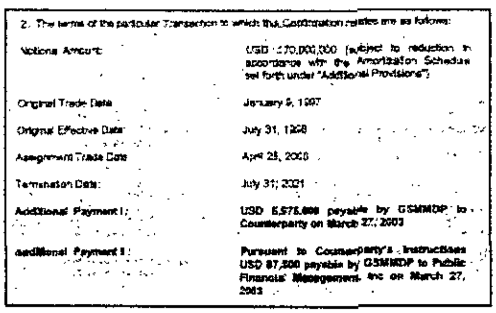
Who Inked Oakland's Costly Swap Deal? Where Are They Now?



2. The terms of the particular Transaction to which this Confirmation relates are as follows:

Notional Amount:	USD [illegible],000,000 (subject to reduction in accordance with the Amortization Schedule set forth under "Additional Provisions")
Original Trade Date	January 9, 1997
Original Effective Date	July 31, 1998
Assignment Trade Date	April 25, 2003
Termination Date:	July 31, 2021
Additional Payment I:	USD 5,575,000 payable by GSMMDP to Counterparty on March 27, 2003
Additional Payment II:	Pursuant to Counterparty's Instructions USD 87,500 payable by GSMMDP to Public Financial Management, Inc on March 27, 2003

In 2003 PFM Group, Inc. recieved $87,500 from Goldman Sachs when PFM, acting as a financial advisor for Oakland, helped to change the terms of the rate swap agreement between Goldman Sachs and Oakland. Former Oakland Treasurer Jan Mazyck was an employee of PFM Group at the time. The terms of the deal after 2003 exposed Oakland to basis risk because it substituted a LIBOR payment from Goldman Sachs instead of the SIFMA (formerly PSA and BMA) index rate the swap had been pegged to until then. It opened up other forms of risk for Oakland also, and yet did not include a renegotiation of the fixed rate Oakland was to pay under the original deal, 5.6775%.

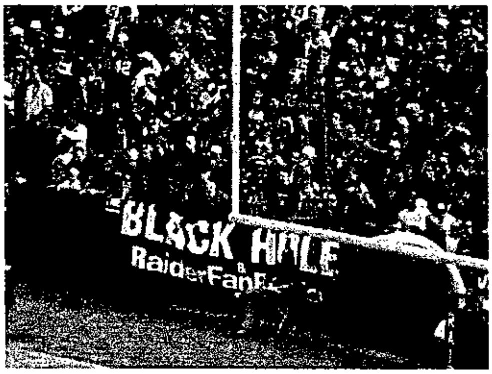
Oakland's interest rale swap deal with Goldman Sachs required signatures from some of the city's highest officers, and also from powerful executives at Goldman Sachs.

Who were they? Where are they now?

Signing off on the original 1997 swap agreement for Goldman Sachs was General Partner Greg Swart. Swart spent twelve years at Goldman Sachs in the bank's Cayman Islands offices doing various jobs for hedge fund clients.

In 2002 Swart left Goldman Sachs to join San Francisco's Farallon Capital Management, the twelfth largest hedge fund in the world with $21 billion under management. The world of hedge funds is notoriously secretive, so not much else is known about Swart's current work for Farallon except what's visible in SEC filing or tidbits in the business press. Needless to say that as a partner at a major hedge fund, derivatives like interest rate swaps still play a major roll in Swart's daily business.

Signing off for Oakland was City Manager Craig Kocian. Kocian, who held the Manager job from 1993 to 1997, had a rough time late in his tenure because of several financial deals that turned sour for the city. The worst was the deal struck with the Raiders Football Club.



The Raiders' Stadium Bonds ended up creating a "black hole" into which the city's budget dollars disappeared. It was an earlier example of overzealous financial thinking and corporate welfare harming Oakland's residents.

Raiders owner Al Davis managed to convince Kocian and the City Council to agree to a hefty public subsidy in order to renovate the Oakland Coliseum with luxury skyboxes and other amenities. Without the renovations Davis said he'd keep the Raiders in LA. To finance the deal Kocian put together a roughly $198 million bond package. These "Stadium Bonds" were supposed to be paid off entirely with the extra revenues that ticket sales would generate —Raiders owner Davis along with the City Council and Kocian all fooled themselves into thinking the East Bay would become a booming market for the Raiders franchise— but the chains of debt bondage for Oakland were written into the fine print. As an independent audit of the city's finances in 2005 explained;

> "The Stadium Bonds are limited obligations of the Authority payable solely from revenues of the Authority, consisting primarily of base rental payments to be received by the Authority from the City and the County. Certain revenues collected from Raiders football operations consisting of revenues from the sale of seat rights, as well as annual seat maintenance fees, a portion of net parking and concession revenues and concessionaires' initial fees, may be used toward meeting this liability. ***In the event that such football revenues are insufficient to make base rental payments, the City and the County are obligated to make up the shortfall in the base rental payments from their respective General Funds*** [emphasis added]."

Of course football revenues fell short and the city was forced to pay out of the General Fund. The same handcuff was applied to the portions of the Stadium Bonds used to renovate the Warriors Arena. Oakland was forced to pay $9.6 million in 2005 alone because of these deficits resulting from corporate welfare bestowed primarily on the Raiders.

Kocian took much of the blame. Trying to salvage some dollars Kocian went so far as to send a memo to Oakland's 4,000 city employees asking them to purchase seat licenses in the stadium by agreeing to a payroll deduction, an option that few employees signed up for because it would have basically been a pay cut with a perk. Other Oakland officials dodged not only much of the blame for the Stadium Bonds deficit, but also skirted allegations of public ethics violations linked to the deal.

This kind of financial thinking —that clever accounting, sky's-the-limit bond issuances, and big bets on Oakland's economic fortunes could allay the city's post-industrial structural deficits— set the context for negotiations between Oakland and Goldman Sachs.

Oakland's then Treasurer Jan Mazyck was another proponent of the Stadium Bonds deal, and would join Kocian in promoting the Goldman Sachs interest rate swap in 1997. Mazyck left Oakland just three months after consummating the swap, however, taking a job in the private sector with the Public Resources Advisory Group in Los Angeles. Apparently she only stayed a year and half until joining the PFM Group, another big consulting firm specializing in helping cities load up on debt and the derivative products like rate swaps that are supposed to make higher levels of leverage safer.

Both Public Resources Advisory Group and PFM Group have subsequently done business with Oakland, including acting as financial advisors on bond issuances. Presently Mazyck seems to have moved on from PFM Group, founding her own consulting business Mazyck Advisors LLC, about which little more is available.

Mazyck may or may not have been involved in the 2003 renegotiation of the Oakland-Goldman Sachs rate swap as a private sector advisor, a revolving door possibility we'll return to in a moment.

Kocian had also left Oakland by the time the bonds that the rate swap deal was designed for were issued in 1998, heading back to the small suburb in Colorado from which he originally came. The bonds in question were issued to refund an earlier pension obligation bond issued in 1988. The 1988 bonds were designed to fund the Police and Fire Retirement System (PFRS). The PFRS pension bond and subsequent under-funding constitutes a fiscal fiasco that is too big a can of worms to open up here.

Goldman Sachs not only sold the rate swap that was supposed lo create a low synthetic rate on these bonds, the investment bank was also selected by Kocian, Mazyck, and their successors, to underwrite $131,500,000 of the $187,500,000 total debt.

It was a sweet deal for Goldman in all respects because the bank earned a large chunk of the $1.92 million of the underwriter's discount agreed to by Oakland, in addition to the cash flow that would eventually accrue from the swap. From the very beginning Oakland's administrators defended the swap agreement, claiming it provided access to cheaper debt, and that Goldman Sachs had generously agreed to up front payments adding up lo about $15 million, money that Oakland's City Council was eager lo pour into its budget

Swart's colleagues at Goldman Sachs who co-signed the 1997 Oakland rate swap included two vice presidents, Calvin Carver and Bradley Wendt Carver was a Goldman Sachs derivatives manager, overseeing numerous derivatives deals. When he left Goldman in 2002, Carver joined the newly created SwapsWire Limited, a London company that specialized in facilitating derivatives trading. In 2008 SwapsWire was bought by Markit Group Limited, another British company that specializes in financial information services related to derivatives pricing and trading. Ironically Markit's fortunes were enormously boosted by the financial crisis because every new regulation concerning transparency has been a new business opportunity. Wendt similarly left Goldman Sachs to join the BondDesk Group, a technology company thai serves bond traders, including Goldman Sachs.

Fast forward...

In 2003 the original rate swap deal was renegotiated and amended. The key change was lo the benchmark rate that Goldman Sachs was obliged to pay. The original agreement stipulated that Goldman would pay the PSA Municipal Swap Index, an index rate that averages hundreds of outstanding bond prices. The 2003 amendment replaced this benchmark rate and stipulated that Goldman would from then on pay 65 percent of the London Interbank Offered Rate. The upside to the deal was that it should have allowed Oakland lo reduce its fixed rate payment because the city was willingly taking on more risk. Switching to LIBOR was clearly a plus for Goldman. However, Oakland's fixed rate payment stayed the same, 5.6775%. Instead Goldman gave Oakland $5.975 million to sweeten an otherwise bum deal.

Swart and his colleagues at Goldman were gone by this point, as was Kocian.

Just glancing at the signatures gracing the 2003 amended swap agreement Mazyck also seems to have also been out of the picture. On closer inspection it turns out that one of the advisors to the 2003 amended deal was Public Financial Management, Inc., the consulting firm where Mazyck was working and on her way toward becoming a general partner. Whether Mazyck worked on the amended deal isn't clear.

Goldman paid Public Financial Advisors $87,500 for helping draft the amendment

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Update as of March 27, 2012

Turns out that ex-Oakland Treasurer Mazyck was involved in restructuring the bonds connected to the Goldman interest rate swap. Here's an article from The Bond Buyer in 2003 describing Mazyck's role as a private sector adviser to Oakland and Goldman Sachs as they restructured the original 1997-1998 swap-linked bond deal – http://www.highbeam.com/doc/1G1-78824783.html

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Big Banks Squeeze Billions in Profits from Public Budgets

An estimated $28 billion already taken out of public budgets to pay banks on swap deals; big banks seek to collect billions more.

Big banks are profiting at state and local governments' expense using the same toxic financial instruments that helped crash the economy. These derivatives known as interest rate swaps, were sold to governments with a promise that they would lower their borrowing costs but have now become a huge liability. The banks have already taken as much as $28 billion from state and local governments. Now, during the worst public budget crisis in memory, the big banks seek to collect billions more from toxic deals that local and state governments are trapped into and are forcing layoffs and cuts to services to cover payments to banks.

Big banks must renegotiate or cancel the derivatives, which could prevent the transfer of billions of dollars from public budgets to big banks.

Bank Deals Turn Toxic: Increased Costs for Governments, Windfall for Banks
Banks like JPMorgan Chase, Bank of America, and Goldman Sachs initially marketed derivative deals with the promise that they would help state and local governments reduce their cost of borrowing for public improvement projects.[1] In a typical deal, a state or local government agreed to "swap" interest rates on variable-rate bonds, with the government paying the bank a fixed rate in exchange for a variable payment that would track the interest due on the bonds. If interest rates were projected accurately, the payments would more or less balance out over the life of the contract and the public entity would end up with something similar to a fixed-rate bond.

Derivatives, however, have turned into a windfall for banks and a nightmare for taxpayers. In the wake of the financial collapse, the federal government aggressively drove down interest rates to save the big banks and spur economic recovery. The unintended consequence was the creation of an opportunity for banks – whose variable payments were tied to prevailing interest rates – to reap a tremendous profit from the deals. While banks are still collecting fixed rates of 3 to 6 percent, they are now regularly paying public entities as a little as a tenth of one percent on the outstanding bonds, with rates expected to remain low in the future. Over the life of the deals, banks are now projected to collect billions more than they pay state and local governments – an outcome which amounts to a second bailout for banks, this one paid directly out of state and local budgets.

While banks have benefitted, state and local governments have been trapped in expensive and risky debt. They are paying above-market rates and are exposed to even higher penalty rates if banks and other financial institutions withdraw support for their complicated variable-rate debt. Yet the banks have made it prohibitively expensive for state and local governments to refinance by demanding tens or hundreds of millions of dollars in fees to terminate derivatives. In some cases, public entities have gone ahead and made the payments out of desperation; in others, the banks have actually forced termination of the deals just to collect the huge termination fees. The overall effect is staggering. Banks are estimated to have collected as much as $28 billion in termination fees alone from state and local governments over the past two years. This does not even begin to account for the outsized net payments that state and local governments are now making to the banks.

Finally, there is also mounting evidence that it is no accident that these deals have gone so badly, so quickly for state and local governments. Ongoing investigations by the U.S. Department of Justice and the California, Florida, and Connecticut Attorneys General implicate nearly every major bank in a nationwide conspiracy to rig bids and drive up the fixed rates state and local governments pay on their derivative contracts.[2] If the allegations are true, the banks' illegal practices have directly contributed the outsized costs and risks now faced by state and local governments.

Local Governments All over the Country Are Caught up in the Swaps Net

Back in November *BusinessWeek* told the story of Detroit, a city whose swaps had gone bad. Detroit struck a derivatives deal with UBS (UBS). However the deal came with problematic strings attached. If the city's credit rating dropped, the banks could opt out of the deal and demand a sizable breakup fee. That's precisely what happened last year when Detroit saw its credit rating slashed. The banks executed the swap termination clause and the city of Detroit, already struggling was on the hook for $400 million.[3]

While die press have reported numerous stories of cities like Detroit, caught with high termination payments, the reality is there are hundreds (maybe even thousands) more cities, counties, utility districts, school districts and state governments with swap agreements. These agreements could be ticking time bombs. In any case, in the current interest rate environment they are causing cash strapped local and city governments to pay millions of dollars in unneeded fees directly to Wall Street. In location after location governments are caught between the high fees to the banks and the extraordinary termination fees they would need to get out of the deal.

In Pennsylvania for instance, the banks pitched at least 500 deals involving interest rate swaps, totaling $12 billion. "Most of the transactions - which occurred outside the state's largest cities of Philadelphia and Pittsburgh - have been made without public bidding, which means that banks and advisers privately arranged the deals with small school districts."[4] One in five school districts and 86 other local governments in Pennslyvania have swap agreements according to a report issued by the Auditor General's office. The Department of Community and Economic Development's records indicate that 626 swap filings were made in Pennsylvania between October 2003 and Jime 2009, which related to $14.9 billion in debt.[5]

No one has yet completely categorized all the outstanding swap deals entered into by local and state govemments but a cursory search of a small sample Comprehensive Annual Financial Reports (CAFRs) revealed multiple swaps issued in at least 32 jurisdictions in 12 states.[6] Table 1 below includes some examples of these swaps within the State of California. Table 2 looks at locations outside of California.

Banks Must Renegotiate Derivatives to Prevent State and Local Government Budget Cuts

The banks that created the economic crisis and received trilhons of dollars in bailouts should not be allowed to profiteer from the crash while state and local govemments suffer. Banks have renegotiated derivative contracts in the past, and they must commit to modifying the contracts on a much wider scale in order to do their part to support economic recovery. Sen. Robert Menendez and Rep. John Lewis have introduced legislation which would impose a 100 percent tax on derivative termination fees to keep banks from seeking to collect on these deals, but banks cannot wait to act.

Banks must commit to reform their derivative businesses now in order to stave off catastrophic cuts to state and local govemment services:

- Renegotiate or cancel deals at no cost to taxpayers to stop the massive transfer of wealth from the public sector to banks;
- Disclose bank derivative holdings before state and local govemments plan budgets; and
- Sign a code of ethics which will govern their future marketing and pricing of municipal derivatives.

Sampling of Interest Rate Swap Deals Across the Country

Deals Below to Cost Taxpayers More Than $1.25 Billion in 2010

State	Public Entity	Annual Swap Payments ($ million)	Termination Fee† ($ million)	Bank Counterparties	Local Budget Situation
CA	See California table below	364.7	1,004.1	BofA, Citi, Goldman, JPMChase, Others	See California table below
CO	City & County of Denver	33.9**	289.5	Goldman, BofA, JPMChase, RBC, Others	Cut $200M from its budget in FY 2010
CO	Denver Public Schools	34.7	81.3	JPMorgan Chase, Bank of America, RBC	Dealing with $120M deficit in FY 2010
CO	City of Aurora	2.6	9.6	JPMorgan Chase, Morgan Stanley	N/A
CT	State of Connecticut*	9.8	16.7	Unknown	Dealt with a $515 M deficit in FY 2010
IL	State of Illinois	57.7**	88.8	Unknown	Dealt with a $13.2B deficit in FY 2010
IL	City of Chicago	66.9**	442.2	Unknown	Dealt with a $520M deficit in FY 2010
IL	Chicago Public Schools	35.7	164.2	RBC, Loop Financial, BofA, Goldman, Other	Facing up to $1B deficit in FY 2011
LA	City of New Orleans	9.0	52.8	UBS	Dealt with a $68 M deficit in FY 2010
MA	State of Massachusetts*	18.5	325.7	Barclays, Morgan Stanley, Citigroup, BofA, BofNY, DeutscheBank, JPMorganChase, Goldman Sachs, Ambac	Dealt with a $3B deficit in FY 2010
MD	City of Baltimore	18.5**	63.2	Unknown	Facing a $121M deficit in FY 2011
MI	City of Detroit	107.1**	303.8	Unknown	Dealing with $300M deficit in FY 2010
MO	City of Kansas City	7.8	35.1	Citigroup, UBS, Barclays	Dealt with $65M deficit in FY 2010
NC	City of Charlotte	22.7	45.0	Unknown	Facing a $9M deficit in FY 2011
NO	City of Winston-Salem*	3.1	14.0	Unknown	Cut $25M from its budget in FY 2010
NJ	State of New Jersey	118.4	535.6	Unknown	Facing an $11B deficit in FY 2011
NY	State of New York*	102.0	534.0	Unknown	Dealt with a $3.2B deficit in FY 2010
NY	Metro Transportation Authority	103.7**	579.5	Citi, JPMChase, UBS, Morgan Stanley, Others	Dealing with $783M deficit in FY 2010
OR	State of Oregon	13.5	34.5	Bank of America, Morgan Stanley, JPMChase	Dealt with $4.2B deficit for 2010-11
PA	City of Philadelphia	94.4**	332.0	JPMC, Citi, RBC, Goldman, MorgStan, Others	Dealt with $2.4B deficit in FY 2010
PA	Pennsylvania Turnpike	26.4	145.5	Goldman Sachs, Deutsche Bank	N/A
	TOTAL	**$1,251.1**	**$5,097.1**		

Annual payments based on interest rates as of February 2010

Sampling of California Interest Rate Swap Deals

Public Entity	Annual Swap Payments ($ million)	Termination Fee[†] ($ million)	Bank Counterparties	Local Budget Situation
State of California[*]	135.2	269.2	Unknown	Dealing with a $52.1B total deficit in FY 2010
City & County of San Francisco	19.2	N/A[‡]	JPMChase, Goldman Sachs, BofA, Depfa	Facing a $522M deficit in FY 2011
City of Corcoran	0.7	2.2	Piper Jaffray	N/A
City of Los Angeles	19.0	29.0	Bank of New York Mellon, Dexia	Dealt with a $212M mid-year deficit in FY 2010
City of Menlo Park	2.4	8.5	Piper Jaffray	Dealt with a $550K mid-year deficit in FY 2010
City of Oakland	5.2	19.0	Goldman Sachs	Still facing a S4M deficit in FY 2010
City of Oxnard[*]	1.9	7.7	Royal Bank of Canada, Others	N/A
City of Pittsburg	4.8	13.3	Piper Jaffray	Facing a $2M deficit in FY 2011
City of Richmond	6.0	21.1	Royal Bank of Canada	Still facing a S10M deficit in FY 2010
City of Riverside[*]	11.6	29.9	Unknown	Dealing with $4M deficit in FY 2010
East Bay Municipal Utility District	34.4	29.1	Citi, SBS Financial, JPMChase, BofA, Other	N/A
Metro Transportation Commission[*]	62.8	411.1	Ambac, Citi, JPMChase, BNY, BofA, Goldman Sachs, Morgan Stanley	N/A
Peralta Community College District	19.0	N/A[‡]	Morgan Stanley	Cut S13M from budget in FY 2010
Riverside County[*]	3.9	24.1	Citigroup	Dealing with $71M deficit in FY 2010
Sacramento County[*]	25.4	88.9	Bank of America, JPMorgan Chase	Cut S195M from budget in FY 2010
Valley Transportation Authority	13.2	51.0	Unknown	Dealt with $98M deficit in FY 2010
TOTAL	**$364.7**	**$1,004.1**		

Annual payments based on interest rates as of February 2010

[*] The swap payments for these entities are not calculated based on current interest rates, but taken from their most recently available Comprehensive Annual Financial Reports (CAFR).

[†]Termination fees are based on the figures reported in the entities' most recently available CAFRs, either from FY 2008 or FY 2009.

[**]The actual number is likely higher. In each of these entities, we found a few swaps for which we were unable to calculate the current payments, so those swaps were left out of this calculation.

[‡]We were unable to determine the proper termination fee for these entities.

Stronger Together

[1] http://www.auditorgen.state.pa.us/Department/Press/WagnerCallsOnBanRiskySwapContracts.html

[2] http://www.bloomberg.com/apps/news?pid=20601015&sid=a852NJ_VtI1U&refer=munibonds

[3] http://www.businessweek.com/magazine/content/09_48/b4157034230199.htm

[4] http://www.bloomberg.com/news/marketsmag/mm_0308_story2.html

[5] http://www.auditorgen.state.pa.us/Department/Press/WagnerCallsOnBanRiskySwapContracts.html

[6] See swap table