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CITY OF OAKLAND

AGENDA REPORT

TO:	Sabrina B. Landreth City Administrator	**FROM:**	Michele Byrd, HCD Director, HCD
SUBJECT:	Brooklyn Basin Affordable Housing Parcel Swap	**DATE:**	November 9, 2016

City Administrator Approval Date: 11/21/16

RECOMMENDATION

Staff Recommends That The City Council Adopt An Ordinance (1) Authorizing The City To Acquire Project Parcel A For Affordable Housing Development At The Brooklyn Basin Project From Zarsion-OHP I, LLC, In Exchange For Project Parcel G, (2) Authorizing An Amendment To The Cooperation Agreement With The Oak To Ninth Community Benefits Coalition To Reflect The Exchange, And (3) Amending Resolution No. 84349 C.M.S. To Terminate The City's Put Option Providing For The Optional Resale Of The Affordable Housing Parcels Back To Zarsion-OHP I

EXECUTIVE SUMMARY

In August 2014, in accordance with the City's 2006 Development Agreement (DA) with master Brooklyn Basin developer Zarsion-OHP I, LLC (ZOHP) and the Cooperation Agreement with the Oak to Ninth Community Benefits Coalition, the City purchased Brooklyn Basin Parcels F and G from ZOHP for the purpose of developing affordable housing at the project site. In 2015, ZOHP selected, and the City subsequently approved, MidPen Housing Corporation (MidPen) as the affordable housing developer for the project. The 2006 DA requires the affordable housing developer to build 400 public parking spaces and 42,000 square feet of commercial space as separate condo developments on Parcel G (in addition to approximately 300 affordable housing units), on a fee basis, with the parking/retail condominiums then turned over to ZOHP on a reimbursement basis. This requirement makes it difficult for MidPen to develop their project financing plan on Parcel G. In addition, ZOHP does not have control over the design of this commercial space at the main gateway to the project site.

To address these issues, ZOHP has proposed swapping Parcel G for an adjacent parcel, Parcel A, which would eliminate the need for the affordable housing developer to take on a commercial/parking development in addition to the affordable housing units, and allow ZOHP to have full control over the character of development at the gateway to the Project Site. Therefore, both parties would benefit substantially from the swap. In return, ZOHP has

requested that the City terminate its Put Option[1] (and associated Put Option escrow) with ZOHP, which was negotiated when the City purchased the parcels in 2014. In return for releasing the Put Option, ZOHP has agreed to retain their $2 million contribution to affordable housing development (required under the DA) in escrow for some period of time. In return for allowing the parcel swap, staff is recommending that the City Council approve the release of the Put Option and escrow funds in exchange for ZOHP's agreement to hold the affordable housing contribution in escrow, to be distributed in accordance with the DA as amended.

BACKGROUND / LEGISLATIVE HISTORY

Project Description and Affordable Housing Requirement

The Brooklyn Basin project (formerly known as the Oak to Ninth project) is a large-scale development project on a formerly-industrial site along Oakland's waterfront. When fully developed, the project will comprise approximately 3,100 housing units, over 200,000 square feet in retail space, 29.9 acres of parks and public open space, two renovated marinas and restoration of an existing wetland area.

In 2006, the developer of the project (then known as Oakland Harbor Partners), the City, and the Redevelopment Agency entered into a DA for the project. The City negotiated a variety of community benefits provisions into the DA, including provisions for on-site affordable housing development. The DA required the Redevelopment Agency to purchase two parcels (Parcels F and G) from the developer and to develop 465 units of housing affordable to low income households on those parcels. The affordable housing would be developed in phases as part of the overall project according to a schedule set forth in the DA. Oakland Harbor Partners agreed to sell the affordable housing parcels at a discount and to contribute $2 million toward development of affordable housing on those parcels.

Parallel to negotiations with the developer over the DA, the Redevelopment Agency negotiated a "Cooperation Agreement" with a coalition of community groups, known as the Oak to Ninth Community Benefits Coalition (the "Coalition"), over the level of community benefits that would result from the project, including affordable housing development. The Cooperation Agreement was executed in 2006. Consistent with the DA, the Cooperation Agreement required the Redevelopment Agency to purchase the affordable housing parcels and ensure that at least 465 affordable housing units are developed on the site.

Delay and Subsequent Changes to Affordable Housing Requirements

Shortly after the DA and the Cooperation Agreement were signed, the Brooklyn Basin project was put on hold by the developer due to the economic downturn, and a legal challenge to the Project.

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[1] Per *Black's Law Dictionary*: A put is an "option permitting its holder to sell a certain stock or commodity at a fixed price for a stated quantity and within a stated period." In this case, the Put Option gives the City the right, but not the obligation, to require that ZOHP purchase back one or both of the affordable housing parcels at the original sales price between December 31, 2015 and December 31, 2018.

Upon dissolution of the Redevelopment Agency in 2012, the City retained and assumed the housing assets and functions of the Redevelopment Agency, including obligations related to affordable housing development at Brooklyn Basin.

In recent years, with the legal settlement and economic recovery, the project has been revived by the current developer, ZOHP. In 2013, ZOHP proposed that the City exercise its option under the DA for an "early purchase" of the affordable housing parcels, i.e., purchase of the parcels at a discount before ZOHP's site improvement and environmental remediation work was completed. In order to induce the City to exercise its early purchase option, ZOHP offered to grant the City a "Put Option" that allows the City, at the City's discretion, to require ZOHP to buy back one or both of the affordable housing parcels during a three year option period (2016 through 2018) for the amount of the original purchase price paid by the City. The Put Option is intended as a backstop in case the City needs to sell the affordable housing parcels on the open market because it is unable to finance the development of the affordable units on-site, and the market value of the parcels is less than the original purchase price. The Put Option was secured by a $7,527,962 escrow account funded by ZOHP, which the City can draw on if ZOHP or its successors in interest do not fulfill their obligations under the Put Option to buy back the property.

Pursuant to the DA and the Cooperation Agreement, the City purchased Parcels F and G from ZOHP on August 28, 2014, for a purchase price of $21,508,462 plus closing costs, with ZOHP obligated to conduct extensive environmental remediation, as well as infrastructure work on the property. The purchase price represented the appraised fair market value of the parcels, discounted by $3,033,204 due to the early purchase. To fund the purchase, the City used proceeds from a housing bond issued by the Redevelopment Agency in 2011. Project funds totaling $2,454,627 from this bond remained after the purchase of the parcels. The transaction included ZOHP's grant of the Put Option to the City, and the escrow account securing the Put Option was established and continues to be in place.

Current Status and Affordable Housing Funding Outlook

ZOHP has begun site preparation work on the first phase of the overall project, including Parcels F and G. In June 2015, ZOHP selected MidPen Housing Corporation, a nonprofit affordable housing developer with extensive development experience in the Bay Area, to be the developer for the affordable housing project, and the City approved this selection. The City has been working closely with MidPen and the Coalition since June 2015, as MidPen develops and refines its affordable housing development scenarios and financing plan.

On January 5, 2016, City Council approved Resolution No. 85939 C.M.S., which approved MidPen's proposed financing plan for the affordable housing unit development, and approved the submittal of a petition to the California Department of Finance (DOF) for a Final and Conclusive Determination (FCD) that the City had an enforceable obligation under the DA and the Cooperation Agreement to fund development of 465 units of affordable housing on the affordable housing parcels. The City sought $45 million in Real Property Tax Trust Funds (RPTTF), i.e., property tax funds that were formerly considered tax increment funds, as its contribution to develop the affordable housing.

DOF initially denied the request on the grounds that vertical construction of affordable housing was not an enforceable City obligation. After a period of negotiations with DOF staff and local staff and officials, including Mayor Schaaf, with the enthusiastic and invaluable support of the Coalition, other local taxing entities and State elected officials, a solution was reached on May 19, 2016 (***Attachment A***). Per a change in the state redevelopment dissolution law, DOF is now allowing the City to retroactively re-characterize previous draws from the 2011 Affordable Housing Set-Aside Bond Fund, for the affordable parcel purchase at Brooklyn Basin and the Mural Apartments affordable housing development at the MacArthur BART station, as RPTTF expenditures. This frees up the 2011 Affordable Housing Bond Funds to support vertical construction of affordable housing development at Brooklyn Basin.

After allowing for City staff costs associated with administering and monitoring project development over the next seven years, approximately $35 million in 2011 Affordable Housing Bond funds are projected to be available for vertical construction under this arrangement, instead of the $45 million in RPTTF funds requested. MidPen has been able to re-work their financial projections to leverage other funding sources, and the 465 units of affordable housing will be viable with the new funding amount. MidPen proposes to build the required 465 units through four to five separate phases over a seven-year time frame. Per the terms of the Cooperation Agreement, 110 units will target seniors and the remaining 355 will target families. All units will be affordable to households earning 25 percent to 60 percent of Area Median Income. At least 30 percent of the units will be three-bedroom units and at least 20 percent of the units will be two-bedroom units.

On July 19, 2016, per City Council Resolution No. 86301 C.M.S., the City Council approved a $360,000 predevelopment loan to support MidPen in their predevelopment activities for development on Parcel F, and that loan is expected to close within weeks.

Staff expects to return to the City Council in early 2017 with an agreement with the Oakland Housing Authority for joint ownership of the affordable housing parcels in exchange for development funding commitments for the project.

ANALYSIS AND POLICY ALTERNATIVES

The 2006 DA's requires that the affordable housing developer for Brooklyn Basin construct standalone condominium parcels with 400 parking spaces and 42,000 square feet of commercial space on Parcel G, in addition to a projected 250-300 units of affordable housing. MidPen has been working diligently since their selection as the affordable housing developer in June 2015 to create a plan to provide 465 affordable housing units at the Brooklyn Basin project site, as provided for under the Cooperation Agreement, but it has been commonly acknowledged for some time that the requirement that the affordable housing developer also finance and construct the parking and commercial space, to be later reimbursed by the master developer (ZOHP), would make financing for the overall development of Parcel G fairly challenging.

In addition, Parcel G flanks the main vehicular entryway to the overall Brooklyn Basin project site. On their part, ZOHP understandably wants to ensure (a) that development on Parcel G takes place early in the overall development, and (b) that they can set the tone for the development, particularly for the "anchor" retail use, at this entryway.

Therefore, ZOHP's offer to swap Parcel A for Parcel G is mutually beneficial for both the market rate and affordable housing development of Brooklyn Basin. ***Attachment A*** includes a map showing both parcels, as well as a comparison of the two sites. Once the DOF funding issues were resolved in May of this year, City staff began negotiations in earnest with ZOHP over the parcel swap proposal.

Size: Parcel A (2.14 acres net developable area) is slightly smaller than Parcel G (2.38 acres net developable area).

Development Capacity: Parcel A's maximum allowable building height (240 feet) is much greater than Parcel G (85 feet), and is permitted for a maximum of 407 units versus Parcel G's 300 units. To some extent, the advantages of this additional development capacity under current zoning are diminished by ZOHP's requirement that no more than 465 units total be built on the affordable housing parcels.

Parcel Location: Parcel A is further from the freeway (I-880), closer to the waterfront, and is immediately adjacent to Shoreline Park, which makes its location more advantageous than Parcel G.

Cost: ZOHP has proposed that the swap be made with zero cost to either party. Using the market value of $55,417 per unit used for the 2014 purchase of Parcels F and G, ZOHP's estimate is that the market value of Parcel A (330 units assumed, with a market value of $18,287,610) would be over $1.6 million more than the market value of Parcel G (300 units assumed, market value $16,625,000). Although this will be subject to verification by the City's Real Estate Division, given the continued high demand in the real estate market since 2014, this assumption seems relatively reasonable.

In return for the swap, ZOHP has requested that the City release both the Put Option and the Put Option escrow account of $7,527,962, which were negotiated when the City purchased the parcels in 2014. The Put Option requires ZOHP to repurchase one or both of the affordable housing parcels during the option period (which runs through December 31, 2018), at the City's discretion, for the amount of the purchase price paid by the City in 2014. The Put Option is secured by the escrow account, which the City could draw on if ZOHP does not fulfill their obligations under the Put Option to buy back the property.

Although the development risks that were intended to be mitigated by these instruments have now been somewhat lessened by DOF's decision allowing for City funding of the affordable housing development, and the Oakland Housing Authority's interest in investing in the project, City staff has been reluctant to release the Put Option and Put Option escrow without receiving anything in return. Therefore, City staff and ZOHP have agreed that the swap deal would include keeping ZOHP's $2 million affordable housing contribution required under the DA ($1 million per parcel, to be drawn down once building permits for the affordable housing are pulled) in an escrow account until the parcels are sold to MidPen, or the end of 2018, whichever is earlier.

In addition to the amendment to the Cooperation Agreement, the swap also has been reviewed for conformance with the DA.It has been determined that this proposed swapis not a material change to the DA obligations and therefore does not require a noticed public hearing or Council approval, pursuant to Section 11.2 of the DA.

If the proposed swap did not occur, MidPen would be required to seek financing for and oversee construction the affordable housing on Parcel G, but also the additional parking and commercial space condo parcels. Since the financing and development of these additional components would be substantially more complicated, potentially delaying delivery of the affordable housing units on this Parcel. In addition, Parcel G is not as desirable a Parcel for residential development as Parcel A. Therefore, pursuing the swap would be highly advantageous to the affordable housing development.

FISCAL IMPACT

Prior to entering into a purchase and sale agreement, City staff will work with our Real Estate Division staff to confirm the relative values of Parcel A and Parcel G, but given the size (Parcel A is slightly smaller than Parcel G, but without the parking space and commercial space condo development requirements), location (Parcel A is located further from the I 880 freeway), and restrictions on development (Parcel A is zoned for more units), the market value of Parcel A is likely to be similar or greater than Parcel G. In addition, financing the affordable housing development on Parcel A will be substantially easier without having to fund the parking space and commercial space development on a reimbursement basis.

PUBLIC OUTREACH / INTEREST

The Coalition continues to be involved with this project since it negotiated the Cooperation Agreement with the City in 2006. The members of the Coalition are the Asian Pacific Environmental Network, East Bay Asian Youth Center, Oakland Community Organizations, and the Urban Strategies Council. City staff, the Coalition, the Oakland Housing Authority (which is interested in committing development funding and Project-Based Section 8 vouchers to the project), and MidPen have been meeting frequently since June 2015 to discuss the affordable housing program and financing plan and the Coalition is an active participant in those discussions. The Coalition supports the swap.

This fall, a community member requested a staff report to answer questions regarding the State DOF's decisions on funding, ownership of the affordable housing parcels, and the current status of funds on hand for the affordable housing development. Staff worked with the community member, and agreed to bring answers to his questions with this staff report, which are included as **Attachment B** to this Staff Report.

COORDINATION

Housing and Community Development staff coordinated with the City Attorney's Office, Controller's Bureau, the City Administrator's Office and MidPen Housing in preparation of this report. Staff also remains in frequent comment with the Planning and Building Department, as well as the Public Works department's Environmental Services Division, regarding preparations for development and compliance with the DA. Real Estate staff will be brought in to review the relative valuation for Parcel A versus Parcel G.

SUSTAINABLE OPPORTUNITIES

Economic: The development of affordable housing at Brooklyn Basin will create economic opportunities through the provision of construction and property management employment opportunities.

Environmental: Environmental remediation of the affordable housing parcels has been completed and monitoring is occurring. Housing Staff will work with Public Works – Environmental Services Division staff to verify that Parcel A has been remediated to the same (or greater) enhanced standards ZOHP committed to for Parcels F & G.

Social Equity: The development of affordable housing at Brooklyn Basin will create 465 affordable housing units for low and very low income residents, which is a means of achieving greater social equity. Oakland's neighborhood-level environment will be improved by replacing vacant and underused lots with new homes and residents.

CEQA

The City of Oakland Planning Commission certified the Oak to Ninth Avenue Project Environmental Impact Report on March 15, 2006. Under the California Environmental Quality Act (CEQA) Section 15162, no subsequent environmental review is required unless the project has changed substantially, the circumstances under which the project would occur have changed substantially, or new information demonstrates that any potential environmental impacts would be substantially more severe than previously demonstrated. In reviewing the preliminary affordable housing development and financing plan, staff has determined that none of the circumstances necessitating further environmental review are present. The reasons for this determination include, among others, the following: (1) the preliminary affordable housing development and financing plan does not affect development envelope previously reviewed in the EIR and is not a change in the project that involves any new significant effects or a substantial increase in the severity of previously identified significant effects; (2) circumstances under which the project is undertaken have not occurred that will involve new significant environmental effects or a substantial increase in the severity of previously identified significant effects; and (3) no new information has come to light that would involve new or substantially more severe effects or feasible alternatives or mitigation measures. Accordingly, no further environmental review is required for this project at this time. The EIR identifies impacts and requires mitigation measures, and the proposed project will continue to be required to incorporate the mitigation measures. The EIR is available for review at 250 Frank Ogawa Plaza, Suite 3315, Oakland, CA 94612 during normal business hours.

ACTION REQUESTED OF THE CITY COUNCIL

Staff recommends that the City Council adopt the following legislation An Ordinance (1) Authorizing The City To Acquire Project Parcel A for Affordable Housing Development At the Brooklyn Basin Project From Zarsion-OHP I, LLC, In Exchange For Project Parcel G, (2) Authorizing An Amendment To The Cooperation Agreement With The Oak To Ninth Community Benefits Coalition To Reflect The Exchange, And (3) Amending Resolution No. 84349 C.M.S. To Terminate The City's Put Option Providing For The Optional Resale Of The Affordable Housing Parcels Back To Zarsion-OHP I

For questions regarding this report, please contact Christia Katz Mulvey, Housing Development Coordinator, at (510) 238-3623.

Respectfully submitted,

Michele Byrd

MICHELE BYRD
Director, Housing and Community Development

Reviewed by:
Norma W. Thompson, Housing Development Manager

Prepared by:
Christia Katz Mulvey, Housing Development Coordinator, Housing Development Services

Attachments (2):

Attachment A. Site Parcel Map / Comparison of Parcels
Attachment B. Response to Community member questions

Attachment A:

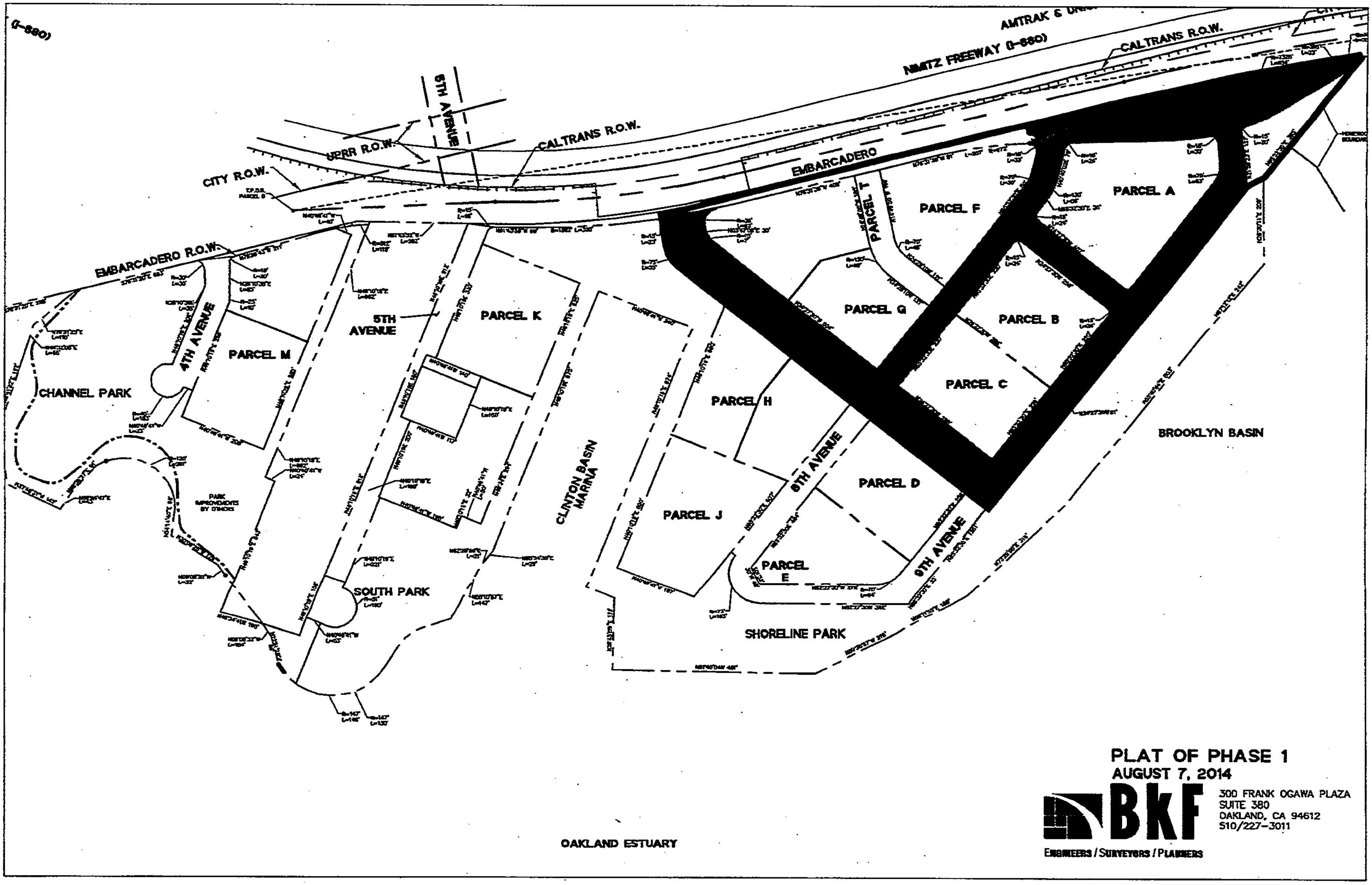
Brooklyn Basin

Comparison of Parcel A versus Parcel G

	Parcel A		Parcel G	
Parcel Area				
Gross Lot	2.41 ac		2.69 ac	
Net Lot Area (exclusive of setbacks)	2.14 ac		2.38 ac	(10,454 square feet)
Development Regulations				
Maximum Building Height	240 feet		85 feet	
Additional Required Programming				
Public/Retail Parking	n/a		400 space garage (4 levels @ approximately 33,000 sf each)[3]	
Ground Floor Retail	n/a		42,000 square feet of ground floor retail[1]	
Permissible Residential Density per PDP	**407 du**		**300 du**	
Approx. no. of units designed as wood frame podium - Type III	371 du		256 du	
Approx. no. of units designed as wood frame wrap - Type III	289		n/a	
Approx. no. of units designed as Type I - concrete	407 du		300 du	
Rough Order of Magnitude of Construction Costs				
Type III Podium $300 to $320/square foot				
Type III Wrap $260 to $280/square foot				
Type I Concrete $385+/square foot				
Parcel Location				
Waterfront location	Yes		No	
Adjacent to Shoreline Park	Yes		No	
Interior Parcel Location	No		Yes	

Notes

1. Combined programming of retail and public parking encumbers approximately 1.72 acres (75,000 sf) of Parcel G
2. Assumes that maximum residential density is achieved with Type I construction which requires compliance with life safety code
3. For planning purposes it was assumes that public/retail parking is a freestanding structure


(I-880)
AMTRAK & UNI
NIMITZ FREEWAY (I-880)
CALTRANS R.O.W.
5TH AVENUE
UPRR R.O.W.
CALTRANS R.O.W.
CITY R.O.W.
EMBARCADERO
EMBARCADERO R.O.W.
PARCEL T
PARCEL A
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PARCEL G
PARCEL B
PARCEL C
PARCEL H
PARCEL D
PARCEL J
PARCEL E
8TH AVENUE
9TH AVENUE
BROOKLYN BASIN
SHORELINE PARK
CLINTON BASIN MARINA
PARCEL K
5TH AVENUE
PARCEL M
4TH AVENUE
CHANNEL PARK
PARK IMPROVEMENTS BY OTHERS
SOUTH PARK
OAKLAND ESTUARY
PLAT OF PHASE 1
AUGUST 7, 2014
BKF
300 FRANK OGAWA PLAZA
SUITE 380
OAKLAND, CA 94612
510/227-3011
ENGINEERS / SURVEYORS / PLANNERS

Attachment B. Responses to Questions from community member Gene Hazzard Regarding the Brooklyn Basin Affordable Housing Development

In October, Mr. Hazzard requested an informational staff report regarding the following items (questions in *italics*, answers in **bold**):

1) *Informational Report Related To The April 4, 2016 And The May 16 2016 Letters From The State Department Of Finance Denying The City's Request For The Enforceable Obligation Of The Use Of $4,000,000.00 For The Construction Of Affordable Housing On The Oak To Ninth Project*

The State's correspondence is somewhat difficult to decipher; however, although the State Department of Finance initially denied the City's request for Forty-Five Million Dollars ($45,000,000) in RPTTF funds for the affordable housing project, the revised May 19, 2016 letter actually allows for the City to access Thirty-Seven Million Five Hundred ($37,500,000) of that amount.

On January 5, 2016, City Council approved Resolution No. 85939 C.M.S., which approved MidPen's proposed financing plan for the affordable housing unit development, and approved the submittal of a request to the California Department of Finance ("DOF") for a Final and Conclusive Determination ("FCD") for the use of $45 million in RPTTF, i.e., property tax funds that were formerly considered tax increment funds, along with approximately $2.5 million in housing bond funds.

The City filed the FCD request with DOF on February 1, 2016. The obligation to use RPTTF funds to develop affordable housing at Brooklyn Basin had been listed on Oakland's ROPS since the dissolution of the Redevelopment Agency in 2012. Under state law, the City was permitted to petition DOF for an FCD in certain cases when an obligation is to be funded through RPTTF. Receipt of an FCD would bar DOF from later determining that the ROPS item is not an enforceable obligation.

In an initial denial of the City's FCD request, DOF indicated their position that the Cooperation Agreement covering vertical construction of the affordable housing was not an enforceable obligation, despite its inclusion in every ROPS commencing with redevelopment dissolution in 2012. After a period of negotiations with DOF staff and local staff and officials, with the enthusiastic and invaluable support of the Coalition, other local taxing entities and State elected officials, a solution was reached in a DOF determination issued on May 19, 2016 (*Exhibit 1*). Per this decision, DOF is allowing the City to retroactively re-characterize previous draws from the 2011 Affordable Housing Set-Aside Bond Fund for the parcel purchase at Brooklyn Basin and the Mural Apartments affordable housing development at the MacArthur BART station, as RPTTF expenditures. This frees up the 2011 Affordable Housing Bond Funds to support the vertical construction of affordable housing at Brooklyn Basin.

Approximately $2.5 million in remaining 2011 Affordable Housing Bond funds had previously been available for the Brooklyn Basin project. The solution agreed upon in May 2016 provides an additional $37.5 million for a total of $40 million of 2011 Affordable Housing Bond funds being made available for the project over the next several years. Project staff must also now be funded through the bond funds rather than RPTTF, which results in approximately $35 million projected to be available for

vertical construction over the life of the project following DOF's decision, instead of the $45 million in RPTTF funds requested.

2) *Also Provide The Percentage Of Ownership In The Project Of Oakland Harbor Partners (Aka Signature Properties) And Zarison.*

Zero. Zarsion-OHP I LLC does not own the affordable housing parcels, and will not have an ownership interest in the affordable housing developed on these Parcels.

3) *Include, The Current Status Of The Funds On Hand For The Construction Of Affordable Housing On The Oak To 9th Project.*

Funds on hand for the development and project staff costs include $2,545,000 remaining balance from the City's 2011 Affordable Housing Set-Aside Bond, and $2,000,000 in RPTTF redistributed back to the City in the first half of FY 2016-17. An additional $2,000,000 in RPTTF redistributions are expected in January 2017. The City's proposed schedule for remaining RPTTF funding distributions for the affordable housing at Brooklyn Basin follows on the attached *Exhibit 2*.

Exhibit 1. Correspondence with DOF

Exhibit 2. Projected RPTTF drawdown schedule

DEPARTMENT OF FINANCE

EDMUND G. BROWN JR. • GOVERNOR

915 L STREET ■ SACRAMENTO CA ■ 95814-3706 ■ WWW.DOF.CA.GOV

April 4, 2016

Ms. Sarah T. Schlenk, Agency Administrative Manager
City of Oakland
250 Frank H. Ogawa Plaza
Suite 3315
Oakland, CA 94612

Dear Ms. Schlenk:

Subject: 2016-17 Annual Recognized Obligation Payment Schedule

Pursuant to Health and Safety Code (HSC) section 34177 (o) (1), the City of Oakland Successor Agency (Agency) submitted a Recognized Obligation Payment Schedule for the period July 1, 2016 through June 30, 2017 (ROPS 16-17) to the California Department of Finance (Finance) on January 26, 2016. Finance has completed its review of the ROPS 16-17.

Based on a sample of line items reviewed and application of the law, Finance made the following determinations:

- Item No. 6 – Claimed administrative costs exceed the allowance by $226,930. HSC section 34171 (b) (3) limits the fiscal year 2016-17 Administrative Cost Allowance (ACA) to three percent of actual distributed Redevelopment Property Tax Trust Fund (RPTTF) in the preceding fiscal year or $250,000, whichever is greater; not to exceed 50 percent of the distributed RPTTF in the preceding fiscal year. As a result, the Agency's maximum ACA is $1,794,454 for the fiscal year 2016-17. Although $2,021,384 is claimed for administrative cost, only $1,794,454 is available pursuant to the cap. Therefore, $226,930 of excess administrative cost is not allowed.

- Item No. 207 – 9451 MacArthur Blvd-Evelyn Rose Project in the total outstanding amount of $517,500 is not approved. Finance continues to deny this item. This item was denied during the January through June 2013 (ROPS III) period because Low and Moderate Income Housing Fund (LMIHF) deferral payments were not eligible for repayment. The Agency now contends the item is not a LMIHF deferral payment, and explained repayment to LMIHF is required because the former redevelopment agency (RDA) expended LMIHF funds on an affordable housing project located at 9451 MacArthur Boulevard, which was never completed. The RDA ultimately sold the property to another developer in 2002 for development of non-affordable housing. The Agency contends that due to the removal of the affordable housing covenant tied to the property, the Agency is required to pay back LMIHF funds used. The Agency has not provided sufficient documentation to support requirement to repay the LMIHF. Therefore, the requested RPTTF in the amount of $517,500 is not approved.

- Item No. 370 – Low and Moderate Income Housing Project management cost in amount of $1,620,828 is partially approved. The Agency provided a breakdown of how the total requested amount was allocated to housing projects listed on ROPS 16-17. Of the requested amount, a total of $734,850 was related to the Oak to 9th Project (Brooklyn Basin) under Item No. 423. As noted in the bullet below, Item No. 423 is not an enforceable obligation. Therefore, the related project development costs are also not an enforceable obligation of the Agency. As a result, of the requested $1,620,828, the amount of $734,850 is not eligible for RPTTF funding.

- Item No. 423 – Oak to 9th Project (Brooklyn Basin) is not an enforceable obligation of the Agency. The Cooperation Agreement dated August 24, 2006 between the former RDA and the Oak to Ninth Community Benefits Coalition did not require the RDA to provide additional funding beyond the enforceable obligation to purchase the Affordable Housing Parcels pursuant to the Development Agreement dated August 24, 2006 between the RDA and Oakland Harbor Partners, LLC. The Agency fulfilled its only enforceable obligation when it acquired the parcels during the July 1, 2014 through December 30, 2014 ROPS period under Item No. 422 using 2011 housing bond proceeds. Therefore, the development of affordable housing units is not an enforceable obligation of the Agency as defined in HSC section 34171 (d). As such, the additional funding requested in the amount of $4,000,000 in RPTTF is not approved.

  We note that the Agency is requesting re-authorization to use $2,545,000 in excess bond proceeds, which were approved on a previous ROPS. The Agency received a Finding of Completion on May 29, 2013 and is allowed to expend bond proceeds derived from bonds issued prior to January 1, 2011 (pre-2011 bond proceeds) and housing bonds issued prior to June 28, 2011 in a manner consistent with the bond covenants. Such expenditures constitute the creation of an "excess bond proceeds obligation" payable from available excess bond proceeds. Additionally, during ROPS 15-16B, Agency staff acknowledged the Agency's use of bond proceeds was pursuant to recent Senate Bill 107 changes. As such, Finance approved bond funding for pre-development costs of the affordable housing units in accordance with HSC section 34176 (g), not because the item was an enforceable obligation. Finance is re-authorizing the Agency's request to use $2,545,000 in excess housing bond proceeds in accordance with HSC section 34176 (g), as the funds may not have been expended.

  Additionally, Finance notes the Agency was authorized to transfer approximately $96,000,000 to the City of Oakland (City) pursuant to a bond expenditure agreement. To the extent there are excess pre-2011 bond proceeds and/or 2011 housing bond proceeds, the City and/or Agency may choose to use such proceeds to fund Item No. 423; and if necessary, repurpose available excess bond proceeds for the Oak to 9th Project. Should the Agency desire to increase the amount of excess bond proceeds for Item No. 423, a Meet and Confer should be requested to obtain authorization to expend additional excess bond proceeds.

  Finally, our approval is specifically limited to the use of excess pre-2011 bond proceeds pursuant to HSC section 34191.4 (c) (1) and excess housing bond proceeds pursuant to HSC section 34176 (g). Such approval should not be construed as approval of the project itself as an enforceable obligation. Therefore, we have changed the Obligation Type from "OPA/DDA/Construction" to "Bond Funded Project – Housing".

- Item No. 426 – West Oakland Loan Indebtedness in the total outstanding amount of $2,717,524 is not approved. Pursuant to HSC section 34191.4 (b) (3), interest on the remaining principal amount of the loan that was previously unpaid after the original effective date of the loan shall be recalculated from the date of origination of the loan on a quarterly basis, at a simple interest rate of three percent and repayments shall be applied first to principal, and second to interest.

  The Agency provided Oversight Board Resolution No. 2013-16, which found the loan was for legitimate redevelopment purposes. It is our understanding the RDA was to repay the City of Oakland (City) for costs incurred totaling $2,689,535 for various projects in the West Oakland project area. Although a 2011 Funding Agreement was provided, the Agency was unable to provide sufficient financial documentation to support the current outstanding principal amount owed. As a result, Finance could not determine if the Agency's reported total outstanding balance was accurate and if the requested $1,813,238 for the ROPS 16-17 period exceeded the balance owed. Therefore, this item is not eligible for RPTTF funding at this time.

Except for the items denied in whole or in part or reclassed, Finance is not objecting to the remaining items listed on your ROPS 16-17. If you disagree with Finance's determination with respect to any items on your ROPS 16-17, except for those items which are the subject of litigation disputing Finance's previous or related determinations, you may request a Meet and Confer within five business days of the date of this letter. The Meet and Confer process and guidelines are available at Finance's website below:

http://www.dof.ca.gov/redevelopment/meet_and_confer/

On the ROPS 16-17 form, the Agency reported cash balances and activity for the period of July 1, 2015 through June 30, 2016. Finance performs a review of the Agency's self-reported cash balances on an ongoing basis. Be prepared to submit financial records and bridging documents to support the cash balances reported upon request. If it is determined the Agency possesses cash balances that are available to pay approved enforceable obligations, HSC section 34177 (l) (1) (E) requires these balances to be used prior to requesting RPTTF.

The Agency's maximum approved RPTTF distribution for the reporting period is $62,108,332 as summarized in the Approved RPTTF Distribution table on page 5 (See Attachment).

ROPS distributions will occur twice annually, one distribution for the July 1, 2016 through December 31, 2016 (ROPS A period), and one distribution for the January 1, 2017 through June 30, 2017 (ROPS B period) based on Finance's approved amounts. Since Finance's determination is for the entire ROPS 16-17 period, the Agency is authorized to receive up to the maximum approved RPTTF through the combined ROPS A and B period distributions.

On the ROPS 16-17 form, the Agency was not required to report the estimated obligations versus actual payments (prior period adjustment) associated with the July 1, 2015 through December 31, 2015 period (ROPS 15-16A). The Agency will report actual payments for ROPS 15-16A and ROPS 15-16B on the ROPS 18-19 form pursuant to HSC section 34186 (a) (1). A prior period adjustment will be applied to the Agency's future RPTTF distribution. Therefore, the Agency should retain any difference in unexpended RPTTF.

Please refer to the ROPS 16-17 schedule used to calculate the total RPTTF approved for distribution:

http://www.dof.ca.gov/redevelopment/ROPS

Absent a Meet and Confer, this is Finance's determination related to the enforceable obligations reported on your ROPS for the period July 1, 2016 through June 30, 2017. This determination only applies to items when funding was requested for the 12-month period. Finance's determination is effective for this time period only and should not be conclusively relied upon for future ROPS periods. All items listed on a future ROPS are subject to review and may be denied even if it was not denied on this ROPS or a preceding ROPS. The only exception is for items that have received a Final and Conclusive determination from Finance pursuant to HSC section 34177.5 (i). Finance's review of Final and Conclusive items is limited to confirming the scheduled payments as required by the obligation.

The amount available from the RPTTF is the same as the amount of property tax increment available prior to the enactment of the redevelopment dissolution statutes. Therefore, as a practical matter, the ability to fund the items on the ROPS with property tax is limited to the amount of funding available to the Agency in the RPTTF.

Please direct inquiries to Cindie Lor, Supervisor, or Todd Vermillion, Lead Analyst at (916) 445-1546.

Sincerely,

for

JUSTYN HOWARD
Program Budget Manager

cc: Mr. Patrick Lane, Development Manager, City of Oakland
Ms. Carol S. Orth, Tax Analysis, Division Chief, Alameda County

Attachment

Approved RPTTF Distribution For the period of July 2016 through June 2017			
	ROPS A Period	ROPS B Period	Total
Requested RPTTF (excluding administrative obligations)	$ 19,342,195	$ 48,037,270	$ 67,379,465
Requested Administrative RPTTF	580,266	1,441,118	2,021,384
Total RPTTF requested for obligations on ROPS 16-17	**19,922,461**	**49,478,388**	**$ 69,400,849**
Total RPTTF requested	**19,342,195**	**48,037,270**	**67,379,465**
Denied Items			
Item No. 207	(517,500)	0	(517,500)
Item No. 370	(367,425)	(367,425)	(734,850)
Item No. 423	(2,000,000)	(2,000,000)	(4,000,000)
Item No. 426	(906,619)	(906,618)	(1,813,237)
	(3,791,544)	(3,274,043)	(7,065,587)
Total RPTTF authorized	**15,550,651**	**44,763,227**	**$ 60,313,878**
Total Administrative RPTTF requested	**580,266**	**1,441,118**	**2,021,384**
Administrative costs in excess of the cap (see Administrative Cost Allowance Cap table below)	0	(226,930)	(226,930)
Total Administrative RPTTF authorized	**580,266**	**1,214,188**	**$ 1,794,454**
Total RPTTF approved for distribution	**16,130,917**	**45,977,415**	**$ 62,108,332**

Administrative Cost Allowance Cap Calculation	
Actual RPTTF distributed for fiscal year 2015-16	$ 61,084,234
Less sponsoring entity loan and Administrative RPTTF	1,269,106
Actual RPTTF distributed for 2015-16 after adjustment	59,815,128
Administrative Cap for 2016-17 per HSC section 34171 (b)	1,794,454
ROPS 16-17 Administrative RPTTF after Finance adjustments	2,021,384
Administrative Cost Allowance in excess of the cap	**$ (226,930)**

DEPARTMENT OF FINANCE

EDMUND G. BROWN JR. ▪ GOVERNOR
915 L STREET ▪ SACRAMENTO CA ▪ 95814-3706 ▪ WWW.DOF.CA.GOV

April 4, 2016

Ms. Sarah T. Schlenk, Agency Administrative Manager
City of Oakland
250 Frank H. Ogawa Plaza
Suite 3315
Oakland, CA 94612

Dear Ms. Schlenk:

Subject: Request for Final and Conclusive Determination

On February 11, 2016, the California Department of Finance (Finance) received the City of Oakland Successor Agency's request for a final and conclusive determination on Item No. 423 – Oak to Ninth project (Brooklyn Basin), as listed on the Recognized Obligation Payment Schedule for the January 1, 2016 through June 30, 2016 (ROPS15-16B) period.

Pursuant to HSC section 34177.5 (i), "If [1] an *enforceable obligation* provides for [2] an *irrevocable commitment of revenue* and where allocation of such revenues is expected to occur over time, the successor agency may petition [Finance] to provide written confirmation that its determination of such enforceable obligation as approved in a ROPS is final and conclusive, and reflects Finance's approval of subsequent payments made pursuant to the enforceable obligation."

Finance has completed its review of your request, which may have included obtaining clarification on items provided or additional supporting documentation. Based on our review, Item No. 423 does not qualify for a final and conclusive determination. Specifically:

1. The Cooperation Agreement dated August 24, 2006 between the former Redevelopment Agency (RDA) and the Oak to Ninth Community Benefits Coalition did not require the RDA to provide additional funding beyond the enforceable obligation referenced in section B of the Recitals to purchase the Affordable Housing Parcels pursuant to the Development Agreement dated August 24, 2006 between the RDA and Oakland Harbor Partners, LLC. The Agency fulfilled its obligation to acquire the parcels during the July 1, 2014 through December 30, 2014 ROPS period (ROPS 14-15A) under Item No. 422 with the use of 2011 housing bond proceeds. Although the Agency has other responsibilities such as ensuring affordability restrictions, project unit type restrictions, and project development/schedule, there is not a requirement to *provide funding* for the development of the Affordable Housing Parcels.

   Furthermore, Section II G of the Cooperation Agreement states that the Agency shall reserve any funds deposited into the Agency's Low and Moderate Income Housing Fund (LMIHF) from tax increment revenues generated by the Oak to Ninth Project for the development of the Affordable Housing Projects. However, dissolution law discontinued the existence of the LMIHF; and therefore, any such requirement to deposit future funds into the LMIHF no longer exists.

Consequently, the development of affordable housing units is not an enforceable obligation, as defined in HSC 34171 (d), of the Agency

2. The Cooperation Agreement referenced above does not specify an irrevocable funding commitment to the Oak to Ninth Project. The Cooperation Agreement includes specific language that the governing body of the Agency may determine the project is not economically feasible if financing for the project is not adequate and, as noted above, available LMIHF funding is zero, and will always be zero. Therefore, there is not an irrevocable commitment of revenue as required by HSC 34177.5 (i).

As describe above, development of the affordable housing units is not an enforceable obligation of the Agency, and there is no irrevocable commitment of revenues. Therefore, Item No. 423 – Oak to Ninth Project does not qualify for a final and conclusive determination.

Please direct inquiries to Cindie Lor, Supervisor, or Todd Vermillion, Lead Analyst, at (916) 445-1546.

Sincerely,

JUSTYN HOWARD
Program Budget Manager

cc: Mr. Patrick Lane, Development Manager, City of Oakland
Ms. Carol S. Orth, Tax Analysis, Division Chief, Alameda County

MEET AND CONFER REQUEST FORM

Instructions: Please fill out this form in its entirety to initiate a Meet and Confer session. Additional supporting documents may be included with the submittal of this form—as justification for the disputed item(s). Upon completion, email a PDF version of this document (including any attachments) to:

Redevelopment_Administration@dof.ca.gov

The subject line should state "[Agency Name] Request to Meet and Confer". Upon receipt and determination that the request is valid and complete, the Department of Finance (Finance) will contact the requesting agency within ten business days to schedule a date and time for the Meet and Confer session.

To be valid, all Meet and Confer requests must be specifically related to a determination made by Finance and submitted within the required statutory time frame. The requirements are as follows:

- **Housing Asset Transfer** Meet and Confer requests must be made within five business days of the date of Finance's determination letter per HSC Section 34176 (a) (2).
- **Due Diligence Review** Meet and Confer requests must be made within five business days of the date of Finance's determination letter, and no later than **November 16, 2012 for** the Low and Moderate Income Housing Fund due diligence review per HSC Section 34179.6 (e).
- **Recognized Obligation Payment Schedule (ROPS)** Meet and Confer requests must be made within five business days of the date of Finance's determination letter per HSC Section 34177 (m) and (o).

Agencies should become familiar with the Meet and Confer Guidelines located on Finance's website. Failure to follow these guidelines could result in termination of the Meet and Confer session. Questions related to the Meet and Confer process should be directed to Finance's Dispute Resolution Coordinator at (916) 445-1546 or by email to Redevelopment_Administration@dof.ca.gov.

AGENCY (SELECT ONE):

☒ Successor Agency ☐ Housing Entity

AGENCY NAME: Oakland Redevelopment Successor Agency

TYPE OF MEET AND CONFER REQUESTED (SELECT ONE):

☐ Housing Assets Transfers ☐ Due Diligence Reviews ☒ ROPS Period 16-17

DATE OF FINANCE'S DETERMINATION LETTER: April 4, 2016

REQUESTED FORMAT OF MEET AND CONFER SESSION (SELECT ONE):

☒ Meeting at Finance ☐ Conference Call ☐ Combination Meeting/Conference Call

DETAIL OF REQUEST

A. **Summary of Disputed Issue(s)** *(List only the item number and description from the ROPS)*

1. Item No. 426 – West Oakland Loan Indebtedness totaling $2,717,524
   (ROPS 16-17 request of 1,813,238)

2. Item No. 423 – Oak to 9th (Brooklyn Basin) totaling $4,000,000

3. Item No. 370 -- Low & Moderate Income Housing Project Management costs totaling $734,850

4. Item No. 207 – 9451 MacArthur Blvd- Evelyn Rose Project totaling $517,500

5. **Background/History** *(Provide relevant background/history, if applicable.)*

Please see attached.

6. **Justification** *(Must be specific and include attachments/documentation to support the Agency's position. Please tie each attachment to the specific line item listed above that it supports.)*

Please see attached.

Agency Contact Information

Name:	Sarah T. Schlenk	Name:	Norma Thompson
Title:	Agency Admin Manager	Title:	Housing Development Manager
Phone:	510-238-3982	Phone:	510-238-7137
Email:	sschlenk@oaklandnet.com	Email:	nthompson@oaklandnet.com

Department of Finance Local Government Unit Use Only

REQUEST TO MEET AND CONFER DATE: ____________ APPROVED ___ DENIED ___

REQUEST APPROVED/DENIED BY: ____________________ DATE: ____________________

MEET AND CONFER DATE/TIME/LOCATION: ____

MEET AND CONFER SESSION CONFIRMED: ___ YES DATE CONFIRMED: ____________________

DENIAL NOTICE PROVIDED: ___ YES DATE AGENCY NOTIFIED: ____________________

Form DF-MC (Revised 10/14/2015)

1. <u>ROPS line #426</u>: The Oakland Redevelopment Successor Agency ("ORSA" or "Agency") is appealing the Department's disallowance of the West Oakland Loan Indebtedness totaling $2,717,524 with a ROPS 16-17 RPTTF request of $1,813,238.

BACKGROUND:

ORSA received its Finding of Completion on May 29, 2013. On July 29, 2013, the Oakland Oversight Board approved Resolution No. 2013-016, which found that the West Oakland loan was an enforceable obligation, found that the loan was made for legitimate redevelopment purposes, and approved a loan repayment schedule. The staff report to the Oversight Board detailed all the uses of loan funds. On August 1, 2013, the Department of Finance (Department) responded via email that it would not be initiating a review of OB Resolution No. 2013-016.

JUSTIFICATION:

In response to the Department's concerns raised in the April 4th letter:

1) Per HSC Section 34191.4(b)(3), if interest on the remaining principal amount of the loan needs to be recalcuated, ORSA is prepared to do so; however, please note that the amount requested during ROPS 16-17 is less than the outstanding principal amount of $2.69 million. This requested amount should be payable regardless of the final calculation of interest.

2) The Department indicated that ORSA failed to provide adaquate financial documentation of the current outstanding principal amount owed. As discussed with the analyst during the ROPS review, please see *Exhibit 1*, which provides a trial balance showing the principal amount of the loan as an outstanding loan receivable (account #12211) per Agency Resolution 2013-024 and Oversight Board Resolution 2013-16. Please note, the receivable for the West Oakland Capital Fund (5660) accounts for 80 percent of the loan principal per the statute for loan repayments, while the 20 percent balance is payable to the the Low and Moderate Income Housing Asset Fund.

   Additionally, *Exhibit 2* provides a summary of actual expenditures of loan proceeds, by project, year to date, that provides the status consistent with the list of projects to be funded with the proceeds of the $2.69 million loan.

2. ROPS line #423: ORSA is appealing the Department's disallowance of funding for the Oak to Ninth (now known as Brooklyn Basin) affordable housing totaling $4,000,000 for the ROPS 16-17 period.

BACKGROUND:

Please refer to the Agency's Final and Conclusive (F&C) request on ROPS line #423 for an extensive background on the Brooklyn Basin project.

JUSTIFICATION:

In response to the Department's concerns raised in the April 4th F&C letter:

1) The Department states that the Cooperation Agreement does not require the Agency to provide any additional funding beyond the purchase of the affordable housing parcels.

The Cooperation Agreement does in fact provide for Agency funding of vertical development of affordable units on the affordable housing parcels, and is not limited to Agency funding of the purchase of the parcels. Sections II.D provides that "The Agency **shall cause** the commencement of **construction** of the Affordable Housing Projects on the Affordable Housing Parcels, subject to economic feasibility as defined below, no later than the following dates:", followed by a construction schedule for the project phases. Section II.E references the use of Agency funding sources to make project construction feasible, including bond proceeds, tax increment revenue from the Central City East redevelopment project area,and low and moderate income housing funds. Section II.G provides for the Agency to reserve a portion of tax increment funds generated by the market-rate project "for the **development** of the Affordable Housing Projects, retaining such funds on an ongoing basis in an effort to make **development** of the Affordable Housing Projects economically feasible."

2) The Department asserts that the Dissolution law discontinued the existence of the LMIHF; and therefore, any requirement to deposit funds into the LMIHF no longer exists.

This position is inconsistent with the Department's policy and practice of recognizing redevelopment agencies' contractual pledges of rebates or setasides of tax increment revenue despite the fact that "tax increment" no long exists. The pledge of funds in the Cooperation Agreement was intended by the parties to reserve a certain portion of "tax increment" revenues generated by the market-rate portions of the project for affordable housing development, and that pledge cannot be escaped simply because these revenues are no longer deposited into a fund called the "Low and Moderate Income Housing Fund." Every contract has an implied covenant of good faith and fair dealing, and it would not be good faith for a party to disregard its pledge simply due to semantics. The term "tax increment" is generally understood to be the

3. ROPS line #370: ORSA is appealing the Department's disallowance of funding for Low and Moderate Income Housing Project Management costs totaling $734,850, which is required to support the Brooklyn Basin (ROPS line #423) affordable housing development.

BACKGROUND:

During the ROPS review process, ORSA provided the Department with a breakdown of Low and Moderate Income Housing Project Management costs that were allocated to Housing projects listed on ROPS 16-17. The Brooklyn Basin development is a large and complex project that requires substantial project management support. Much of this effort is required for predevelopment activities. The total amount of Low and Moderate Income Housing Project Management costs allocated to ROPS line #423 is $734,850, which represents approximately 3.81 full time equivalent (FTE) positions.

JUSTIFICATION:

ORSA contends that ROPS line #423 is an enforceable obligation, therefore the Low and Moderate Income Housing Project Management costs totaling $734,850 of RPTTF funding should be restored.

Furthermore, the Department's response to ORSA's F&C petition on ROPS line #423 recognized that the "Agency has other responsibilities such as ensuring affordability restrictions, project unit type restrictions and project development/schedule...". These are all activities that require intensive project management support regardless of the ultimate outcome of ROPS line #423.

4. ROPS line #207: ORSA is appealing the Department's disallowance of funding for the 9451 MacArthur Blvd.-Evelyn Rose Project totaling $517,500.

BACKGROUND:

This site was purchased with Low and Moderate Income Housing Funds (LMIHF) in the mid 1980's. The City worked with an affordable developer and expended over $1 million of LMIHF on predevelopment for an affordable housing development. The Redevelopment Agency later determined that the proposed affordable development was not going to proceed, and therefore under the CRL, the Agency was required to reimburse the LMIHF for the affordable housing funds it had expended on the project. A total reimbursement amount was determined with the methodology detailed in a report provided to the Department. The fair market value of the property was only $500,500. Once the property was sold to a developer for a market rate housing development, CCE Redevelopment Project area general tax increment funds were to reimburse the LMIHF for the outstanding $517,500 in funds expended on the project beyond the purchase price of the property. These funds were still owed to the LMIHF at the time of dissolution and continue to be owed.

JUSTIFICATION:

The April 4th letter denied this item due to insufficient documentation of the requirement to repay the LMIHF. A trial balance was provided showing the amount remains outstanding the in the Agency's financial system. Health and Safety Code Section 34171(d)(1)(G) provides that payments owing to the Low and Moderate Income Housing Fund are enforceable obligations and are payable to the LMIHF of the housing successor.

Exhibit 1

Page

Font Size 10

Oakland Operating

Summary1 Trial Balance
Period: P10-16

Report Date: 11-APR-2016 15:23
Page: 1 of 1

Currency: USD
Balance Type: Year to Date
FUND Range: 5660 to 5660

FUND: 5660 West Oakland Projects

ACCOUNT	Description	Beginning Balance	Debits	Credits	Ending Balance
11311	Cash Held by Treasury: City Poo	(1,293,278.75)	80,062.83	69,908.53	(1,283,124.45)
11313	Cash In Bank: GASB Adjustments	(349.44)	349.44	0.00	0.00
11317	Cash Adjustment for Interest Ac	1,248.12	0.00	1,248.12	0.00
12113	Receivable: Grants Receivable	79,133.72	0.00	79,133.72	0.00
12211	Due from: Oakland Redevelopment	0.00	2,163,797.60	0.00	2,163,797.60
12411	Interest Receivable: Investment	(1,248.12)	1,248.12	0.00	0.00
21111	Accounts Payable: General	(30,000.00)	39,015.00	9,015.00	0.00
21511	Accrued: Payroll	0.00	27,787.00	27,787.00	0.00
24111	Deferred: Loan Revenues	0.00	0.00	2,163,797.60	(2,163,797.60)
33221	Unreserved Fund Balance: Undesi	1,244,494.47	91,935.86	91,935.86	1,244,494.47
44112	Interest: Investments	0.00	3,106.53	929.11	2,177.42
47111	Internal Service Revenues	0.00	79,133.72	79,133.72	0.00
48316	Unrealized Gain/Loss in Market	0.00	0.00	349.44	(349.44)
51111	Civilian: Regular	0.00	9,147.92	0.00	9,147.92
51420	License	0.00	77.74	0.00	77.74
51511	Civilian: Paid Leave Charge	0.00	2,094.86	0.00	2,094.86
51611	Civilian: Retirement Accrual	0.00	3,691.71	0.00	3,691.71
51613	Civilian: Fringe Benefits Accru	0.00	4,329.98	0.00	4,329.98
52911	Bottled Water and Food for Huma	0.00	1,000.00	0.00	1,000.00
53219	Rental: Miscellaneous	0.00	560.00	0.00	560.00
54411	Architectural and Engineering S	0.00	4,455.00	0.00	4,455.00
54912	Third Party: Grant Contracts Ea	0.00	3,000.00	0.00	3,000.00
58521	Overhead: Departmental Cost All	0.00	2,125.14	0.00	2,125.14
58522	Overhead: Central Services Cost	0.00	3,064.53	0.00	3,064.53
58523	Overhead: Division Cost Allocat	0.00	3,255.12	0.00	3,255.12
		0.00	2,523,238.10	2,523,238.10	0.00

First Previous Next Last

1

Exhibit 2

Fund **West Oakland Capital Fund (5660)**

Sum of Ytd Balance SUM		**Actuals for each Fiscal Year**					**Project to Date**	**Available Budget**
Project	**Proj Desc**	**FY12**	**FY13**	**FY14**	**FY15**	**FY16 (YTD)**	**Grand Total**	***(to be expended)***
C346110	Encamp&Dump WOak	7,500.00	37,500.00	0.00	0.00	0.00	45,000.00	5,000.00
C365310	DIST 3 TEEN CTR	23,726.18	1,819,917.05	669.00	0.00	0.00	1,844,312.23	16,591.77
G313170	7TH ST. PHASE II	0.00	138,045.29	98,855.61	58,661.15	22,712.53	318,274.58	13,725.42
P441210	DUMPG APPRHS SYS7780	17,979.29	14,066.72	0.00	0.00	0.00	32,046.01	0.00
P441310	SAN PABLO KOB7780	0.00	4,999.50	0.00	0.00	0.00	4,999.50	0.00
P441410	ST ANDREWS PARK 7780	0.00	0.00	0.00	30,000.00	9,015.00	39,015.00	35,985.00
P441510	SAN PBLO STTREES7780	0.00	54,921.00	18,375.00	0.00	0.00	73,296.00	0.00
P442410	716 PERALTA BIKE7780	3,450.00	0.00	0.00	0.00	0.00	3,450.00	0.00
T288410	WEST OAK FACADE IP	17,500.00	60,000.00	0.00	0.00	0.00	77,500.00	0.00
T288510	WEST OAK TIP	45,000.00	0.00	0.00	0.00	0.00	45,000.00	0.00
T442010	New Crucible	45,283.00	12,417.00	0.00	0.00	0.00	57,700.00	0.00
T442210	PERALTA LIGHTING9590	2,638.00	0.00	0.00	0.00	0.00	2,638.00	0.00
T442310	MURAL PROJECT	55,000.00	20,000.00	0.00	0.00	0.00	75,000.00	0.00
Grand Total		**218,076.47**	**2,161,866.56**	**117,899.61**	**88,661.15**	**31,727.53**	**2,618,231.32**	**71,302.19**

DEPARTMENT OF FINANCE

EDMUND G. BROWN JR. • GOVERNOR
915 L STREET ■ SACRAMENTO CA ■ 95814-3706 ■ WWW.DOF.CA.GOV

Revised

May 19, 2016

Ms. Sarah T. Schlenk, Agency Administrative Manager
City of Oakland
250 Frank H. Ogawa Plaza
Suite 3315
Oakland, CA 94612

Dear Ms. Schlenk:

Subject: 2016-17 Annual Recognized Obligation Payment Schedule

This letter supersedes the California Department of Finance's (Finance) Recognized Obligation Payment Schedule (ROPS) letters dated April 4, 2016, and May 17, 2016. Pursuant to Health and Safety Code (HSC) section 34177 (o) (1), the City of Oakland Successor Agency (Agency) submitted a Recognized Obligation Payment Schedule for the period of July 1, 2016 through June 30, 2017 (ROPS 16-17) to Finance on January 26, 2016. Finance issued a ROPS determination letter on April 4, 2016. Subsequently, the Agency requested a Meet and Confer session on one or more of the determinations made by Finance. The Meet and Confer session was held on April 21, 2016. Subsequent to the issuance of the May 17, 2016 letter, the Agency requested to decrease the amounts for Item Nos. 421 and 422.

Based on a review of additional information and documentation provided to Finance during the Meet and Confer process, Finance has completed its review of the specific determinations being disputed.

- Item No. 207 – 9451 MacArthur Blvd-Evelyn Rose Project in the total outstanding amount of $517,500. Finance continues to deny this item. During the initial review the Agency contended that the repayment to the Low and Moderate Income Housing Fund (LMIHF) is required because the former redevelopment agency (RDA) expended LMIHF funds on an affordable housing project located at 9451 MacArthur Boulevard, which was never completed. The former RDA ultimately sold the property to another developer in 2002 for development of non-affordable housing. Furthermore, the Agency contended that due to the removal of the affordable housing covenant tied to the property, the Agency is required to pay back the LMIHF funds used. However, Finance initially denied this item because the Agency did not provide sufficient documentation to support requirement to repay the LMIHF.

  During the Meet and Confer process, the Agency contended that HSC section 34171 (d) (1) (G) provides that payments owing to the LMIHF are enforceable obligations and are payable to the LMIHF of the housing successor. However, HSC section 34171 (d) (1) (G) specifically limits repayments to amounts borrowed from, or payments owing to, the LMIHF of a former RDA, which had been deferred. The amount that the Agency contends is owed was not a result of funds being borrowed or amounts owed as a result of a deferral. As such, this item does not meet the definition of an enforceable obligation pursuant to HSC section 34171 (d) (1) (G). Therefore, this item is not an enforceable obligation and the requested Redevelopment Property Tax Trust Fund (RPTTF) funding in the amount of $517,500 is denied.

- Item No. 370 – Low and Moderate Income Housing Project management cost in amount of $1,620,828. Finance continues to partially approve this item. The Agency provided a breakdown of how the total requested amount was allocated to housing projects listed on ROPS 16-17. Of the requested amount, a total of $734,850 was related to the Oak to 9th Project (Brooklyn Basin) under Item No. 423, which was initially denied. During the Meet and Confer process, the Agency requested that the project management costs for Item No. 423 be reconsidered if that item is approved for funding.

  As noted in the bullet below, Item No. 423 is not an enforceable obligation, but rather it is an excess bond proceeds obligation pursuant to HSC section 34191.4 (c) (1). The use of excess bond proceeds does not constitute an enforceable obligation pursuant to HSC section 34171 and therefore, do not create further enforceable obligations. As such, the Agency's request to fund project management costs incidental to the use of excess bond proceeds is not eligible for funding out of RPTTF. Finance notes that to the extent allowable, the Agency should use available bond proceeds to fund project management costs and should request such funding on a ROPS. Therefore, the related project development costs are also not an enforceable obligation of the Agency. As a result, of the requested $1,620,828, the amount of $734,850 is not eligible for RPTTF funding.

- Item No. 421 – MacArthur BART affordable housing in the amount of $5,200,000 from excess bond proceeds. This item was not reviewed during the initial review. Subsequent to the Meet and Confer process, the Agency requested that this item be decreased by $2,200,000 to $3,000,000 for ROPS 16-17 and the funding source be changed to RPTTF. Finance decreases the amount requested to a total of $3,000,000 and changes the funding source to RPTTF. Additionally, the outstanding balance has been updated to $16,005,000 for ROPS 16-17.

- Item No. 422 – Oak to 9th Project – Land Acquisition in the amount of $0. This item was not reviewed during the initial review. Subsequent to the Meet and Confer process, the Agency requested that this item be funded at $1,000,000 from RPTTF for ROPS 16-17. Finance approves the amount requested of $1,000,000 from RPTTF. Additionally, the outstanding balance has been updated to $21,545,373 for ROPS 16-17.

- Item No. 423 – Oak to 9th Project (Brooklyn Basin) is not an enforceable obligation of the Agency. Finance continues to deny the request for RPTTF funding, but increases the excess bond proceeds requested as this item is an excess bond proceeds obligation pursuant to HSC section 34191.4 (c) (1).

  We note that the Agency initially requested re-authorization to use $2,545,000 in excess bond proceeds, which were approved on a previous ROPS. The Agency received a Finding of Completion on May 29, 2013, and is allowed to expend bond proceeds derived from bonds issued prior to January 1, 2011 (pre-2011 bond proceeds) and housing bonds issued prior to June 28, 2011, in a manner consistent with the bond covenants. Such expenditures constitute the creation of an "excess bond proceeds obligation" payable from available excess bond proceeds. Additionally, during ROPS 15-16B, Agency staff acknowledged the Agency's use of bond proceeds was pursuant to recent Senate Bill 107 changes. As such, Finance approved bond funding for pre-development costs of the affordable housing units in accordance with HSC section 34176 (g). Finance is re-authorizing the Agency's request to use $2,545,000 in excess housing bond proceeds in accordance with HSC section 34176 (g), as the funds may not have been expended.

During the Meet and Confer process, the Agency requested that excess bond proceeds be increased by $2,000,000 for a total of $4,545,000 for ROPS 16-17. As such, Finance approves a total of $4,545,000 in excess bond proceeds and continues to deny the requested amount of $4,000,000 in RPTTF.

Our approval is specifically limited to the use of excess pre-2011 bond proceeds pursuant to HSC section 34191.4 (c) (1) and excess housing bond proceeds pursuant to HSC section 34176 (g). Such approval should not be construed as approval of the project itself as an enforceable obligation. Therefore, we continue to change the Obligation Type from "OPA/DDA/Construction" to "Bond Funded Project – Housing."

- Item No. 426 – West Oakland Loan Indebtedness in the total outstanding amount of $2,717,524. Finance continues to deny this item. Finance initially denied this item because the Agency was unable to provide sufficient financial documentation to support the current outstanding principal amount owed. During the Meet and Confer process, the Agency provided a summary of actual expenditures. The summary shows that expenditures incurred by the City started in fiscal year 2011-12, which were in accordance with the list of projects in the First Amendment to Funding Agreement dated March 25, 2011, between the City and the former RDA. Additionally, documents provided by the Agency indicated that contracts entered into by the City were after June 27, 2011. As such, the outstanding balance as of June 27, 2011, was $0 for the loan agreement approved by the Oversight Board (OB) in OB Resolution 2013-16.

  ABx1 26 requires agencies to expeditiously wind down the affairs of the dissolved RDAs and provides successor agencies with limited authority only to the extent needed to implement the wind down of RDA affairs and perform under enforceable obligations. As of June 27, 2011, RDAs were prohibited from creating any new obligations and engaging in any new redevelopment. As of February 1, 2012, the RDA's authority was suspended and the RDA ceased to exist. Any transfers of the RDA's powers to a third party were also impacted by the prohibitions and the dissolution. Since the RDA no longer had the power to take out or make new loans or engage in any other activity to create obligations as of June 27, 2011, these powers could no longer be transferred to a third party. Thus, any specific obligations, whether by the RDA or a third party acting on behalf of the RDA, that did not exist as of June 27, 2011, are not enforceable obligations on the successor agency within the meaning of HSC section 34171 (d) (1). As such, the various contracts entered into by the City with third parties after June 27, 2011, are not obligations of the Agency.

  Therefore, for the above reasons, this item is not an enforceable obligation and the $1,813,238 requested for ROPS 16-17 is denied.

In addition, per Finance's letter dated April 4, 2016, we continue to make the following determinations not contested by the Agency during the Meet and Confer:

- Item No. 6 – Claimed administrative costs exceed the allowance by $226,930. HSC section 34171 (b) (3) limits the fiscal year 2016-17 Administrative Cost Allowance (ACA) to three percent of actual distributed RPTTF funding in the preceding fiscal year or $250,000, whichever is greater; not to exceed 50 percent of the distributed RPTTF in the preceding fiscal year. As a result, the Agency's maximum ACA is $1,794,454 for the fiscal year 2016-17. Although $2,021,384 is claimed for administrative cost, only $1,794,454 is available pursuant to the cap. Therefore, $226,930 of excess administrative cost is not allowed.

Except for the items denied in whole or in part or reclassed, Finance is not objecting to the remaining items listed on your ROPS 16-17.

On the ROPS 16-17 form, the Agency reported cash balances and activity for the period of July 1, 2015 through June 30, 2016. Finance performs a review of the Agency's self-reported cash balances on an ongoing basis. Be prepared to submit financial records and bridging documents to support the cash balances reported upon request. If it is determined the Agency possesses cash balances that are available to pay approved enforceable obligations, HSC section 34177 (l) (1) (E) requires these balances to be used prior to requesting RPTTF.

The Agency's maximum approved RPTTF distribution for the reporting period is $66,108,332 as summarized in the Approved RPTTF Distribution table on page 6 (See Attachment).

ROPS distributions will occur twice annually, one distribution for the July 1, 2016 through December 31, 2016 (ROPS A period), and one distribution for the January 1, 2017 through June 30, 2017 (ROPS B period) based on Finance's approved amounts. Since Finance's determination is for the entire ROPS 16-17 period, the Agency is authorized to receive up to the maximum approved RPTTF through the combined ROPS A and B period distributions.

On the ROPS 16-17 form, the Agency was not required to report the estimated obligations versus actual payments (prior period adjustment) associated with the July 1, 2015 through December 31, 2015 period (ROPS 15-16A). The Agency will report actual payments for ROPS 15-16A and ROPS 15-16B on the ROPS 18-19 form pursuant to HSC section 34186 (a) (1). A prior period adjustment will be applied to the Agency's future RPTTF distribution. Therefore, the Agency should retain any difference in unexpended RPTTF.

Please refer to the ROPS 16-17 schedule used to calculate the total RPTTF approved for distribution:

http://www.dof.ca.gov/redevelopment/ROPS

This is Finance's determination related to the enforceable obligations reported on your ROPS for the period July 1, 2016 through June 30, 2017. This determination only applies to items when funding was requested for the 12-month period. Finance's determination is effective for this time period only and should not be conclusively relied upon for future ROPS periods. All items listed on a future ROPS are subject to review and may be denied even if it was not denied on this ROPS or a preceding ROPS. The only exception is for items that have received a Final and Conclusive determination from Finance pursuant to HSC section 34177.5 (i). Finance's review of Final and Conclusive items is limited to confirming the scheduled payments as required by the obligation.

The amount available from the RPTTF is the same as the amount of property tax increment available prior to the enactment of the redevelopment dissolution statutes. Therefore, as a practical matter, the ability to fund the items on the ROPS with property tax is limited to the amount of funding available to the Agency in the RPTTF.

Please direct inquiries to Evelyn Suess, Dispute Resolution Supervisor, or Mary Halterman, Analyst, at (916) 445-3274.

Sincerely,

JUSTYN HOWARD
Program Budget Manager

cc: Mr. Patrick Lane, Development Manager, City of Oakland
Ms. Carol S. Orth, Tax Analysis, Division Chief, Alameda County

Attachment

Approved RPTTF Distribution For the period of July 2016 through June 2017	ROPS A Period	ROPS B Period	Total
Requested RPTTF (excluding administrative obligations)	$ 19,342,195	$ 48,037,270	$ 67,379,465
Requested Administrative RPTTF	580,266	1,441,118	2,021,384
Total RPTTF requested for obligations on ROPS 16-17	**19,922,461**	**49,478,388**	**$ 69,400,849**
Adjustment to Agency Requested RPTTF	2,000,000	2,000,000	4,000,000
Total RPTTF adjustments	**2,000,000**	**2,000,000**	**$ 4,000,000**
Total RPTTF requested	**21,342,195**	**50,037,270**	**71,379,465**
Denied Items			
Item No. 207	(517,500)	0	(517,500)
Item No. 370	(367,425)	(367,425)	(734,850)
Item No. 423	(2,000,000)	(2,000,000)	(4,000,000)
Item No. 426	(906,619)	(906,618)	(1,813,237)
	(3,791,544)	(3,274,043)	(7,065,587)
Total RPTTF authorized	**17,550,651**	**46,763,227**	**$ 64,313,878**
Total Administrative RPTTF requested	**580,266**	**1,441,118**	**2,021,384**
Administrative costs in excess of the cap (see Administrative Cost Allowance Cap table below)	0	(226,930)	(226,930)
Total Administrative RPTTF authorized	**580,266**	**1,214,188**	**$ 1,794,454**
Total RPTTF approved for distribution	**18,130,917**	**47,977,415**	**$ 66,108,332**

Administrative Cost Allowance Cap Calculation	
Actual RPTTF distributed for fiscal year 2015-16	$ 61,084,234
Less sponsoring entity loan and Administrative RPTTF	1,269,106
Actual RPTTF distributed for 2015-16 after adjustment	59,815,128
Administrative Cap for 2016-17 per HSC section 34171 (b)	1,794,454
ROPS 16-17 Administrative RPTTF after Finance adjustments	2,021,384
Administrative Cost Allowance in excess of the cap	**$ (226,930)**

Exhibit 2 (to Attachment B): Brooklyn Basin Affordable Housing Parcel Swap

BROOKLYN BASIN SCHEDULE FOR NECESSARY RPTTF DRAWDOWN BY PHASE

BROOKLYN BASIN RPTTF Drawdown by Project Phase		FY 2016-17		FY 2017-18		FY 2018-19		FY 2019-20		FY 2020-21		FY 2021-22		FY 2022-23		
		7/2016 - 12/2016	1/2017 - 6/2017	7/2017 - 12/2017	1/2018 - 6/2018	7/2018 - 12/2018	1/2019 - 6/2019	7/2019 - 12/2019	1/2020 - 6/2020	7/2020 - 12/2020	1/2021 - 6/2021	7/2021 - 12/2021	1/2022 - 6/2022	7/2021 - 12/2021	1/2022 - 6/2022	TOTAL
Bond Proceeds on Hand		2,545,000														$ 40,045,000
RPTTF Fiscal Year Request		2,000,000	2,000,000	2,000,000	2,500,000	2,500,000	5,000,000	5,000,000	4,500,000	5,000,000	4,500,000	2,500,000	0	0	0	
City Housing Staff Costs		(375,000)	(375,000)	(375,000)	(375,000)	(375,000)	(375,000)	(375,000)	(375,000)	(350,000)	(350,000)	(300,000)	(300,000)	(150,000)	(150,000)	(4,600,000)
RPTTF Accrual Balance for Project		4,170,000	5,795,000	7,420,000	9,545,000	3,170,000	5,333,000	9,958,000	4,125,000	8,307,000	4,150,000	6,350,000	300,000	150,000	0	
RPTTF Project drawdown		0	0	0	(8,500,000)	(2,462,000)	0	(9,958,000)	(468,000)	(8,307,000)	0	(5,750,000)	0	0	0	(35,445,000)
Ending RPTTF Accrual Balance		4,170,000	5,795,000	7,420,000	1,045,000	708,000	5,333,000	0	3,657,000	0	4,150,000	600,000	300,000	150,000	0	0
TAX CREDITS	DATES															
PARCEL 1 - Family Phase (Non-Competitive 4% Tax Exempt Bond project)	4% Tax Exempt															
Tax Credit Application	October 2017															
Tax Credit Award	December 2017															
Tax Credit closing deadline (90 days) / Construction Start	March 2018															
RPTTF needed	March 2018				3,240,000											3,240,000
RPTTF needed	July 2018					2,462,000										2,462,000
Construction Completion / Begin Lease-Up	August 2019															
PARCEL 1 - Senior Phase (Competitive 9% Tax Credit project)	9%															
Tax Credit Application	June 2017															
Tax Credit Award	September 2017															
Tax Credit closing deadline (180 days) / Construction Start	March 2018															
RPTTF needed	March 2018				5,260,000											5,260,000
Construction Completion / Begin Lease-Up	August 2019															
PARCEL 2 - Family 1 Phase (Non-Competitive 4% Tax Exempt Bond project)	4% Tax Exempt															
Tax Credit Application	March 2019															
Tax Credit Award	May 2019															
Tax Credit closing deadline (90 days) / Construction Start	July 2019															
RPTTF needed	July 2019							9,958,000								9,958,000
RPTTF needed	January 2020								468,000							468,000
Construction Completion / Begin Lease-Up	December 2020															
PARCEL 2 - Family 2 Phase (Non-Competitive 4% Tax Exempt Bond project)	4% Tax Exempt															
Tax Credit Application	March 2020															
Tax Credit Award	May 2020															
Tax Credit closing deadline (90 days) / Construction Start	July 2020															
RPTTF needed	July 2020									8,307,000						8,307,000
Construction Completion / Begin Lease-Up	December 2021															
PARCEL 2 - Family 3 Phase (Non-Competitive 4% Tax Exempt Bond project)	4% Tax Exempt															
Tax Credit Application	March 2021															
Tax Credit Award	May 2021															
Tax Credit closing deadline (90 days) / Construction Start	July 2021															
RPTTF needed	July 2021											5,750,000				5,750,000
RPTTF needed	January 2022												0			0
Construction Completion / Begin Lease-Up	December 2022															

FILED
OFFICE OF THE CITY CLERK
OAKLAND

2016 NOV 22 AM 11:02

APPROVED AS TO FORM AND LEGALITY

DEPUTY CITY ATTORNEY

OAKLAND CITY COUNCIL

ORDINANCE NO. ________ C.M.S.

ORDINANCE (1) AUTHORIZING THE CITY TO ACQUIRE PROJECT PARCEL A FOR AFFORDABLE HOUSING DEVELOPMENT AT THE BROOKLYN BASIN PROJECT FROM ZARSION-OHP I, LLC, IN EXCHANGE FOR PROJECT PARCEL G, (2) AUTHORIZING AN AMENDMENT TO THE COOPERATION AGREEMENT WITH THE OAK TO NINTH COMMUNITY BENEFITS COALITION TO REFLECT THE EXCHANGE, AND (3) AMENDING RESOLUTION NO. 84349 C.M.S. TO TERMINATE THE CITY'S PUT OPTION PROVIDING FOR THE OPTIONAL RESALE OF THE AFFORDABLE HOUSING PARCELS BACK TO ZARSION-OHP I

WHEREAS, under the Development Agreement ("DA") for the Brooklyn Basin development project (formerly the Oak to 9th project) with the Zarsion-OHP I, LLC ("ZOHP") (formerly Oakland Harbor Partners, LLC) approved by the City and the Redevelopment Agency of the City of Oakland (the "Redevelopment Agency") in 2006, ZOHP agreed to set aside and sell Project Parcels F and G to the Redevelopment Agency at a discount for affordable housing development, after ZOHP performed site work and environmental remediation on those parcels; and

WHEREAS, the DA required that the affordable housing developer selected by the Redevelopment Agency develop a certain amount of commercial space and associated parking on Project Parcel G, along with affordable housing; and

WHEREAS, the Redevelopment Agency in 2006 entered into a Cooperation Agreement with the Oak to Ninth Community Benefits Coalition, a consortium of four community organizations, requiring the Redevelopment Agency to purchase Project Parcels F and G for affordable housing development and to ensure the development of at least 465 affordable housing units on those parcels; and

WHEREAS, the City is the housing successor to the Redevelopment Agency under Health and Safety Code Section 34176, including the Redevelopment Agency's housing obligations and functions with respect to the DA, the Cooperation Agreement, and the Project Parcels designated for affordable housing development; and

WHEREAS, Resolution No. 84349 C.M.S. adopted on May 7, 2013, authorized the City to exercise the early purchase option in the DA to purchase Project Parcels F and G prior to the completion of site work and environmental remediation, subject to the condition that ZOHP grant the City an option to sell back these parcels to ZOHP for the original purchase price at any time from December 31, 2015, through December 31, 2018 (the "Put Option"); and

WHEREAS, the City purchased Project Parcels F and G from ZOHP in 2014 pursuant to the DA, the Cooperation Agreement, and Resolution No. 84349 C.M.S., and entered into a Put Option Agreement with ZOHP that granted the Put Option to the City and required ZOHP to set aside funds in escrow to secure its Put Option obligations; and

WHEREAS, ZOHP has proposed exchanging Project Parcel G for Project Parcel A, with Project Parcel A to be used for affordable housing development instead of Project Parcel G; and

WHEREAS, Parcel A is suitable for the development of affordable housing; and

WHEREAS, the proposed exchange would have certain benefits to the City and the affordable housing developer, in that (1) the affordable housing developer would be relieved from the obligation to develop commercial space on Project Parcel G as required under the DA, and (2) development of affordable housing on Project Parcel A would be less costly and more feasible than development on Project Parcel G; and

WHEREAS, the Oak to Ninth Community Benefits Coalition supports the proposed exchange; and

WHEREAS, a condition of the exchange is that the City agree to terminate the Put Option and release the escrowed Put Option security funds to ZOHP; and

WHEREAS, Section 2.41.020, et seq., of the Oakland Municipal Code authorizes the City to purchase real property by ordinance; and

WHEREAS, Section 2.42.050.C, et seq., of the Oakland Municipal Code authorizes the City to sell real property by ordinance; and

WHEREAS, the City Administrator and ZOHP will be addressing these changes pursuant to Section 11.2 of the DA (which specifies that certain project-related City actions do not constitute an amendment to the DA that requires a noticed public hearing) to provide for the exchange under the negotiated conditions; and

WHEREAS, the Environmental Impact Report for the Oak to Ninth Mixed Use Development Project prepared under the California Environmental Quality Act ("CEQA") and certified by the City Council in 2006 and recertified in 2009 (the "EIR") provides a project-level analysis of the environmental impacts of the Brooklyn Basin development project and supports all levels of approval necessary to implement the project; and

WHEREAS, the proposed exchange would not result in any significant effect that has not already been analyzed in the EIR, and there will be no significant environmental effects caused by the exchange that have not already been analyzed in the EIR; now, therefore

The Council of the City of Oakland does ordain as follows:

SECTION 1. The City Council hereby authorizes the City to acquire Project Parcel A from ZOHP, and to convey Project Parcel G to ZOHP in exchange for Project Parcel A. Upon the exchange, Project Parcel A shall then become one of the "affordable housing parcels" under the DA and the Cooperation Agreement.

SECTION 2. The City Council hereby amends Resolution No. 84349 C.M.S. **to** authorize as a condition of the exchange the termination of the Put Option and the release of any Put Option security funds to ZOHP.

SECTION 3. The City Council hereby authorizes the City Administrator or her designee to negotiate and execute agreements and grant deeds with ZOHP for the property exchange, including the termination of the Put Option, consistent with the terms of this Ordinance, as well as negotiate and execute any other agreements or documents as necessary to effectuate the property exchange and the Put Option termination. This includes without limitation an amendment to the Cooperation Agreement with the Oak to Ninth Community Benefits Coalition to reflect the property exchange.

SECTION 4. The City Council, pursuant to Oakland Municipal Code Section 2.42.050.B., hereby waives a competitive process for disposition of Project Parcel G to ZOHP pursuant to the exchange, and finds and determines that disposition of this property without a competitive process is in the best interest of the City because of the benefits to the City and the affordable housing developer from the exchange as set forth in this Ordinance and the staff report accompanying this Ordinance.

SECTION 5. The City Council hereby finds and determines on the basis of substantial evidence in the record that none of the circumstances necessitating preparation of additional environmental review, as specified in CEQA and the CEQA Guidelines, including, without limitation, Public Resources Code Section 21166 and CEQA Guidelines Sections 15162 or 15163, are present because of the exchange, in that (1) there are no substantial changes proposed in the project or the circumstances under which the project is undertaken that would require major revisions of the EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; and (2) there is no "new information of substantial importance," as defined in CEQA Guidelines Section 15162(a)(3). The City Council further finds and determines, each as a separate and independent basis, that this action is exempt from CEQA pursuant to CEQA Guidelines Sections 15183 (projects consistent with General Plan and Zoning), 15378(b)(5) (the exchange will not independently result in a physical change in the environment) and 15061(b)(3) (no significant effect on the environment). The City Administrator or her designee is hereby authorized to file a notice of determination with the Office of the Alameda County Recorder and the State Office of Planning and Research.

SECTION 6. The City Administrator or her designee is hereby authorized to take any other action necessary in furtherance of the exchange and termination of the Put Option consistent with this Ordinance and its basic purposes.

SECTION 7. This Ordinance shall be in full force and effect immediately upon its passage as provided by Section 216 of the City Charter if adopted by at least six members of Council, or upon the seventh day after final adoption if adopted by fewer votes.

IN COUNCIL, OAKLAND, CALIFORNIA, _______________, 2016

PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, CAMPBELL WASHINGTON, GALLO, GUILLEN, KALB, KAPLAN, REID AND PRESIDENT GIBSON MCELHANEY

NOES-

ABSENT-

ABSTENTION-

ATTEST:_______________________________

LATONDA SIMMONS
City Clerk and Clerk of the Council
of the City of Oakland, California

ORDINANCE (1) AUTHORIZING THE CITY TO ACQUIRE PROJECT PARCEL A FOR AFFORDABLE HOUSING DEVELOPMENT AT THE BROOKLYN BASIN PROJECT FROM ZARSION-OHP I, LLC, IN EXCHANGE FOR PROJECT PARCEL G, (2) AUTHORIZING AN AMENDMENT TO THE COOPERATION AGREEMENT WITH THE OAK TO NINTH COMMUNITY BENEFITS COALITION TO REFLECT THE EXCHANGE, AND (3) AMENDING RESOLUTION NO. 84349 C.M.S. TO TERMINATE THE CITY'S PUT OPTION PROVIDING FOR THE OPTIONAL RESALE OF THE AFFORDABLE HOUSING PARCELS BACK TO ZARSION-OHP I

NOTICE AND DIGEST

This Ordinance authorizes the exchange of Project Parcel G, one of the affordable housing parcels at the Brooklyn Basin development project, with Zarsion-OHP I, LLC, for Project Parcel A. This Ordinance also authorizes an amendment to the Cooperation Agreement with the Oak to Ninth Community Benefits Coalition to reflect the exchange, and the termination of a Put Option held by the City providing for the optional resale of the affordable housing parcels back to Zarsion-OHP I, LLC. This Ordinance also makes associated findings with respect to the California Environmental Quality Act (CEQA).