



MEMORANDUM

DATE: January 18, 2022
TO: Chair Bauters and Board of Directors
FROM: Andrea Visveshwara, Interim General Counsel
SUBJECT: **Resolution of the Board of Directors Of The City of Emeryville As Successor Agency to the Emeryville Redevelopment Agency (“Successor Agency”) Authorizing The Executive Director to Execute The Conveyance Agreement Between The City Of Emeryville (“City”) And The City Of Emeryville As The Successor Agency To The Emeryville Redevelopment Agency (1) To Transfer Platform Parcels 3 (portion of APN 049-1325-002) and 4 (APN 1325-001-04) and 59th Street Extension (portion of APN 049-1325-002) From The Successor Agency To The City And (2) To Assign To The City The Successor Agency's Right To Acquire The Station Parcel (APN 049-1325-001-2), And Authorizing the Executive Director To Take Related Actions; CEQA Determination: Exempt Pursuant to CEQA Guideline 15061(b)(3)**

RECOMMENDATION

Staff recommends that the Successor Agency adopt the above-referenced resolution.

BACKGROUND

Property Required for Amtrak Operations

The owner of the property on which the Amtrak Station is located (“Station Parcel”) is Wareham Development Corporation (known as “Wareham Development” or “Wareham”). There are four separate parcels underlying the passenger platform adjacent to the Station Parcel. The owner of two of the platform parcels (Platform Parcels One and Two) is the City of Emeryville (“City”), and the owner of the remaining two platform parcels (Platform Parcels Three and Four) is the City of Emeryville as Successor Agency to the Redevelopment Agency (“Successor Agency”). In the early 1990s, numerous real estate transactions were executed to facilitate the construction of the station building by Wareham and the leasing of the property to Amtrak for the operation of passenger rail service.

In March 1993, the former Emeryville Redevelopment Agency (“Redevelopment Agency”) purchased property, consisting of the Station Parcel, 59th Street Extension, and Platform Parcels Three and Four from Chevron. The Redevelopment Agency then subdivided the property to create the Station Parcel, an air rights parcel above the Station Parcel, and Platform Parcels Three and Four.¹ The Redevelopment Agency then sold the Station

¹ The City acquired Platform Parcels One and Two from other entities later.

Parcel and air rights parcel back to Wareham for \$1 and retained Platform Parcels Three and Four, and 59th Street Extension.

Wareham then developed the Station Parcel as a facility for rail passenger service to be provided by Amtrak. Wareham then leased the Station Parcel back to the Redevelopment Agency. Pursuant to the lease between Wareham and the Redevelopment Agency ("Wareham Lease"), the Station Parcel was to be conveyed to the Redevelopment Agency at the end of the lease term, in 2018, at no additional cost to the Redevelopment Agency. After the Redevelopment Agency leasing the Station Parcel from Wareham, the City, rather than the Redevelopment Agency, executed a lease with Amtrak for the Station Parcel and the four Platform Parcels, despite not having a lease with the property owner, Wareham or a sublease with the Redevelopment Agency. The City's lease with Amtrak requires the City to transfer the Station Parcel and all four Platform Parcels to Amtrak upon expiration of the lease at no cost to Amtrak, which the City believes occurred on October 15, 2018. This transfer has not occurred yet.

Long Range Property Management Plan

AB1484 established a process by which successor agencies can dispose of former redevelopment agency property pursuant to a Long Range Property Management Plan ("LRPMP"). The LRPMP governs the method, use, and timing of disposition of all former redevelopment agency properties. The LRPMP must be approved by the Oversight Board and the California Department of Finance (DOF). The Successor Agency submitted an LRPMP in 2014, which was ultimately approved by the DOF. The Successor Agency amended its LRPMP in 2017, and the amended LRPMP was ultimately approved by DOF. LRPMPs can only be amended once and only for limited purposes. The amended and approved LRPMP does not list Platform Parcels Three and Four and 59th Street extension as assets of the Successor Agency, nor does it list the Redevelopment Agency's leasehold interest in the Station Parcel or the Redevelopment Agency's right to acquire the Station Parcel in accordance with the Wareham Lease.

DISCUSSION

Government Purpose

Health and Safety Code section 34181(a) provides that the oversight board may direct the successor agency to transfer an asset "constructed and used for a governmental purpose, such as roads, school buildings, parks, police and fire stations, libraries, parking facilities and lots dedicated solely to public parking, and local agency administrative buildings, to the appropriate public jurisdiction pursuant to any existing agreements relating to the construction or use of such an asset." The Amtrak Station, and the Platform Parcels constitute governmental purpose properties by providing public transportation facilities. The Station Parcel and Platform Parcels will be transferred to the City, which will in turn transfer the properties to Amtrak, a federally created governmental entity for continued use as a transportation facility.

Platform Parcels 3 and 4 are necessary to continue the use of the Amtrak station. The Amtrak station requires the use of Platforms 3 and 4, in conjunction with Platform Parcels

1 and 2 and the Station Parcel, to allow for train passengers to board and disembark trains. As required by the agreement between the City and Amtrak, the City is assembling the parcels necessary for the complete operation of a rail station to Amtrak. To do so, the City must obtain title to the Station Parcel either from Wareham or by exercising the Successor Agency's rights under the Wareham Lease that requires Wareham to convey the Station Parcel to the Successor Agency and title to Platform Parcels 3 and 4 from the Successor Agency. The City already owns Platform Parcels 1 and 2.

Assignment of the Successor Agency's right to acquire the Station Parcel to the City will allow the City to fulfill the obligations under the agreements with Amtrak to convey the Station Parcel and the Platform Parcel to Amtrak for continued use as a transportation facility. Although the Successor Agency has a contractual right to acquire the Station Parcel pursuant to the Wareham lease, the Redevelopment Dissolution Law, Health and Safety Code Section 34163(e), prohibits successor agencies from acquiring property by any means. In order to achieve the intent of the agreements between Wareham and the Redevelopment Agency, as well as the agreements between the City and Amtrak, and continue the use of the Station Parcel and the Platform Parcels as government purpose properties, assignment of the Successor Agency's right to acquire the Station Parcel is necessary. Once assigned, the City can acquire the Station Parcel, transfer the Station Parcel to Amtrak, and fulfill the obligations of the agreements with Amtrak.

With respect to 59th Street extension, the property is necessary to support the transportation uses in the vicinity. The property is subject to the City's public right of way rights, and provides access to the bus bays, which are used by Amtrak, and anticipated to be used by other state-funded transportation agencies, and the parking garage where Amtrak passengers may park. Transferring this property to the City facilitates ongoing maintenance of the property that provides access to components of the multi-modal transit center, supporting the public transit operations in the vicinity.

Financial Benefit

When the oversight board directs the successor agency to transfer an asset for government purposes, Health and Safety Code section 34181(a)(1) provides:

“Any compensation to be provided to the successor agency for the transfer of the asset shall be governed by the agreements relating to the construction or use of that asset. Disposal shall be done expeditiously and in a manner aimed at maximizing value. Asset disposition may be accomplished by a distribution of income to taxing entities proportionate to their property tax share from one or more properties that may be transferred to a public or private agency for management pursuant to the direction of the oversight board.”

Here, the Successor Agency has already been compensated for the disposition of the Platform Parcels, as well as the Station Parcel. The lease between the City and Amtrak called for Amtrak to pay annual rent. (See Section 8 of the Agreement between the City and Amtrak). Successor Agency records show that the annual rent was deposited into the funds for the former Redevelopment Agency, and after dissolution, the Successor

Agency. Accordingly, the Successor Agency, and thus the taxing agencies, have received the compensation for the Station Parcel and the Platform Parcels which has been used to offset the Successor Agency's enforceable obligations. With respect to 59th Street extension, no compensation is proposed – the property is currently used as a public right of way.

Approval Process

Under Health and Safety Code section 34181(f), the Oversight Board may consider the Successor Agency's action at a public meeting after at least ten days' notice to the public of the proposed action. If the Oversight Board adopts a resolution approving the Successor Agency's transfer of the property to the City, the California Department of Finance has five days in which to request review of the Oversight Board Action. The Department of Finance has one hundred days to review the Oversight Board's action. If the Department of Finance does not request review to the Oversight Board's action, the Oversight Board's approval is considered final.

ENVIRONMENTAL REVIEW

The actions taken authorized by the above-referenced resolution are exempt from environmental review under CEQA Guideline 15061(b)(3), the common sense exemption. The resolution authorizes actions intended to preserve the status of quo of maintaining the subject property as part of a multi-modal transit center.

FISCAL IMPACT

The transactions described above are to carry out the actions necessary to achieve the end result that the parties anticipated when they first entered into the various agreements relating to the leasing and conveyance of the Station Parcel and four Platform Parcels. There is no new fiscal impact, beyond the staff time and outside legal counsel time to effectuate the parties' original intent.

STAFF COMMUNICATION WITH THE PUBLIC

Staff has communicated with Wareham and Amtrak.

CONFLICT OF INTEREST

None.

CONCLUSION

For the foregoing reasons, staff recommends that the Successor Agency adopt the above-referenced resolution.

**APPROVED AND FORWARDED TO THE
CITY COUNCIL OF THE CITY OF EMERYVILLE AS SUCCESSOR AGENCY TO THE
EMERYVILLE REDEVELOPMENT AGENCY:**



Christine Daniel, Executive Director

ATTACHMENTS

- Draft Resolution
 - Exhibit A – Conveyance Agreement with the City of Emeryville