



City of Emeryville

CALIFORNIA

MEMORANDUM

DATE: September 5, 2017

TO: Mayor Scott Donahue and City Council and Successor Agency

FROM: Michael A. Guina, City Attorney

SUBJECT: Resolution Of The City Council Of The City Of Emeryville Accepting Transfer Of Governmental Use Properties Known As Greenway @ Parcel D, Greenway @ 59th Street, Emery Station Greenway Plaza, 48th Street Community Garden, Art & Cultural Center And Glashaus Public Parking From The City Of Emeryville As Successor Agency To The Emeryville Redevelopment Agency Pursuant To The Long Range Property Management Plan

Resolution Of The City Of Emeryville As Successor Agency To The Emeryville Redevelopment Agency Transferring Governmental Use Properties Known As Greenway @ Parcel D, Greenway @ 59th Street, Emery Station Greenway Plaza, 48th Street Community Garden, Art & Cultural Center And Glashaus Public Parking To The City Of Emeryville Pursuant To The Long Range Property Management Plan

RECOMMENDATION

It is recommended that the City Council and Successor Agency each adopt the respective enclosed resolution thereby effectuating the transfer of fee title to real property known as Greenway @ Parcel D, Greenway @ 59th Street, Emery Station Greenway Plaza, 48th Street Community Garden, Art & Cultural Center and Glashaus Public Parking from the City of Emeryville as Successor Agency to the Emeryville Redevelopment Agency ("Successor Agency") to the City of Emeryville ("City") pursuant to the Long Range Property Management Plan ("LRPMP"). The LRPMP was approved by the State of California Department of Finance ("DOF") on November 20, 2015.

BACKGROUND

Long Range Property Management Plans

A component of the Dissolution Act established a process by which successor agencies can dispose of non-housing property pursuant to a Long Range Property Management Plan ("LRPMP"). The LRPMP governs the method, use, and timing of disposition of former redevelopment agency properties. Note that all real property acquired by the former Emeryville Redevelopment Agency for affordable housing purposes (e.g. 3706 San Pablo Avenue) was previously transferred to the City.

The LRPMP of a successor agency must be approved by their respective oversight board and the DOF. A LRPMP may be submitted to the oversight board and DOF for approval once DOF issues a Finding of Completion to a successor agency. A Finding of Completion is issued once a successor agency completes various matters in accordance with the Dissolution Act. The Successor Agency received its Finding of Completion from the DOF on August 29, 2013.

On February 4, 2014, the Successor Agency approved the LRPMP for the disposition and use of non-housing redevelopment agency properties. Thereafter, on February 11, 2014, the Emeryville Oversight Board approved the LRPMP and the Successor Agency submitted the LRPMP to the DOF. On December 31, 2014, DOF notified the Successor Agency that the LRPMP was not approved.

The Successor Agency prepared a revised LRPMP in September 2015 to address the stated reasons for the DOF's disapproval, which was subsequently approved by the DOF on November 20, 2015. A copy of the Successor Agency's approved LRPMP can be found on DOF's website at the following link:

http://www.dof.ca.gov/Programs/Redevelopment/Long_Range_Property_Management/LRP_MPC_Plans/documents/Emeryville_LRPMP_Part%201.pdf.

Scope of LRPMP

The LRPMP includes an inventory of all non-housing properties and details the following information for each property:

- The date of the acquisition of the property, the value of the property at the time of acquisition, and an estimate of the current value of the property.
- The purpose for which the property was acquired.
- Parcel data, including address, lot size, and current zoning in the former Redevelopment Plan or specific, community, or General Plan.
- An estimate of the current value of the parcel including, if available, any appraisal information.
- An estimate of any lease, rental, or any other revenues generated by the property, and a description of the contractual requirements for the disposition of those funds.
- Each parcel's history of environmental contamination, including designation as a brownfield site, any related environmental studies, and a history of any remediation efforts.
- A description of the property's potential for transit-oriented development and the advancement of the planning objectives of the Successor Agency.
- A brief history of previous development proposals and activity, including the rental or lease of property.
- Properties that are subject to an enforceable obligation and the status of the obligation.

Properties subject to the LRPMP must be categorized as falling within one of four uses:

1. Governmental Purpose Use - proposed for continuation in governmental use;
2. Enforceable Obligation Use - proposed for retention to fulfill existing enforceable obligations;
3. Properties for Immediate Sale - proposed for sale for fair market value at their highest and best use; or
4. Properties for Future Development – properties identified in a redevelopment plan, which may be sold at their fair market value or their fair reuse value, based on the dictates of market conditions, the scope of development outlined by the City, and the development climate at the time of disposition.

The LRPMP of the Successor Agency addresses the use and disposition of former Redevelopment Agency property pursuant to the following categories: 1) properties retained for governmental use; 2) properties retained for future development; and 3) properties slated for immediate sale. The Successor Agency does not have any property to be used to fulfill an enforceable obligation and thus this category will not be discussed further. Each of the applicable categories is described below.

Governmental Use Properties

The Successor Agency has six properties in this category that will be transferred to the City for continued governmental use. The purpose of tonight's item is to effectuate the transfer of these six (6) parcels to the City. Health and Safety Code Section 34181 (a) identifies use of property for roads, school buildings, parks, police and fire stations, libraries, parking facilities and lots dedicated solely to public parking and local agency administrative buildings as being illustrative of a governmental use.

The six (6) properties intended to be transferred to the City for continued governmental use fall into three (3) categories: parks, community facility and parking facility.

Parks

- *Greenway @ Parcel D*
- *Greenway @ 59th Street*
- *Emery Station Greenway Plaza*
- *48th St Community Garden*

These properties were purchased for park development, and will be transferred to the City for operation as components of Emeryville's park system. Each of these properties are identified in the City's General Plan land use element as open space and are accordingly zoned as open space. The area encompassing the Greenway @ 59th Street (11,782 s.f.) and Emery Station Greenway Plaza (3,925 s.f. at northeast corner of Powell and Hollis Streets) properties have been designated as open space since 2002 with the enactment of the North Hollis Overlay Zone, and the Greenway @ Parcel D (63,422 s.f. adjacent to former Sherwin-Williams site) obtained its current open space designation in 2006 with the enactment of the Park Avenue District Overlay. The 48th Street Community Garden (5,208 s.f.) obtained its current designation as part of the 2009 Emeryville General Plan adoption and conforming zoning regulations adopted thereafter.

With the exception of the 48th Street Community Garden, all of these park properties will be incorporated into a contiguous park and pedestrian/bicycle path called the “Emeryville Greenway”, which when completed will extend across Emeryville from its northern to southern border. The concept of a linear park along what was known as the Ninth Street Drill Track was first reflected in the 1976 Redevelopment Plan. The Drill Track ran along the westerly border of what is identified as Area I in the 1976 Redevelopment Plan and a project to develop a buffer between the existing residential area within Area I and the industrial area to the west by the use of a linear park is identified in the 1976 Redevelopment Plan.

The Emeryville Greenway runs along the historic Ninth Street Drill Track alignment and plays a critical role in the linkage of the City’s bicycle and pedestrian system, connecting the Emeryville Greenway with the City of Berkeley to the north, Oakland to the south, and the San Francisco Bay Trail to the west.

The 48th Street Community Garden site, acquired in 2008, will become one of three community gardens disbursed throughout the City available to the residents of Emeryville for urban agriculture.

Community Facility

- *Art and Cultural Center*

The Emeryville Redevelopment Agency purchased a 30,000 square foot one-story, unreinforced masonry brick building, on a 33,697 square foot site, directly adjacent to City Hall for the purpose of developing an Art and Cultural Center in 2006. The Public Use General Plan land use designation and zoning for this site has been in effect since 2006.

Public Parking Facility

- *Glashaus Public Parking*

The Glashaus Public Parking facility at the corner of Hollis and 65th Street consists of a separate condominium parcel containing 50 public parking spaces (8,331s.f.) on the bottom floor of a two-story parking podium structure beneath four-stories of residential condominium units. The former Redevelopment Agency contracted with Pulte Home Corporation in 2006 to construct this public parking as a component of their condominium development.

The intent was that the 50 parking spaces be available to members of the public who are visiting the small commercial establishments in the Glashaus mixed use development and other nearby businesses in the area which lack available parking. This parking is currently provided free to members of the public as a means to support nearby commercial businesses which lack adequate off-street parking.

Properties for Future Development

The Successor Agency has an assemblage of five (5) parcels in this category, comprising approximately 3.04 acres (132,499 s.f.), collectively known South Bayfront Site B, which is located in the former 1976 Emeryville Redevelopment Project Area that will be transferred to the City for future development pursuant to Health and Safety Code Section 34191.5(c)(2). A condition of the transfer to the City under the LRPMP is that the Successor Agency must obtain regulatory closure from the State of California, Department of Toxic Substances Control ("DTSC"). This condition has not yet been met and accordingly this parcel is not ready to be transferred to the City. Further, staff anticipates that an item will be brought back to the City Council at a later date to separately discuss the process to solicit development proposals and secure the sale of these parcels.

The LRPMP provides for the Successor Agency to transfer South Bayfront Site B to the City in order to be retained for future development of a project identified in, and in accordance with, the 1976 Redevelopment Plan, the 2010-2014 Implementation Plan, and the City's General Plan and any applicable specific plan. Future development of this site under the control of the City is essential in order to advance the planning objectives for which these properties were originally acquired by the former Redevelopment Agency and to realize community benefit objectives. The fundamental purpose for acquiring and developing these properties is to achieve the objective identified in the 1976 Redevelopment Plan and 2010-2014 Implementation Plan as follows:

- 1976 Emeryville Redevelopment Plan: South Bayfront Site B is located in the general area identified as Area III in the 1976 Redevelopment Plan. Within Area III, the 1976 Redevelopment Plan envisioned that the redevelopment of this area would intensify the development of property presently underutilized and develop appropriate commercial and residential development. The 1976 Redevelopment Plan recognizes that the Agency may assist the development of new commercial and residential development within Area III in order to strengthen the economic and employment base of Emeryville, as well as to provide a greater residential market within Emeryville.
- 2010-2014 Implementation Plan: The 2010-2014 Implementation Plan identified the Bay Street Site B Project as a means to address and alleviate the loss of tax base and jobs. As described therein, Bay Street Site B will be a continuation and completion of the existing Bay Street Mixed-Use Development. The project will serve as a northern end-cap for the existing Bay Street development and may consist of retail, a hotel, and structured parking.

The City will be responsible for marketing the property to potential developers, likely through a competitive process such as a Request for Qualifications and Proposals. The property will be sold at its fair market value or fair reuse value in its "as is" condition, based on the dictates of market conditions, the scope of development outlined by the City, and the development climate at the time of disposition. The determination of fair market value will consider the property's highest and best use. The determination of fair reuse value will consider the proposed use of the property and the value of the property with the conditions, covenants and development costs associated with the negotiated disposition. Any

disposition of the property shall be governed by a negotiated disposition and development agreement that will govern the terms of the disposition, the development of the property, and the use of the property following development.

Further, as required by Assembly Bill 470 (Government Code Section 52200 *et seq.*), the City will be required to hold a public hearing and adopt findings that the sale of South Bayfront Site B will assist in the creation of “economic opportunity” as defined. Section 52200.2 provides that “economic opportunity” includes projects that (i) create affordable housing, or (ii) are included in a sustainable communities’ strategy adopted in accordance with Senate Bill 375, or (iii) are a transit priority project as defined in Public Resources Code Section 21155. Essentially the entire City of Emeryville, including South Bayfront Site B, is in a Priority Development Area (PDA) and PDAs are serving as the foundation upon which the Bay Area’s first sustainable communities strategy is structured. Further, given the close proximity of South Bayfront Site B to the Emeryville Amtrak Station, which is a “major transit stop” as defined in Public Resources Code Section 21064.3, the South Bayfront Site B project is certain to qualify as a transit priority project depending upon the mix and density of residential use, if any. Finally, the City’s General Plan and Planning Regulations are entirely consistent with the objectives of Assembly Bill 470 and Senate Bill 375 as they relate to the development of South Bayfront Site B. Accordingly, staff is confident the required findings of “economic opportunity” can be made.

Properties for Immediate Sale

The Successor Agency has one parcel, the Shellmound Street Lot, in this category that will be sold for fair market value at its highest and best use in its “as is” condition. Again, staff anticipate that a separate item will be brought back to the City Council at a later date in order to discuss the process for sale of this parcel, and similarly whether the City has any interest in acquiring it.

The Shellmound Street Lot is a remnant piece from an acquisition of three (3) contiguous parcels known as Shellmound Ventures Lot I, II and III, acquired by the former Redevelopment Agency in 1994. A portion of the overall assemblage was sold to Caltrans for the widening of Interstate 80 in the aftermath of the Loma Prieta Earthquake and collapse of the adjacent Cypress Freeway; another portion was dedicated to the City for the construction of a new arterial roadway known as the Bay-Shellmound-40th Street Project; another portion was sold to Marriott for development of the Marriott Courtyard hotel; and another portion was sold to the Emeryville Redevelopment Project Partnership for the development of the Bay Street shopping mall. Further, the Successor Agency sold an easement interest in the Shellmound Street Lot to the East Bay Municipal Utility District to facilitate the construction of a reclaimed water line along Shellmound Street.

FISCAL IMPACT

After approval of the LRPMP, the properties identified as being used for a governmental purpose are to be transferred to the City for that purpose. Hence the purpose of tonight’s item. There is no cost to the City for the transfer of these parcels other than the obligation to operate and maintain the properties in the future.

At later meetings separate items will be presented to the City Council and Successor Agency relating to the Shellmound Street Lot and South Bayfront Site B. Proceeds from a sale of these parcels are handled differently based on the property's use category. If the LRPMP calls for the liquidation of the property (i.e. immediate sale), as in the case of the Shellmound Street Lot, the proceeds from the sale are to be distributed as property taxes to the taxing entities (Section 34191.5(c)(2)(A) and (B)).

If the LRPMP calls for the property to be used for future development in accordance with an approved redevelopment plan, as in the case of South Bayfront Site B, then the property is to be transferred to the City and the proceeds from disposition of properties that have been identified for a project in an approved redevelopment plan will be addressed pursuant to the terms of a compensation agreement between the City and the affected taxing entities.

The compensation agreement will specify that any net unrestricted proceeds from the sale of the property will be distributed to all of the affected taxing entities on a pro rata basis in proportion to each entity's respective share of the property tax base. The calculation of net unrestricted proceeds shall take into account the transaction costs incurred by the City in marketing the property and processing the sale, as well as the costs incurred by the City in carrying or maintaining the property and in preparing and improving the parcels for development.

Furthermore, three (3) of the five (5) parcels that comprise South Bayfront Site B were acquired by the former Redevelopment Agency with tax-exempt bond proceeds. Accordingly, bond counsel has advised that in accordance with bond covenants and applicable law, any proceeds from the eventual disposition of these three (3) parcels will continue to be restricted to uses consistent with federal tax law and with the bond covenants in the indenture. Accordingly, these funds must be invested in other capital projects meeting a redevelopment purpose as identified in the 2010-2014 Implementation Plan. Therefore, the LRPMP provides that the City and Successor Agency will follow the advice of independent tax counsel regarding the distribution of sales proceeds from these parcels. If the opinion of tax counsel is consistent with the advice from bond counsel, proceeds from the sale of three (3) of the five (5) parcels comprising South Bayfront Site B would not be available for distribution to taxing entities. Rather, the aforementioned compensation agreement would address the distribution of proceeds from the sale of two (2) of the five (5) parcels comprising South Bayfront Site B and the City would retain and utilize the proceeds from the sale of the three (3) parcels acquired with bond proceeds to undertake projects identified in the 2010-2014 Implementation Plan. These three (3) parcels comprise approximately 60% of the acreage of South Bayfront Site B which was last appraised at \$13.88 million in 2012.

CONCLUSION

In order to carry out the terms of the LRPMP as to six (6) properties identified for a governmental use, it is recommended that the enclosed resolutions be adopted by the City Council and Successor Agency providing for the transfer of the six (6) parcels to

the City of Emeryville, as legally described in Exhibits A, B, C, D, E and F to the Grant Deed enclosed as Attachment 1 to the resolutions.



Michael A. Guina, City Attorney

ATTACHMENTS

1. Resolution of Successor Agency Transferring Governmental Use Properties
 - Attachment 1 – Grant Deed
 - Exhibit A to Grant Deed – Greenway @ Parcel D Legal Description
 - Exhibit B to Grant Deed – Greenway @ 59th Street Legal Description
 - Exhibit C to Grant Deed – Emery Station Greenway Plaza Legal Description
 - Exhibit D to Grant Deed – 48th St Community Garden Legal Description
 - Exhibit E to Grant Deed – Art & Cultural Center Legal Description
 - Exhibit F to Grant Deed – Glashaus Public Parking Legal Description
2. Resolution of City Council Accepting Grant of Governmental Use Properties
 - Attachment 1 – Grant Deed
 - Exhibit A to Grant Deed – Greenway @ Parcel D Legal Description
 - Exhibit B to Grant Deed – Greenway @ 59th Street Legal Description
 - Exhibit C to Grant Deed – Emery Station Greenway Plaza Legal Description
 - Exhibit D to Grant Deed – 48th St Community Garden Legal Description
 - Exhibit E to Grant Deed – Art & Cultural Center Legal Description
 - Exhibit F to Grant Deed – Glashaus Public Parking Legal Description