



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).

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 _____

DATE OF FINANCE’S DETERMINATION LETTER: 10/26/2012 Review of Oversight Board Action Resolution 2012-10

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

☒ Meeting at Finance ☐ Conference Call

DETAIL OF REQUEST

A. Summary of Disputed Issue(s) *(Must be specific.)*

The Oakland Redevelopment Successor Agency ("ORSA") disputes DOF's conclusions outlined in its October 26, 2012 determination letter regarding approval by the Oakland Oversight Board of ORSA's disposition of real property and transfer of funds with respect to the Foothill Seminary project per Oakland Oversight Board Resolution 2012-10.

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

SEE ATTACHMENT A.

C. Justification *(Provide additional attachments to this form, as necessary.)*

SEE ATTACHMENT B.

Agency Contact Information

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Date: 11/01/12

Name:
Title:
Phone:
Email:

Date:

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 9/10/12)

Background/History

The Foothill Seminary project is not "new redevelopment work". The very early beginnings of the project extend back to 1993 and became more of a reality with the establishment of the Central City East Redevelopment Project Area and issuance of taxable bonds in 2006. (Please see the attached Foothill Seminary Redevelopment Effort Chronology and Linkages Chart). The Foothill Seminary site is made up of eleven parcels totaling 1.693 acres bounded by Foothill Boulevard, Seminary and Bancroft Avenues. On September 4, 2009, the Redevelopment Agency of the City of Oakland issued a Notice of Development Opportunities ("NODO") to solicit development proposals for this site. The NODO included a preferred alternative for retail development with required parking to be addressed on-site. This alternative was based on the needs of the surrounding community, various market studies, CCE Project Area Committee visioning and goal setting priorities and the City-wide Retail Enhancement Strategy adopted in 2008. Through a competitive RFQ/P process, the Redevelopment Agency selected a proposal by Sunfield Development, LLC ("Sunfield") for the development of a 26,950 square foot new neighborhood-serving retail center with an allowance for approximately 73 on-site parking spaces.

The Redevelopment Agency entered into a 15-month (12 months plus 3 month extension) Exclusive Negotiation Agreement ("ENA") with Sunfield on November 9, 2010. Execution of the ENA provided for exclusive negotiations between the Redevelopment Agency and Sunfield and required the developer to submit a non-refundable deposit required for the purpose of funding the Redevelopment Agency's due diligence review of the project. The stated purpose of the ENA was to further evaluate the feasibility of the community driven development proposal and to begin to negotiate the preliminary terms of a Disposition and Development Agreement ("DDA"). The ENA Schedule of Performance required the developer to expend considerable resources beyond payment of the Good Faith Deposit to evaluate the feasibility of the development proposal. The ENA period allowed the developer to demonstrate financial capacity, financial feasibility, finalize solidify cost estimates, enter into contract with architects and engineers to finalize the project design, enter into contract to secure a retail broker to secure interest from retail operators, conduct applicable market feasibility studies for retail and to also utilize the ENA period to secure CEQA review and planning entitlements. During the ENA period Sunfield expended approximately \$300,000 in project predevelopment costs. On October 19, 2010, the City of Oakland Planning Commission approved design review, CEQA entitlements and Conditions of Approval for the project and Sunfield has secured letters of commitment from the major anchor and infill tenants.

Pursuant to a Purchase and Sale Agreement entered into on March 3, 2011, the property was transferred by the Redevelopment Agency to the City of Oakland on January 31, 2012. On July 17, 2012 the Oakland Redevelopment Successor Agency

("ORSA") approved Resolution No. 2012-0004 authorizing ORSA to enter into a DDA for the project, should the property be transferred to ORSA, with the intent of moving forward on the project to enable construction to begin in the Spring of 2013. ORSA approval of the transaction was sought based on the requirements of the developer's title company and partners. On August 23, 2012, the Oakland Oversight Board unanimously approved ORSA's disposition of the property for this project through a DDA, should the property be transferred to ORSA.

The Phase 2 site assessment for first two Foothill Seminary parcels that the Redevelopment Agency acquired on September 26, 2008 recommended additional environmental analysis for these two sites. The follow-up Phase 2 assessment recommended limited remediation for the proposed use which was estimated at approximately \$150,000. When the Redevelopment Agency went to the ORSA to authorize the DDA on July 17, 2012, it also recommended an allocation of funding to complete the Redevelopment Agency obligation to provide remediation. The source of the \$150,000 is taxable bond proceeds.

Justification

1. DOF concludes that the transfer of the Foothill Seminary parcels to the City was not permitted based on Health and Safety Code section 34163 (d), which states that a former redevelopment agency shall not dispose of any assets after June 27, 2011. First, the permissibility of the transfer from the Redevelopment Agency to the City is irrelevant to whether ORSA, as successor agency, may transfer the property to the developer should the City-to-Agency transfer be reversed and the property transferred back to ORSA. In fact, the developer was seeking ORSA and Oversight Board approval precisely because of the risk that the transfer to the City would be undone by the State Controller and the property returned to ORSA per the statute cited by DOF. Second, we disagree that the transfer was impermissible. While DOF correctly noted that the transfers took place on January 26, 2012, after Redevelopment Agency suspension, DOF does not acknowledge that the transfers were made pursuant to a preexisting legally-enforceable Purchase and Sale Agreement between the Redevelopment Agency and the City entered into on March 3, 2011, prior to Agency suspension. Prior to dissolution contracts between cities and redevelopment agencies were considered valid enforceable obligations, see Health and Safety Code Section 34167(d) (5). The suspension of Agency powers to transfer properties after June 28, 2011, did not pertain to transfers pursuant to a previously-existing enforceable obligation.
2. DOF states that ORSA's plans to enter into a DDA with Sunfield for the development of the parcels is not allowed under Health and Safety Code Section 34177.3 (a) which provides that successor agencies cannot create new enforceable obligations or begin new redevelopment work, except in compliance with an enforceable obligation that existed prior to June 28, 2011. However, Health and Safety Code Section 34177(e) permits a successor agency to dispose of real property with the approval of the oversight board, notwithstanding Section 34177.3. While AB 1484 (Section 34191.3) suspended the requirement that a successor agency dispose of property at the direction of the oversight board, it did not suspend the ability of a successor agency with oversight board approval from disposing of property if the successor agency so chooses. AB 1484 was intended to forstall the forced disposition of property prior to the successor agency's receipt of its finding of completion, not to prevent the volunteer disposition of property should the oversight board approve. The use of a DDA instrument does not give rise to new redevelopment work; the DDA is simply the device that the City or ORSA will use to dispose of the real property for this project as permitted under Section 34177(e).
3. DOF concludes that the Redevelopment Agency's transfer of \$150,000 to the City for remediation and demolition of the properties was not permitted because there was no contract executed prior to June 28, 2011 to develop the properties, citing Health and Safety Code Section 34177.3 (c) which prohibits transferring revenues or powers from the successor agency from to any other public entity except pursuant to an enforceable obligation on an

approved ROPS. However, as with the real property, the permissibility of the funds transfer to the City is irrelevant to the request for ORSA to approve this funding should these funds be clawed-back by the State Controller. We should also note for the record that the transfer of these funds was made pursuant to the Funding Agreement between the City and the Redevelopment Agency, a valid enforceable obligation of the Agency entered into prior to suspension, and was therefore not prohibited under the suspension rules.

4. DOF further concludes that Health and Safety Code Section 34191.3 suspended a successor agency's ability to dispose of real property assets for non-governmental purposes until DOF has issued a finding of completion and approved a long range property management plan. We take issue with DOF's legal opinion that Section 34191.3 suspended the ability of the successor agency under Health and Safety Code Section 34177(e) to voluntarily dispose of property with the approval of the oversight board; Section 34191.3 simply suspended the forced sale requirements of Section 34177(e), see above. Also, please note that while ORSA in most cases is willing to defer approval of property dispositions pending receipt of a finding of completion and approval of a long-range property management plan, in this case ORSA is seeking approval of this disposition now in order to save the transaction. As the material we submitted to the Oversight Board and DOF shows, this developer will need ORSA approval now in order to keep investors, lenders, and prospective tenants in the deal. The members of the Oversight Board understood the fiscal benefits of the transaction to the taxing entities and the need to move this project forward now in order to realize those benefits. **Failure to approve this transaction, or deferring it to next year's approval of the long range property management plan, will sink the project and the ability of the taxing entities (and the state) to benefit from the increased tax revenues generated by a developed site.**