



Joseph P. Bort MetroCenter
101 Eighth Street
Oakland, CA 94607-4700
TEL 510.817.5700
TDD/TTY 510.817.5769
FAX 510.817.7848
EMAIL info@mtc.ca.gov
WEB www.mtc.ca.gov

Memorandum

TO: Bay Area Headquarters Authority

DATE: May 16, 2012

FR: Executive Director

RE: 390 Main Street Status Report – May 2012

1. Architectural and Engineering Services Update

The programming information prepared by the architect, Perkins + Will (PW), and reviewed by BAHA, Air District, BCDC, and ABAG are being used to develop the schematic design. Agreements related to inter- and intra-agency adjacencies include creating a cluster for the Executive Management and Legal staff and the Planning staff. Staff continues to explore opportunities for consolidation.

BAHA's consultant, Farella Braun + Martel, LLP (FBM) is preparing the California Environmental Quality Act (CEQA) document. BAHA is the lead agency; when the document is complete, it will be presented to this board for approval.

The project team, including PW, the Construction Manager at Risk (McCarthy), and the four agencies met to discuss and define sustainability goals. The City and County of San Francisco requires that projects meet a Gold certification level under the United States Green Building Council's Leadership in Energy and Environmental Design (LEED). Sustainability measures dealing with site, water efficiency, energy and atmosphere, materials and resources, and indoor environmental quality were discussed.

Valerie Campbell, BAHA's IT Migration Manager and TEECOM, the IT infrastructure design sub-consultants, met with the core agency staff to review preliminary data on each agency's unique requirements for voice, data and communications. Next steps include identifying convergence (consolidation and co-location) opportunities for developing conceptual designs and system criteria for the IT infrastructure and data center.

2. Construction Update

McCarthy continues to work with BAHA staff and PW on the following tasks: provide construction cost estimates for the schematic design; prepare construction schedules; and refine work-around options for the existing U.S. General Services Administration tenant residing on the top floor of 390 Main.

3. Project Stabilization Agreement (PSA)

The project stabilization agreement, approved by BAHA at its February 2012 meeting, has been signed by 19 out of 20 of the individual trade unions. Mike Valming of Vlaming and Associates is meeting with the Laborers Local 260 to address their questions related to the PSA. Next steps include a pre-job meeting with McCarthy and the trade union to review the proposed construction activities and PSA compliance.

4. Leasing Agent/Property Management Services

At the request of the BAHA board, staff met with Commissioners David Cortese and Amy Rein Worth to address concerns raised at the April 25th BAHA meeting about the previous procurement process. Based on that meeting, staff will prepare a new procurement that includes the following changes: 1) issue a three-part procurement for property management and financial management services, for leasing and marketing services, and optional brokerage services for the MetroCenter's disposition, 2) allow the firms to bid on one or more of the services, 3) revise the minimum qualifications to ensure the firms have commercial leasing experience of similar size buildings, 4) eliminate minimum qualifications for active property management and equity ownership, 5) clearly define the scope of work taking into account the current needs, during construction phase, and once fully occupied, 6) expand the mailing list to include additional firms with commercial property management experience, and 7) require a detailed cost up front.

The recommended firm(s) will be selected via a two-stage process, Request for Qualification /Request for Proposal (RFQ/RFP). Responses to the RFQ will be evaluated and a shortlist of 3-5 firms will be invited to submit a response to the RFP including a detailed cost proposal which will be subject to further scrutiny. Staff expects to issue the procurement in the fall.

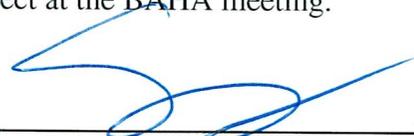
Staff will also review options for providing existing property and financial management services during the interim period. Options include extending the existing agreement with Amerimar LLC or assuming responsibility in-house similar to the arrangement MTC has with the Regional Administrative Facilities Corporation (RAFC) to operate the MetroCenter.

5. City and County of San Francisco

Proposition M passed in 1986 to help manage high levels of office growth in San Francisco. It imposed a limit on how many square feet of office space may be created and established criteria for review of newly proposed office developments. Given the federal government's ownership of 390 Main Street, the building was never formally zoned for office use. At BAHA's request to have the building formally zoned for office use, the City and County of San Francisco determined that 285,808 SF is office space that has continually pre-existed (see attached letter). Any additional space needed for office use purposes would be subject to the Proposition M process at a later date.

6. Legislative Counsel Opinion

In response to Senator DeSaulnier's publication of an opinion by Legislative Counsel about BAHA's purchase of 390 Main Street, we issued the attached detailed response. Staff will present additional information relevant to the subject at the BAHA meeting.



Steve Heminger

Attachment



SAN FRANCISCO PLANNING DEPARTMENT

Letter of Determination

April 27, 2012

Andrew Fremier
Deputy Executive Director, Operations
Bay Area Headquarters Authority
Joseph P. Bort MetroCenter
101 Eighth Street
Oakland, CA 94601-4700

1650 Mission St.
Suite 400
San Francisco,
CA 94103-2479

Reception:
415.558.6378

Fax:
415.558.6409

Planning
Information:
415.558.6377

Site Address:	390 Main Street
Assessor's Block/Lot:	3746/002
Zoning District:	Rincon Hill Downtown Residential Mixed Use District
Staff Contact:	Brittany Bendix, (415) 575-9114 or <u>Brittany.bendix@sfgov.org</u>

Dear Mr. Fremier:

This letter is in response to your request for a Letter of Determination regarding the property at 390 Main Street and the amount of pre-existing office space on-site pursuant to Planning Code Section 320(k). Prior to your agency's acquisition of the property, the United States Postal Service (USPS) owned the subject property and used the space primarily for regional postal distribution services and leased remaining space to other governmental agencies or private firms.

BACKGROUND AND TENANT HISTORY

Building Permit records indicate that a seven story storehouse for the U.S. Marine Corps occupied the site as early as 1942. However, given the federal government's ownership of the building, local permit records are limited. As a result, staff reviewed the Polk's San Francisco City Directory and observed the following transitions in occupancy:

- From 1955 through 1962 the United States Marine Corps is listed as the sole tenant.
- The site is listed as vacant in 1963.
- In 1964 and 1965 the primary tenant is the Internal Revenue Service (publications section).
- As early as 1966, the United States (U.S.) Postal Concentration Center is listed as a principal tenant, amongst others which include the U.S. Air Force Postal Finance Office, U.S. Internal Revenue Service, U.S. General Services Administration, U.S. Navy Fleet Post Office, U.S. Marine Corps Postal Liaison, U.S. Forest Service Regional Electric Center, and the U.S. Treasury Department (Bureau of Accounts).
- By 1980 the Directory expands to call out the specific offices within the U.S. Postal Concentration Center that relate to Compensation, Scheduling, Safety, Training and Logistics.

Andrew Fremier
Bay Area Headquarters Authority
101 Eighth Street
Oakland, CA 94607

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390 Main Street

Furthermore, the scope of operations for the Postal Service as described in your letter includes the following activities: legal, marketing, human resources, purchasing and sales divisions; storage space for various types of records and documents; operational maintenance offices; and space dedicated to carrier activities. These activities are consistent with the Directory listings cited above. Collectively these uses indicate that the Postal Service activities at 390 Main Street meet the definition of an office use as stated in Planning Code Sections 320 and 890.105. Additionally, the chronology of listings confirms that the building converted to office uses prior to the adoption of Planning Code Sections 320 through 323.

In the absence of plans reviewed and approved by local agencies, you have provided an account of the changes in tenancy and associated floor area. The tenant history chronicles the transition of uses over three periods, beginning with the U.S. Postal Service's initial occupation of the site in the 1960s through the sale of the building this past year. The information collected reveals that the building has approximately 448,756 square-feet of floor area, of which approximately 285,808 square-feet is office space that has continually preexisted since the U.S. Postal Service first occupied the building. The remaining 162,948 square-feet of floor area was either never occupied by an office use, or previously office space, but at some point abandoned.

DETERMINATION

The Bay Area Headquarters Authority's occupation or lease of the 285,808 square-feet of area determined as pre-existing office space is exempt from the office allocation process. However, any amount of office space occupied on-site that is in excess of the amount determined to be pre-existing will be reviewed under the provisions outlined in Planning Code Sections 320-323.

APPEAL: If you believe this determination represents an error in interpretation of the Planning Code or abuse in discretion by the Zoning Administrator, an appeal may be filed with the Board of Appeals within 15 days of the date of this letter. For information regarding the appeals process, please contact the Board of Appeals located at 1650 Mission Street, Room 304, San Francisco, or call (415) 575-6880.

Sincerely,



Scott F. Sanchez
Zoning Administrator

cc: Brittany Bendix, Planner
Property Owner
Neighborhood Groups



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Response to Legislative Counsel's Opinion

Contacts:

Randy Rentschler, 510.817.5780

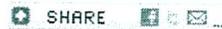
Oakland, CA, May 8, 2012... The Metropolitan Transportation Commission (MTC) and the Bay Area Toll Authority (BATA) today issued the following statement regarding the state Legislative Counsel's May 4, 2012 opinion on the October 2011 purchase of an office building at 390 Main Street in San Francisco by the Bay Area Headquarters Authority (BAHA):

1. The Metropolitan Transportation Commission (MTC) and Bay Area Toll Authority (BATA) – acting through a joint powers authority known as the Bay Area Headquarters Authority (BAHA) – underwent a thorough, deliberative, and transparent public process culminating in the purchase of a new office building in October 2011 adequate to meet the agencies' growing needs. In keeping with that deliberative process, MTC/BATA's legal team has undertaken a serious and respectful review of the Legislative Counsel opinion released by state Senator Mark DeSaulnier a few days ago.
2. Last July, MTC/BATA obtained a legal opinion from its bond counsel, Orrick, Herrington & Sutcliffe LLP (Orrick), a prominent law firm consistently ranked #1 in the country in this specialty area of the law – that the purchase was consistent with state law. Orrick had all the facts of the proposed real estate transaction before it when rendering its opinion. In its May 4th opinion, Legislative Counsel acknowledged that "We do not have all of the facts related to the transaction before us."
3. Senator DeSaulnier's May 7th press release claims that the "Legislative Counsel finds that MTC broke the law." Its opinion does no such thing. Legislative Counsel did not say whether the purchase was legal or illegal. Only courts can declare an action illegal. Legislative Counsel said that the limited information it had available *could* lead a court to decide against the use of bridge toll revenues to fund the purchase of 390 Main Street.
4. Further, Legislative Counsel stated that "a court considering the issue would take into account all the relevant facts in making a determination regarding the purposes underlying the purchase of 390 Main Street, and would give deference to determinations made by BAHA in that regard, if found to be reasonable." As noted above, Legislative Counsel admitted it did not have all the facts about the purchase before it, nor did it give deference to BAHA's determinations as a court would be required to do.
5. The Legislative Counsel opinion rests much of its adverse conclusion on the fact that MTC/BATA acquired 390 Main Street for its own use as well as for other regional public agencies such as the Association of Bay Area Governments (ABAG), Bay Area Air Quality Management District (BAAQMD) and Bay Conservation and Development Commission (BCDC). Legislative Counsel opined that these entities "are not, in our view, related to associated transportation projects or purposes authorized to be undertaken by either BATA or MTC." But these other three regional agencies are significantly involved in the transportation mission of MTC/BATA – ranging from their common membership in the statutorily-created Joint Policy Committee to their partnership on federal air quality planning to their joint activities implementing SB 375 (Steinberg). Thus, much of the foundation of the opinion rests on a faulty assumption about MTC/BATA's relationship with these other regional agencies.
6. The opinion also hinges on the fact that 390 Main Street includes more office space than is currently required by MTC and BATA. There is nothing in California law, however, that requires a public agency only to purchase or lease space that is minimally sufficient for its current needs. Nor does the law define any "bright line" below which excess office space is defensible, but above which it is not. In fact, public agencies routinely purchase or construct buildings with excess space that they will grow into at a later date. Some examples include:
 - The new Transbay Transit Center is an example of a joint powers authority (JPA) developing leasable space to support transit activities. The space being developed is not limited to the current needs but looks to the future needs of the community.
 - The County of Sacramento issued Certificates of Participation in 1997 to purchase an existing building, the Bank of America building on 8 th and I Street in the City of Sacramento. The purchased building was planned to be leased to the City or used by the County but due to

changing space needs was leased to commercial tenants.

- In the year 2000, the Truckee Public Financing Authority issued taxable and tax-exempt bonds to purchase a building that substantially exceeded its needs for a new City Hall and extra space was subleased to public and commercial tenants.
 - In 1993, the Mid-Peninsula Regional Open Space District purchased an existing building for its headquarters building. Initially, the District occupied 60% of the building and leased 40% to commercial tenants.
 - The Port of San Francisco has substantial real estate holdings that it leases to commercial tenants.
 - One of the parties to the 390 Main Street transaction – the Bay Area Air Quality Management District – purchased its current building and for many years rented out a substantial portion of it to the San Francisco Redevelopment Agency, until the space was needed for BAAQMD's expanding staff.
7. MTC/BATA's legal team remains confident that the purchase of 390 Main Street in San Francisco with bridge toll funds was fully consistent with state law.
- BATA, which is directed by the same policy board as MTC, administers toll revenues from the Bay Area's seven state-owned toll bridges. MTC is the transportation planning, financing and coordinating agency for the nine-county San Francisco Bay Area.

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Metropolitan Transportation Commission • 101 Eighth Street, Oakland, California 94607
Phone: 510.817.5700, Fax: 510.817.5848

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