

HEBER PUBLIC UTILITY DISTRICT

REPORT TO THE BOARD OF DIRECTORS

MEETING DATE: March 20, 2014

FROM: Laura Fischer, General Manager
Prepared by: Graciela López, Finance Manager

SUBJECT: Information Only Regarding *parcel number 054-601-001* Community Facilities District No. 2005-1 (Heber Meadows)

INFORMATION AND DISCUSSION ONLY:

BACKGROUND:

In fiscal year 2007-08, APN 054-601-001 was owned by Heber Meadows I, LLC (the "Developer"), and the developer with respect to the Heber Meadows development encompassing the District. APN 054-601-001 was among the parcels delinquent in the payment of fiscal year 2007-08 special taxes.

On August 1, 2008, the individuals owning 90% of the ownership interest in the Developer filed for bankruptcy under Chapter 7 of the U.S. Bankruptcy Code, and the Developer ceased all further development activities in the District. Although APN 054-601-001 was intended to be developed ultimately as a single-family residence, the Developer had temporarily paved the lot and used it for locating sales trailers with respect to the Heber Meadows development. Currently, *APN 054-601-001 remains an undeveloped paved lot.*

Although most of the parcels delinquent in 2007-08 special taxes, other than APN 054-601-001, *have since cured and paid their respective delinquencies, this is not the case with respect to APN 054-601-001.* With respect to APN 054-601-001, no cure was provided by or on behalf of the property owner, and a default judgment was entered in favor of the District on March 15, 2010, which judgment was amended on April 21, 2011 (the "Judgment"), to include special tax delinquencies with respect to fiscal years 2007-08 2008-09, and 2009-10, in the respective amounts of \$766.90, \$954.00, and \$954.00, as well as related statutory penalties and interest, and administrative costs and attorneys' fees incurred by the District, for a total judgment amount of \$21,568.89 (the "Judgment Amount").

Unsuccessful March 2012 District Foreclosure Sale

In accordance with the Foreclosure Covenant, the District duly caused the Imperial County Sheriff to hold a foreclosure sale on March 14, 2012 (the "March 2012 District Foreclosure Sale") to execute on the Judgment, for the minimum bid price of \$22,110.41 (consisting, as specified by Section 53356.5 of the Act, of the Judgment Amount, post-judgment interest at 10% per annum, and authorized costs of the Imperial County Sheriff). There were no bidders at the March 2012 District Foreclosure Sale.

On February 23, 2013, the Tax Collector of the County of Imperial (the "County Tax Collector") held a tax sale (the "February 2013 County Tax Sale") in accordance with the Revenue and Taxation Code to collect delinquent ad valorem property taxes and other delinquent assessments and taxes remaining on the Imperial County tax roll with respect to the preceding five fiscal years (including delinquent special taxes levied by the District with respect to fiscal years 2010-11 and 2011-12 which are not included in the Judgment). The minimum bid at the February 2013 County Tax Sale was significantly lower than the minimum bid required under the Act for a District foreclosure sale, because the California Revenue and Taxation Code authorizes the County Tax Collector to proceed with a tax sale under a process prescribed by the Revenue and Taxation Code and without judicial action and related costs. By way of contrast, the District is required under the Foreclosure Covenant, as authorized under the Act, to undertake foreclosure through a judicial foreclosure action and a foreclosure sale to execute on the Judgment. APN 054-601-001 was sold at the February 2013 County Tax Sale for a sale price of \$5,210 to RSG Capital, LLC, a California limited liability company (the "New Parcel Owner").

Negative Outlook for Future District Foreclosure Sales to Execute on the Judgment

Under California law, the Judgment survives the February 2013 County Tax Sale, and the Foreclosure Covenant presently requires the District to continue to hold foreclosure sales to execute on the Judgment, at the minimum bid amount specified in the Act until the delinquent special taxes included in the Judgment are paid. Because the minimum bid amount, as specified by Section 53356.5 of the Act, must include the Judgment Amount, post-judgment interest at 10% per annum, and authorized costs, *the minimum updated bid amount as of March 17, 2014 is \$27,838.64 and will continue to increase 10% annually after the judgment.*

The fair market value of APN 054-601-001, in its current state, is significantly lower than \$27,838.64, and the District is highly unlikely to accomplish a sale of the parcel at any future foreclosure sale to be held to execute on the Judgment. Moreover, the District is likely to continue to incur additional attorneys' fees and Imperial County Sheriff costs in connection with any future attempts to sell APN 054-601-001 at a foreclosure sale.

Proposed Resolution of Outstanding Special Tax Delinquencies

Except for the delinquent special taxes included in the Judgment (with respect to fiscal years 2007-08, 2008-09, and 2009-10), APN 054-601-001 *is presently current in the payment of special taxes.* The New Parcel Owner intends to develop APN 054-601-001 as a single family residence and is willing to cure the delinquent special taxes included in the Judgment (with respect to fiscal years 2007-08, 2008-09, and 2009-10) by paying to the District an amount equal to the delinquent principal of such delinquent special taxes (\$2,674.90) together with related statutory penalties (\$267.49), for a total amount of \$2,942.39 (the "Cure Amount").

To avert the incurrence of additional costs and expenses of future foreclosure sales to execute on the Judgment (*which are expected to be unsuccessful in view of the minimum bid requirements of the Act*), the Board of Directors of the Heber Public Utility District, as the legislative body of the District, desired to amend the Foreclosure Covenant to *address this highly unusual situation.* The proposed amendment would allow the New Parcel

Owner to satisfy and cure the delinquent special taxes with respect to fiscal years 2007-08, 2008-09, and 2009-10 on APN 054-601-001 by paying the Cure Amount to the District, without the need to pursue additional foreclosure sales to execute on the Judgment. In all other respects and with respect to all other delinquencies, the Foreclosure Covenant would remain unchanged.

On September 2013 Heber Public Utility District Board Meeting acting as legislative body of the Facilities District recommended that the First Supplemental Indenture be approved, as being in the best interests of the Bond Owners of the 2005.

Following HPUD Board of Directors direction mail was sent to the Bond owners with a very poor response, due to this situation it was recommended by the District Bond Counsel, Diana K Chuang to hire a specialized company to request vote from the bond owners, this action had a positive response of \$730,000 out of \$2,010,000 well below the majority of \$1,010,000 necessary to pass the First Supplemental Indenture, therefore the District Bond Counsel's attempt to pass the First Supplemental Indenture failed. Bond Counsel summarizes HPUD's options as follows:

DISCUSSION:

Bond Counsel Options Summary Information:

- (1) Go to the bond owners for another vote on the supplemental indenture, but also including a summary of the results of the last vote, emphasizing the need for majority approval, and including a reminder to be sent by Broadridge close to the vote deadline. The cost to mail a second request to the bond owners is \$1,000 approximately, Bond Counsel hopes to have better numbers with this second notice action.
- (2) HPUD could purchase the parcel for parking lot uses, if we continue to proceed with the next attempted foreclosure sale. This was an idea that HPUD had previously inquired about in July 2011, but then decided not to purchase. The HPUD would submit a bid for the minimum bid amount, calculated at the time of the sale. The CFD itself is not authorized to acquire a parking lot under the formation documents for the CFD.
- (3) Try to get the minimum sale price for the parcel at a foreclosure sale reduced, but this would require approval of 75% of the bond owners. However, given the higher approval requirements (75% vs. majority in option (1)), this option doesn't seem very helpful.

Respectfully Submitted,

Laura Fischer
General Manager.