

**MONTEREY COUNTY BOARD OF SUPERVISORS
BUDGET COMMITTEE**

MEETING: May 13, 2013 – 2:30 p.m.	AGENDA NO:
SUBJECT: Receive and accept a report on the Substitution of Leased Properties under the 2007 Certificates of Participation to enable the County to receive Jail Expansion and other grant funds.	
DEPARTMENT: Office of the Auditor-Controller, Sheriff, & RMA-Public Works	

RECOMMENDATIONS:

It is recommended that the Board of Supervisors' Budget Committee:

Receive and accept a report on the Substitution of Leased Properties under the 2007 Certificates of Participation to enable the County to receive Jail Expansion and other grant funds.

SUMMARY:

Approval of the recommended actions will provide transparency and specificity to encumbered county assets, facilitate transfer of unencumbered land to the State Public Works Board required to generate grant funds pertaining to the Jail Housing Addition, and further enable the County to finance future Capital Improvement Projects.

DISCUSSION:

The 2007 COP financing sold participations in the lease revenue stream generated from the Government Center; the East, West, and North Wings of the Salinas Courthouse Complex; the Monterey Courthouse Complex; the Sheriff's Administration Building; and, the County Jail. However, the legal description contained in the 2007 COP lease pertaining to the County Government Center and the North, East, and West Wings of the Salinas Courthouse Complex covered the entire parcel bordered by Capitol, Gabilan, Church and Alisal Streets. The failure to subdivide the parcel prior to that financing effectively encumbered both parking lots, the old jail, and the land under the modular offices, which were clearly not intended to be part of the "leased" properties. Similarly, Parcel 3 covering the Jail lease included all County owned properties north of the hospital, with the exclusion of APN 003-851-014 on which the Sheriff Administration Building resides. That legal description includes the Juvenile Administration and Jail, as well as other buildings not intended to be subject to the 2007 lease.

The 2007 lease, at Article IX, Section 9.03 states that the County shall have the right, but only upon the express consent of the Insurer, to substitute alternate real property for any portion of the Property, provided the County obtains an independent certified real estate appraisal that states that the Property, as constituted after such substitution, has an annual fair rental value greater than or equal to 105% of the maximum amount of Base Rental Payments payable by the County in any Rental Period and has a useful life equal to or greater than the useful life of the Property, as constituted prior to the release. In addition, the County must obtain a CLTA title insurance policy or policies with respect to any substituted property and an Opinion of Counsel indicating that the substitution will not cause the interest evidenced by the Certificates to be included in gross income for federal tax purposes. Further the County must provide continuing disclosure pertaining to the substitution event, must record those instruments pertaining to the lease amendments, and certified to the Corporation that the substituted property is of approximately the same degree of essentiality to the County as the portion of Property for which it is be substituted.

The County obtained a recent fair rental value appraisal covering the County Administration Building, the North Wing Courthouse, the Monterey Courthouse Complex, and the County Jail which were subject to the original lease. In addition, the newly constructed Health Department Administration Building was appraised. Those fair rental values were determined to be \$10,851,012 annually. The County's maximum remaining base rental obligation is \$10,216,925 in Fiscal Year 2015. The minimum substitution amount of \$10,727,771.25 (\$10,216,925 x 105%) is exceeded by those five properties by \$123,240.75.

Due to time constraints, an appraisal of the fair rental value of the originally leased Sheriff Administrative Building could not be completed. In the future, the County could seek to substitute the Sheriff Administrative Building for the Health Department Building, or simply pledge it toward other financing needs. Therefore, staff recommends leases covering those buildings in order to secure the Jail Expansion funding.

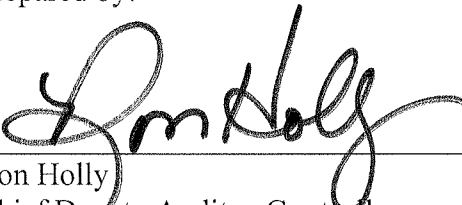
OTHER AGENCY INVOLVEMENT:

The Auditor-Controller, RMA-Public Works, and the Sheriff Department are working jointly to accomplish this substitution to facilitate receipt of the Jail Expansion grant funds.

FINANCING:

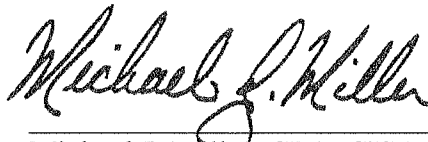
The substitution project to date has been funded from Fund 404 Laurel/Natividad Master Planning. These funds will be drawn from the existing Fund 404 balance. Several factors will influence the cost of this task. It is estimated that bond counsel fees will run \$15,000 and title insurance about \$10,000. The critical unknown is the fee associated with Ambac Assurance Corporation's consent to substitute. Ambac is bankrupt and seeking restitution for creditors. Bond Counsel anticipates that Ambac will charge a fee approximating \$25,000.

Prepared by:



Ron Holly
Chief Deputy Auditor-Controller

Approved by:



Michael J. Miller, CPA, CISA
Auditor-Controller

Dated: May 8, 2013